Sickness Absence Management

A Management Guide

Table of Contents

1 INTRODUCTION

Sickness absence has the potential to impact severely on company profitability and survival. However, the effective management of the problem is often complex, and requires an understanding of industrial relations and the sociology of workplaces (the ways in which groups of people relate to each other, and co-exist at work).

Strategically, this topic resides in the area of performance management. Therefore, it is the responsibility of line management, assisted by human resources. The occupational health team plays an important consultative role.

The underlying reasons for poor work performance may be quite diverse. For example, they could relate to psychosocial problems at home, genuine ill health, logistic problems such as transport, and a long list of others. Ultimately, the final common pathway of all these “problems” is a poor work record or inadequate work performance. In other words the employee is either simply not at work, or when he/she is at work, the performance is below the required standard. Sometimes this under-performance may be that the employee is no longer able to perform some (not all) of the required tasks for that particular occupation.

The aim of effective sickness absence management is to minimise the productivity losses through sickness absence by:

- Ensuring the implementation of sound industrial relations policies, including fairness & consistency, and avoiding victimisation
- Tracking sickness absence statistics & patterns, so as to understand the impacts & trends
- Identifying individual problem cases early, and implementing remedial actions

2 LEGAL REFERENCES

1. The Basic Conditions of Employment Act 75 of 1997 (BCOEA)
2. The Employment Equity Act 55 of 1998.
3. The Code of Good Practice on the Employment of People with Disabilities (19 August 2002, No. 237183) (linked to the Employment Equity Act)
4. The Labour Relations Act No 28 of 1956 as amended in 1996.
5. The Occupational Health and Safety Act (OHSA), No 85 of 1993 and Regulations.
6. The Mines Health and Safety Act (MHSA), No. 29 of 1996 and Codes of Practice.
7. The other Codes of Good Practice (including Hours of Work, Pregnancy, HIV & testing, Disability, etc.)
8. The National Road Traffic Act No. 93 of 1996, and Regulations.

The Basic Conditions of Employment Act 75 of 1997 (BCEA)

The BCEA contains a number of provisions that relate to the issue of fitness for work such as paid sick leave, **medical certificates**, maternity leave, protection of employees before and after birth of a child and night (shift) work. (See Appendix 2)

The provisions regarding sick leave do not apply to an inability to work caused by an accident or an occupational disease as defined in the COID Act, or in the ODMWA, except in respect of any period during which no compensation is payable in terms of these acts.

3 DEFINITIONS

There are no definitions that are specific to this Management Guide.

4 APPROACH TO HEALTH-RELATED POOR PERFORMANCE / EXCESSIVE ABSENTEEISM AT COMPANY-LEVEL

Key steps:

1. Understand that the REAL problem is probably NOT the perceived problem (ill-health).
2. Develop a shared strategy, working with senior managers, who will drive the strategy thro' the business.
3. Get buy-in from the middle-managers, supervisors & HR officials (who must implement the strategy - this is where the battle is won!).
4. Keep the employee representatives (unions) well informed of any changes in management style, and try to get their buy-in, as there is advantage for all employees when the system works. (If they do not agree with the strategy, the job gets harder). If the strategy is fair & consistent, they will support it.

4.1 Step 1: Identifying the REAL problem, not the perceived problem.

Is it because people are sick or is it because there are "other" problems? Usually the real issues are NOT "real" illness. Examples of "other" problems include:

- Poor performance management, and employees simply extract what they can out of the system. (exclude misconduct here)
- Bad employer-employee relations, and employees either don't want to come to work or they use sickness absence as a way of getting back at their supervisors

Actions required:

- Set up a database by which to gather all sickness absence.
- Analyse the data (patterns/trends), especially seeking possible associations with areas of industrial relations conflicts (disciplinary issues, etc.).
- Feed back findings to management.

4.2 Step 2: Develop a strategy.

Key stakeholders (human resources, line management & occupational health) to formulate a shared understanding of the way forward, and develop a policy/procedure/management plan for the management of sickness absence.

4.3 Step 3: Get buy-in from middle managers & supervisors, etc.

This is an important step. Failures in the management of sickness absence often happen here. Reasons include:

- They have been promoted from the ranks, and the general workers are often long-standing colleagues or friends; the fact that they are expected to manage them creates a highly stressful conflict of interests
- They have not been adequately trained in their rights and limitations as managers, as well as the rights and limitations of the employees. They are scared that they may fall foul of labour law, and get into trouble.
- They get involved with the medical issues, instead of sticking to their areas of responsibility, thereby getting embroiled in irresolvable conflicts, such as the validity of the medical decisions taken by doctors.

Actions required:

- Provide training for middle management & supervisors, coaching them on these matters.
- Implement robust performance management, with support of union & senior management.

4.4 Step 4: get buy-in from employee representatives (union(s))

The support of employee representatives is essential. This comes through transparent consultation, and, if necessary, facilitating their training as for managers (above).

The unions should be tasked with communicating the purpose of the performance management strategy, and its advantages (fairness, consistency, and ensuring company survival).

In summary: excessive absenteeism is a massive problem that can impact severely on company profitability. Solutions lie in a team approach, with each role player sticking to his/her "knitting", but working according to a common game plan. Ultimately it comes down to intelligent but effective performance management.

5 STEP-WISE APPROACH TO INDIVIDIALS WITH HEALTH-RELATED POOR PERFORMANCE / EXCESSIVE ABSENTEEISM

The first step in handling excessive sickness absence is to determine whether it is misconduct or incapacity.

5.1 Step 1: Exclude misconduct

Gather available medical evidence and evaluate. Examples of misconduct include:

- Failure to follow the correct procedure, such as not calling in to inform the employer of an episode of sickness absence, and an approximate return to work date, thereby enabling the employer to take appropriate action at work.
- Repeatedly arriving late.
- Patterns of sickness absence that are suspicious (frequency, weekend illness). Determine how regularly and what periods the person is absent, e.g. weekend absence without a medical certificate. Certain trends in sickness absence are a sign of fraudulent use of the entitlement, and can be regarded as misconduct. Medical certificates should be scrutinised carefully when they are provided from a wide variety of doctors.
- Validity of medical certificates. If the medical certificates clearly show signs of not being valid (as defined by the Health Professions' Council – see appendix 7), or if no medical reports are given and it can be concluded that the employee is absent for other reasons than that of illness, the disciplinary code of conduct may be used.
- Arriving at work in an intoxicated state (or being found to be intoxicate at work)

If there is suspicion that the absence is not justified, try to obtain evidence for the suspicions, e.g. through unexpected visits to the employee's home and/or evidence (preferably verified) from people who have first-hand knowledge of the person's whereabouts.

Note that the requirements for medical certification include protection of the privacy of the employee, hence the doctor may not reveal the nature of the disease without the consent of the employee. The employer may not insist on private or confidential information. It could be considered reasonable, though, for the employer to seek reassurance that the extent of the absence is justified, given the nature of the condition, and for clarity regarding the likely return to work, and the returning person's health status at the time of returning to work (does he/she still meet the requirements of the occupation?).

Where misconduct is established, the appropriate steps are taken, in accordance with the company's disciplinary code.

Where incapacity is established, proceed to step 2.

5.2 Step 2: What's the problem?

If the problem is incapacity, the next step is to determine whether it is a medical problem, or other issues at play, including adversarial relationships, management issues, logistic issues (transport), etc.

- The non-medical issues are to be managed as per any other performance management problem.
- The cases of medical incapacity are handled as described in the management guide on handling incapacity and disability.

5.3 Step 3: Establish a Plan, and follow through

The employee and employer should work together to establish an agreed pathway to recovery (meeting the needs of the employee, and the needs of the operation).

Note:

Referral mechanisms and poor work performance

When an employee is referred for a medical opinion for reasons of poor work performance, extensive periods of sickness absence, ill health etc, the referral mechanism is important. All too often, medical professionals are frustratingly confronted by an employee who is referred by company management for a medical opinion for an obscure reason. This unmasks inadequate management policies or a need for training. Furthermore, it fuels an underlying implication that management is suspicious that the referred party is guilty of sick leave abuse or even misconduct, and that the occupational health unit is an expedient instrument for management action against this "culprit", with negative industrial relations consequences. The medical practitioner is placed in the invidious position of the wise, all-knowing arbitrator, although the employer's subtle underlying expectation may be that the practitioner act in support of the employer. This kind of practice should be avoided. Instead, a structured approach should be established, and procedurally followed.

Synergee has developed a referral form, which should be used by company management whenever a referral for medical evaluation is contemplated.

6 SICKNESS ABSENTEEISM - RESPONSIBILITIES AND ROLE CLARITY

An extremely important component in any sickness absence/performance management programme is the task of establishing role clarity. This prevents misunderstandings and frustrations due to mismatched expectations. This section describes the main role players, and their key functions.

6.1 Role Clarity - The Employees

Key role: the provision of labour of the required standard, and meeting the inherent requirements of the job.

Employees are obliged, by their employment contracts, to provide services to a minimum standard. This is their responsibility. Should they be unable to provide these services for whatever reason, including medical reasons, it remains their obligation to rectify the reasons for this. It is never the responsibility of the company or of the doctor to ensure the optimum health of the employee – their responsibilities are described below. Within the context of sickness absence, it is also the responsibility of the employees to make use of their sickness benefits judiciously and responsibly. They are required to function within the requirements of company policy, such as timeous communication of absence when it occurs.

6.2 Role Clarity - The Employer

Key role: to manage employees and their work performance fairly and with consistency, and in accordance with minimum legal standards; also to communicate poor performance to affected employees and provide fair opportunity for the employees to remedy the problem. The employer should also ensure that the workplace does not put the health and safety of employees at undue risk.

The employer is contracted to pay for the services rendered by the employees and to manage the company effectively so as to ensure a satisfactory profit. In this way, all employees benefit from a stable and prosperous working environment. The employer is obliged to make available certain entitlements such as sick leave, and negotiable benefits such as pension fund, medical aid, etc. The employer should also provide a clear company policy on issues relevant to performance appraisal. The employer should communicate performance, especially under-performance, very clearly. Hence, should an employee be unable to render services effectively, it is incumbent upon the employer to notify the employee accordingly and to make available reasonable assistance so that the employee is able to address the problem. In the case of sickness absence, this “assistance” could be in various forms, such as medical aid (co-funded by the company) or authorised leave of absence from work (paid or unpaid). Some companies even offer the services of an on-site medical clinic.

6.3 Role Clarity – The Medical Service provider (healthcare industry)

Key role: The medical service provider’s role is to provide high quality professional care & treatment, and to communicate with the employer regarding prognosis & return to work.

The doctors, nurses, etc, providing health care to employees are responsible for applying their skills to the best of their abilities, to restore health and wellbeing. They should also provide adequate feedback to the employer regarding the probable outcomes of treatment, and the likely date for return to work. This will facilitate human resource planning at the workplace.

6.4 Role Clarity - The Occupational Health Team

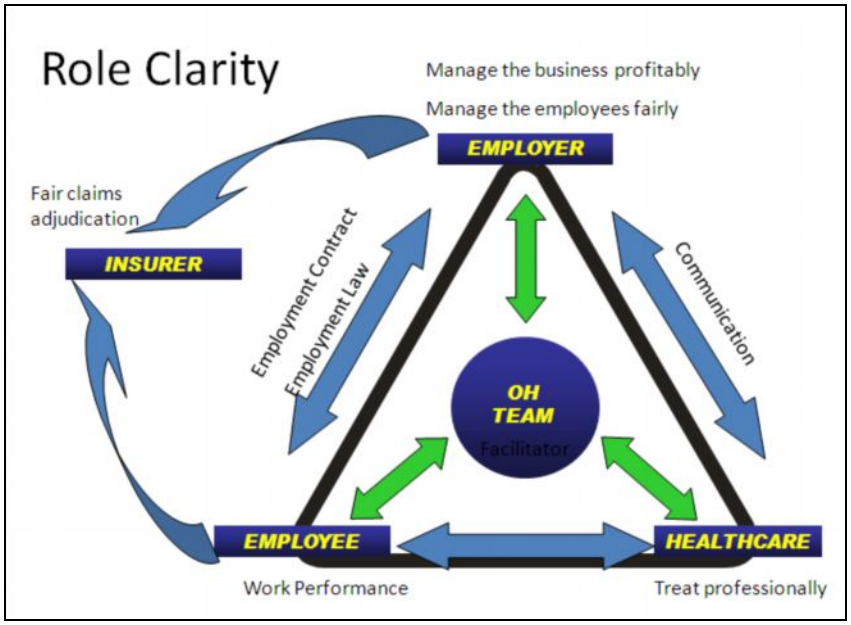
Key role: The occupational health team's role is to facilitate interaction with all the key stakeholders.

The OH team is uniquely positioned. They are positioned in such a way as to be able to interact very effectively with the employer, the employee (and the union), the employee's healthcare provider, and even (to a limited extent), with the insurer.

Where appropriate or possible, some treatments may be offered by the OH team as well.

Where work factors play a role in the illness, the medical staff must interact with management to seek an optimal solution for the problem.

The responsibility to ensure the optimal health (or treatment) of the employee is not the responsibility of the medical team. This remains with the employee. Should the services of the employee's own medical attendant not solve the problem, the employee should address this him/herself. Should the employee require the assistance of the company's medical staff in this regard, he or she should be encouraged to do so. In summary, the company medical team's role is supervisory and supportive.



6.5 The Process

Once these roles are clearly understood it is easier to manage the situation. There is a tendency for employees to regard a Sick Certificate as a diplomatic "immunity" from performance appraisal. However, it must be remembered that the "Sick Certificate" is merely a mechanism by means of which the Basic Conditions of Employment Act (BCEA) regulates the remuneration of sick leave entitlement. Whilst an employer must acknowledge that employees may become ill or injured from time to time, this does not indemnify the employee from overall performance evaluation. Therefore, should an employee be frequently absent from work for medical reasons, the company is only obliged to make available sickness

entitlements in terms of the BCEA, but is not obliged to accept that this absence without question, or that it is an immutable right. Frequent sickness absence, to the point where the company's operations are compromised, is not commensurate with the running of a successful business.

So what does all this mean? Firstly, the company's supervisors or lower order managers should counsel employees who are frequently absent from work. These counselling sessions should be documented and acknowledged in writing (a signature will do) by the counselled employees. The counselling manager should never adopt a judgmental attitude and should never refer to personal issues that could undermine the dignity of the employee. The manager should focus exclusively on work performance and encourage responsible healthcare seeking behaviour. The disciplinary code should include a section in which employee counselling for sub-standard work performance. Specific mention should be made of warnings that might be issued in this regard. After an agreed number of warnings, an employee may be separated from the employ of the company on the grounds of "unsuitability". Note that the term 'unsuitability' is preferred as it is non-judgmental and simply refers to the employee's inability to meet work performance standards.

Should this unsuitability be regarded as a medical incapacity, an incapacity procedure should follow.

6.6 The Markers of Sickness Absence

It is useful to establish markers of sickness absence, that can be used to track overall business impact, as well as track progress of any intervention. These are the markers most frequently used:

SAR (Sickness Absence Rate)
- Percentage of shifts lost as a proportion of total shifts worked.
  Total shifts lost divided by total shifts worked

Target <2.5%

AFR (Absence Frequency Rate)
- The frequency of sickness absence events in the company.
  Total number of sick leave incidents divided by total staff complement

Target <0.5

ASR (Absence Severity Rate)
- The average number of days off per sick certificate.
  Total shifts lost divided by total number of sick certificates

Target > 5

DIIR (Disabling Injury Incidence Rate)
- The rate of disabling injuries at the workplace over the most recent 12 months.
  Total number of disabling injuries and illnesses over last 12 months times 200000 divided by the Total number of actual hours worked over the past 12 months. (200000 represents a "correction factor" derived from the number of hours worked by 100 full-time employees over a year (40x50x100))

Target = 0

DISR (Disabling Injury Severity Rate)
- The impact /effect of the disabling injuries at the workplace over the most recent 12 months.

Total number of days lost over last 12 months times 200000 divided by the Total number of actual hours worked over the past 12 months. (200000 represents a "correction factor" derived from the number of hours worked by 100 full-time employees over a year (40x50x100))

Target = 0

7 Document History

Version Number	Change	Date
00	Now a separate document from the original "parent" document (Management guide for incapacity & disability management").	26/11/2009

8 Appendix 1: Minimum requirements for a valid sickness certificate

The Health Profession's Council of South Africa's viewpoint is that failure to include the following information in a Certificate of Illness constitutes unprofessional conduct:

(Excerpt from "Ethical Rules of Conduct for Practitioners registered under the Health Professions Act, 1974, Government Gazette No. 29079, 4 August 2006").

Certificates and reports

Rule 16.

1) A practitioner shall grant a certificate of illness only if such certificate contains the following information -
   a) the name, address and qualification of such practitioner;
   b) the name of the patient;
   c) the employment number of the patient (if applicable);
   d) the date and time of the examination;
   e) whether the certificate is being issued as a result of personal observations by such practitioner during an examination, or as a result of information which has been received from the patient and which is based on acceptable medical grounds;
   f) a description of the illness, disorder or malady in layman's terminology with the informed consent of the patient: Provided that if such patient is not prepared to give such consent, the practitioner shall merely specify that, in his or her opinion based on an examination of such patient, such patient is unfit to work;
   g) whether the patient is totally indisposed for duty or whether such patient is able to perform less strenuous duties in the work situation;
   h) the exact period of recommended sick leave;
   i) the date of issue of the certificate of illness; and
   j) the initial and surname in block letters and the registration number of the practitioner who issued the certificate.

2) A certificate of illness referred to in subrule (1) shall be signed by a practitioner next to his or her initials and surname printed in block letters.
3) If preprinted stationery is used, a practitioner shall delete words which are not applicable.
4) A practitioner shall issue a brief factual report to a patient where such patient requires information concerning himself or herself.

HPCSA rulings regarding the acceptance of sickness certificates:

- The council is not in a position to pronounce on the legal position in terms of relevant legislation as regards an employer accepting or refusing to accept a certificate of illness. Council is, however, of the opinion that an employer does have the right to refuse to accept a sick leave certificate where circumstances exist (whether of a medical or other nature), justifying such refusal. Naturally such a refusal warrants discretion and must be judiciously exercised.

- The exact wording in a sick leave certificate is of utmost importance. If an employer is of the opinion that the relevant health professional acted unprofessionally in any way, the employer is at liberty to lodge a complaint against a specific person registered with the Health Professions Council of SA.
- A health professional can, on behalf of an employer, if the need occurs, query a sick leave certificate, and shall consult the health professional who issued the sick leave certificate; but shall under no circumstances revoke the opinion of the implicated health professional without prior consultation.

HPCSA summary statement:

- A sick leave certificate is an important legal document, and should always be factually correct. Fraudulent information can result in criminal charges against a certifying health practitioner, as well as disciplinary action by the relevant Health Professions Council.

9 Appendix 2: Excerpt from the Basic Conditions of Employment Act

22 Sick leave

(1) In this Chapter, 'sick leave cycle' means the period of 36 months' employment with the same employer immediately following-

(a) an employee's commencement of employment; or

(b) the completion of that employee's prior sick leave cycle.

(2) During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

(3) Despite subsection (2), during the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

(4) During an employee's first sick leave cycle, an employer may reduce the employee's entitlement to sick leave in terms of subsection (2) by the number of days' sick leave taken in terms of subsection (3).

(5) Subject to section 23, an employer must pay an employee for a day's sick leave-

(a) the wage the employee would ordinarily have received for work on that day; and

(b) on the employee's usual pay day.

(6) An agreement may reduce the pay to which an employee is entitled in respect of any day's absence in terms of this section if-

(a) the number of days of paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay; and

(b) the employee's entitlement to pay-

(i) for any day's sick leave is at least 75 per cent of the wage payable to the employee for the ordinary hours the employee would have worked on that day; and

(ii) for sick leave over the sick leave cycle is at least equivalent to the employee's entitlement in terms of subsection (2).

23 Proof of incapacity

(1) An employer is not required to pay an employee in terms of section 22 if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.

(2) The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.

(3) If it is not reasonably practicable for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of subsection (1) unless the employer provides reasonable assistance to the employee to obtain the certificate.

24 Application to occupational accidents or diseases

Sections 22 and 23 do not apply to an inability to work caused by an accident or occupational disease as defined in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993), or the Occupational Diseases in Mines and Works Act, 1973 (Act 78 of 1973), except in respect of any period during which no compensation is payable in terms of those Acts.

25 Maternity leave[i]*

(1) An employee is entitled to at least four consecutive months' maternity leave.

(2) An employee may commence maternity leave-

(a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or

(b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.

(3) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

(4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.

(5) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to-

(a) commence maternity leave; and

(b) return to work after maternity leave.

(6) Notification in terms of subsection (5) must be given-

(a) at least four weeks before the employee intends to commence maternity leave; or

(b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(7) The payment of maternity benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 1966 (Act 30 of 1966).[ii]*

26 Protection of employees before and after birth of a child

(1) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.[iii]*

(2) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if-

(a) the employee is required to perform night work, as defined in section 17 (1) or her work poses a danger to her health or safety or that of her child; and

(b) it is practicable for the employer to do so.

27 Family responsibility leave

(1) This section applies to an employee-

(a) who has been in employment with an employer for longer than four months; and

(b) who works for at least four days a week for that employer.

(2) An employer must grant an employee, during each annual leave cycle, at the request of the employee, three days' paid leave, which the employee is entitled to take-

(a) when the employee's child is born;

(b) when the employee's child is sick; or

(c) in the event of the death of-

(i) the employee's spouse or life partner; or

(ii) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

(3) Subject to subsection (5), an employer must pay an employee for a day's family responsibility leave-

(a) the wage the employee would ordinarily have received for work on that day; and

(b) on the employee's usual pay day.

(4) An employee may take family responsibility leave in respect of the whole or a part of a day.

(5) Before paying an employee for leave in terms of this section, an employer may require reasonable proof of an event contemplated in subsection (1) for which the leave was required.

(6) An employee's unused entitlement to leave in terms of this section lapses at the end of the annual leave cycle in which it accrues.

(7) A collective agreement may vary the number of days and the circumstances under which leave is to be granted in terms of this section.

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[i] In terms of section 187 (1) ***(e)* of the Labour Relations Act, 1995, the dismissal of an employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, is automatically unfair. The definition of dismissal in section 186 of the Labour Relations Act, 1995, includes the refusal to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract.**

[ii] Sections 34 and 37 of the Unemployment Insurance Act, 1966 (Act 30 of 1966), provide for the payment of maternity leave. Legislative amendments will be proposed to Cabinet to improve these benefits and to provide that the payment to an employee of maternity benefits does not adversely affect her right to unemployment benefits.

[iii] The Minister must issue a Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child in terms of section 87 (1) *(b)*.