

## Working with Adverse Weather

Luckily the rains seem to have now reduced, so we can down our Ark making tools for a while and take stock of the recent events. One point that has been driven home is the unquestionable effect that the weather has on lives and businesses and that adverse weather it is not an such an unusual occurrence, with regard to this some of you may remember the Icelandic volcano Eyjafjallajökull's eruption in 2010, which grounded flights throughout Europe for nearly a week.

The inability of businesses to operate and employees to work as a result of the floods, eruptions and other more common natural events such as snow, raises some interesting and pertinent employment law questions.

### Are employees who are absent due to adverse weather entitled to pay?

The starting point for the obligations and rights of employers and employees in relations to absences is the employment contract. The reality is that while employment contracts normally cover absences from work through illness, they are usually silent on absences due to the matters such as weather. In these circumstances the general rule is that the employee must be able and willing to work and if the employee is unable to attend work for a reason not covered by the employment contract the employee loses their right to be paid for the absence. Generally, although not always, that the employee was absent through no fault of their own will not matter.

It should be noted that this general position does not prevent the employer from deciding to pay their employees and if that has been the position in the past this custom and practice can overtime become an implied term of the employment contract.

Even when the employee has no entitlement simply deducting wages as a result of absence by an employee through no fault of their own could lead to disgruntled employees and it should always be remembered that any deduction of wages must conform with the provisions of sections 13 to 15 of the Employment Rights Act 1996.

### Can the absent employees be disciplined or dismissed?

This will generally depend on two points. First; is there a work policy in place regarding absence due to adverse weather and if so has there



been a breach of this policy? Second; is the employee's absence due to adverse weather a regular occurrence? If the answer is 'yes' to both questions, then it may be possible to discipline an employee in these circumstances, although advice should be gained before proceeding with such a course due to the danger of antagonising employees and the likely hood of a resulting claim. If there is no policy in place then an employer should proceed with any disciplinary action with due caution or it is likely they will be facing an unfair dismissal claim from the former employee.

### What if the employer is unable to provide work?

It may be possible for an employer to require that their employees take leave when work is prevented by adverse weather, but this will generally not be a viable option when the weather event is sudden, as there is a statutory requirement that the notice be given by an employer be at least double the time to be taken off and many contracts will require longer periods.

In addition, and as always, the employment contract should be consulted, as some contain lay-off clauses. A lay-off is where there is no work for the employees and no pay. An employee should use this with caution as should a lay-off lasts more than four consecutive weeks, or for six weeks out of thirteen the employees would be entitled to redundancy pay. However, if the employment contract does not contain a lay-off clause then an employer's attempt to do so will result in a repudiatory breach of the contract and the employees would be treated as dismissed.

In conclusion I would like to say that all of the above is only a general overview, and point out that this is a sensitive area which can all too easily lead to the employer breaching their duty of trust and confidence towards their employees, so any action taken should be done following advice specific to the circumstances of each matter.

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