



## And Now For the Weather.....

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With the treacherous weather conditions across the country that have plagued us for weeks still in full flow, and with no end in sight, one question that has arisen is whether businesses still have to pay their employees who cannot get to work because of the weather.

In keeping with the unprepared and gritless local authorities, most employers are not prepared and do not have a policy that deals with these matters – arguably because most employers have better things to do than worry about such eventualities until they (very infrequently) happen.

The position on pay is that, in the absence of contractual provisions that allow employers to deduct pay when employees cannot make it into work because of adverse weather conditions (and as much as the British love talking about the weather, these would be extremely unusual provisions given the rarity of these kind of extreme weather conditions), then the answer is that not to pay employees may well constitute an unauthorised deduction from wages.

We recommend clarity as always and letting your employees know straight away what they need to do if they think they cannot make it into work because of the snow.

Firstly they should know that they have to make contact with someone in the Company (someone who can make it into work!) in order to discuss the situation before they turn over and go back to sleep. Employees should be aware that if the Company reasonably takes the view that they could still get into work (although it might take some extra effort on their behalf) and requires them to try, then they may well not be paid if they still

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do not turn up as this would be seen as refusal of a reasonable instruction. However, if the Company agrees that they cannot make it into work, then they will be paid, but may be required either to work from home to the extent possible or to make up the hours where they can. Guidance should also be given on any reduced working hours for those whose commute is significantly increased because of the conditions. This does not have to be in a formal permanent policy but might be a memo or email issued to all staff during conditions such as these, clearly outlining what is required and what is permitted – and what are the consequences of failing to comply.

If the employee does not contact anyone to let them know they will not be able to make it in and/or if they refuse the Company's instruction to try to get in, this may be unauthorised leave and as such, may be unpaid, depending on the employer's absence policy. However, since a deduction of pay might count as a disciplinary sanction and/or a breach of contract or unlawful deduction, depending on the circumstances, it would be advisable to hold disciplinary proceedings to consider the issue before such a deduction were made. Disciplinary proceedings in this situation may be incredibly cumbersome but one would hope that the requirement for a phone call and a discussion and the ultimate threat of disciplinary proceedings if the employee refuses to comply with reasonable requests, would at least act as a disincentive to those who view snow days as duvet days.

Take care also in relation to any requests from employees with childcare responsibilities. With the rash of school and nursery closures across the country continuing apace, many parents have been forced to stay home from work, at the last minute, to look after their children or put in place alternative emergency care arrangements. Such situations are likely to qualify as emergency time off for dependants (a statutory right), at least for long enough to allow the employee to put alternative measures in place. Therefore, refusing such a request and demanding the employee turn up to work would breach their statutory rights - although ironically, the statutory right is to unpaid time off, so there would be no statutory obligation to pay for this time, subject only to any Company policy or practice on those situations and also to potential indirect sex discrimination agreements from female employees who may be disproportionately affected by the requirement to turn up for work (or take the time off as unpaid) because of their childcare responsibilities.

One final note of caution is that if the Company takes the view that an employee can make it in and demands that they try and then the employee has an accident on the way to work as a result, this could leave the Company open to personal injury claims and in a very sticky position when the issue of sick pay falls to be discussed. As ever you are encouraged to apply common sense to such situations (and include a safety warning in any guidance!) and look at each employee's position on an individual basis to work out what is possible and reasonable for that person.

And watch out for snowballs on the way home...

If you would like to discuss any aspect of this alert or require further information on the matters referred to, please contact **Nicola Whiteley** on +44 (0)20 7862 4670 or **Mandy Perry** on +44 (0)20 7862 4637.

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