

MANAGING THE IMPLICATIONS OF EXTREME WEATHER

In 2013 we had extreme snow conditions which saw staff unable to get to work for several days in some instances; in 2014 the problem was severe flooding in some parts of the country. In the case of flooding, it wasn't just that staff couldn't travel – it was also that they felt that they did not want to go into work as they dealt with the chaos and devastation they had to deal with.

In order to protect your business, employers need to consider the issues and suggestions outlined in this article – they may have seemed overkill only a few years ago but, with extreme climate conditions predicted to be on the increase, addressing such issues now may save companies considerable costs in the future.

Absent employees

Whatever the reason for absence, employees are always required to notify their employer; failure to do this can result in action being taken. But, even where an employee notifies you that they will not be able to attend work because of weather conditions, there is no automatic obligation on you to agree to the absence. Whether or not it is reasonable to grant – or refuse – permission will depend on several factors, such as:

- Is their absence genuinely caused by the weather?
- Is it reasonable not to attend work due to the weather?
- How long did the period of non-attendance last and what impact did this have on the company?

Where permission is granted, employees are not normally entitled to be paid for weather-related absences unless their employment contract says otherwise or their employer decides that it wishes to do so.

The real problem is where permission to be absent is not granted but the employee still does not attend work. In these situations the absence will be unauthorised and disciplinary action could result.

To help with such situations employers should have a clear adverse weather policy stating that:

- employees are expected to make all reasonable efforts to attend work
- absence due to adverse weather needs to be notified to the company in the same way as any other absence – and that it must be approved
- absence due to the weather is unpaid (if that is what the company's policy is)
- unreported or unauthorised absence may lead to disciplinary action.

Unable to provide work

Where the situation is reversed, and the employee is available for work, but their employer is unable to provide work (e.g. because premises are flooded), in most circumstances, the employee is entitled to be paid even though they may not work.

If your employment contracts contain a lay-off clause you are able to tell employees to stay off work without pay (statutory guarantee payments will apply, however). Laying off employees without a clear contractual provision to this effect would be a breach of contract and potentially lead to successful constructive unfair dismissal claims. There are clear rules and guidance relating to lay offs.

It may be possible to require an employee to take annual leave but this is not straightforward and needs to be handled very carefully.

To provide for such situations in the future, employers should consider:

- building in lay off provisions into their contractual terms and conditions in the event of weather-related disruption or shut down
- reviewing their contractual provisions on requiring employees to take annual leave on short notice
- establishing an emergency weather plan, specifying what work can be done from alternative work premises or from home
- building in greater flexibility into job roles so employees can carry out alternative duties (beyond their general duty of cooperation with their employer's requests) in extreme weather situations.