



Employment alert

EAT guidance on time off for emergencies affecting dependants

The case of *Harrison v Royal Bank of Scotland* has given employers guidance on when an employee has the right to (unpaid) time off for dependants. The right is to take a reasonable amount of time off where it is necessary to:

- (a) Care for a dependant who is ill, giving birth or injured
- (b) Arrange for someone else to care for them
- (c) Sort out a caring arrangement which has unexpectedly fallen through
or
- (d) Deal with a child's accident at school.

If an employer subjects any employee to a detriment for trying to take time off under one of the above headings the employee can bring a claim in an Employment Tribunal.

Often there are disagreements between employer and employee about whether the time off requested is "reasonable" and "necessary" and whether an arrangement has fallen through "unexpectedly". These are all matters of subjective opinion, so any guidance from the Tribunals is welcome.

In this case the employee, Mrs Harrison, learned that her childminder was not going to be available in two weeks' time. Over the next week she tried unsuccessfully to find a replacement. With one week to go she told her employer about her predicament and asked for the time off. The employer said that this was not an "unexpected" development so she could not have the time off and if she took it anyway she would receive a written warning.

Mrs Harrison had no alternative but to take the day off and was given a warning as promised. She then brought a tribunal claim alleging that she had been subjected to a detriment.

The Employment Appeal Tribunal (EAT) found for the employee. It said that the word "unexpected" does not imply a time element. If it was outside the expected arrangements, it was "unexpected". But, it said, the more time that an employee had to make alternative arrangements, the less likely a Tribunal would say that the time requested was "necessary".

More helpful guidance on this issue came last year when the EAT said that an employee who asked for "a month or two" of unpaid time off to care for his children when his wife left him had asked for too much. The provision is supposed to be for short-term emergencies. It said that rarely, if ever, would a month be reasonable.

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