



Employment alert

Let it snow, let it snow, let it snow - to pay or not to pay

With the possibility of more snow on the horizon at some point this winter and many employees being unable to make it to the office due to another dump of snow they will be wondering whether they will be paid for their days spent at home or not.

The recent snow has obviously had quite an impact on business with many employees finding it difficult or impossible to get into work. Given the recent adverse weather conditions we have been asked by numerous clients what approach to take towards staff absences and in particular whether employees need to be paid.

The starting point is that an employer is **not** obliged to pay an employee who is unable to make it into work due to adverse weather conditions unless the contract of employment or some other contractual policy gives the employee an entitlement to be paid in such circumstances.

Employers do therefore have the option of saying to employees who are unable to attend due to adverse weather conditions that they can (i) either take the day off as unpaid leave or (ii) take the day off as part of their annual holiday (assuming that they have some entitlement to use up). Employees should be wary of treating staff differently, on a case by case basis as this can lead to conflict amongst staff and risk exposure to discrimination claims. Consistency is the safest option.

We have been following various on-line forum discussions to see what other employers are doing and the general theme and consensus seems to be that people are taking a flexible and common sense approach. Employees' safety must be a priority but where employees can reasonably make it into work either at a later time or by alternative means (such as walking or the use of public transport) they should be encouraged to do so if it is safe. For other employees there may be the option of working from home or alternative premises. Given the age of modern technology that we live in for some employees this will be a real option, but for many others it still is not.

If you adopt a policy of not paying employees who are unable to make it into work or force them to take the day as annual leave (particularly in circumstances where it is not physically possible or safe for those employees to travel into the work place) you should consider the effect on staff morale. In the litigious society in which we live we have seen it suggested by at least one other lawyer that due to the duty of care that employers owe to their employees they can find themselves liable if an employee feels pressurised to make their way into the office if conditions are treacherous and in doing so suffers an injury.

The sensible alternative solution is to ask employees to make up the time at some later date although where there are prolonged periods of absence this may not be a practical solution.

What about those employees who do make it into work? We found that many employers are very grateful to those who do make it into work and are taking the sensible approach of allowing employees to leave a little earlier. Where employees attend work but are sent home or are expressly told by their employer not to attend, then in those circumstances, that is the employer's choice and the employee would need to be paid.

Given the potential impact adverse weather conditions has for employers it seems prudent for employers to introduce, if not already in place, a policy on severe adverse weather conditions which makes it clear in advance in what circumstances employees will be paid or not if they fail to attend work. The policy should, in many respects, be similar to any sickness and absence policy highlighting who an employee should contact in such circumstances and by what time once they know that they are unable to make it into work or if they will be late. The policy can deal with alternative ways of working such as working from home or at other offices and emphasise the importance of employees trying to find alternative means of making it to the work place. An employer's business continuity or disaster recovery plan should also deal with these circumstances.

For those who are interested in following on-line discussions the HR Professionals UK Group on LinkedIn has a current thread and the publication HR Review has carried out an on-line pole asking "*if people cannot work because of the snow, does your organisation: (1) count it as holiday, (2) overlook it in the circumstances, (3) treat it as unpaid leave and (4) ask people to work flexibly at home*". Out of 618 responses 49% indicated that they would ask people to work flexibly at home, whilst 24% said they would ask their employees to count it as holiday, 14% would overlook it in the circumstances and 13% would ask them to take it as unpaid leave. Steve Smithson, HR Recruitment Director at HR Recruitment Solutions Limited has provided an adverse weather policy available for employers via LinkedIn but for those employers who would like us to provide a more bespoke policy for their particular organisation please let us know by clicking here [Karen Barnes](#).



Stephen Conlan
Partner



BrookStreet des Roches LLP

For further information concerning any matter raised in this alert or other employment advice please contact Stephen Conlan at BrookStreet des Roches LLP, 25 Milton Park, Abingdon, Oxfordshire OX14 4SH Telephone No. 01235 836659 or alternatively e-mail Stephen direct at stephen.conlan@bsdr.com

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