

Up to snow good – employment law tips for employers in the aftermath of Snow-magedon

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Have you been affected by no-show employees this week as a result of snow-magedon? Are you unsure about whether you need to pay staff who didn't show up? If so, read on for our FAQ Guide on the law and best practice in this area.

- 1. Can employees legally refuse to come to work in adverse weather?**

- Not without potential consequences
- If the place of work remains open then there is no automatic right for employees to refuse to attend in bad weather. Technically, failure to turn up without agreeing this in advance is an unauthorised absence. You could discipline in those circumstances (although that's unlikely to be advisable other than in specific circumstances).
- There are a couple of exceptions and other elements to think about:
 - You may have a policy setting out what employees need to do in this situation and if that policy says otherwise, that will prevail;
 - If employees are on pre-arranged leave (sickness or holiday) their leave is unaffected;
 - Employers have a duty to provide a safe place of work – forcing employees into the office in treacherous conditions may fall foul of this. You need to think particularly about disabled employees, pregnant employees etc.

2. Should I pay employees who didn't attend work?

- If employees didn't turn up to work, and hadn't agreed this in advance with you, they didn't meet their end of the bargain and aren't entitled to be paid.
- This is subject to any specific terms to the contrary in their contract of employment, or a company adverse weather policy. You also need to ensure that you treat everyone consistently so its best to have a 'party line' rather than to determine individual cases one by one.
- Legalities aside, common sense should prevail, and employers are well advised to take a more balanced approach and look at work-arounds such as working from home, or making up hours elsewhere, to avoid an unhappy workforce and often because managers themselves can't

make it into the office either.

- You should also bear in mind that whilst you may be legally entitled to withhold pay, if employees weren't warned about it in advance they are likely to feel aggrieved if you subsequently dock pay.

3. Can you force employees to take the leave as holiday?

- Technically, not – unless it is pre-planned in advance. This is because the rules on holiday provide that an employer must give double the length of time they want employees to take in annual leave. So for 1 days' annual leave you would have to give 2 days' notice.
- That said, you can always propose this as an option and – if it is agreed by employees – it is a win/win situation – employees still get paid, but they take a day out of their overall annual allowance.
- You can also pre-empt issues for next time we are hit with a “Beast from the East” by notifying employees as soon as there is a forecast of bad weather likely to affect travel, that any non-attendance will be taken out of holiday entitlement or putting this in an adverse weather policy.

4. What about if the business decides not to open or to close its doors early?

- If it is the employers' decision to close the workplace and workers are otherwise ready, willing and available to work they will usually be entitled to their normal pay.

5. What happens if school closures meant employees couldn't come to work?

- Employees have a right to take time off in an emergency situation involving a dependent which would include children and would almost certainly apply in these circumstances.

- The statutory right is to unpaid leave, but you might have an internal policy on time off for dependents which provides otherwise.

6. Can I discipline employees who didn't turn up this week?

- If they did not agree this in advance, and there is no adverse weather policy stating otherwise, technically you could take disciplinary action. However, think carefully about doing so.
- The weather this week has been extraordinary, and unpredictable. Many employees will have genuinely been unable to get to work due to transport failure or childcare issues for which disciplinary action would be inappropriate, and applying different treatment to different employees is likely to give rise to grievances and an unhappy workforce.
- You would be better off preparing the business for next time around, either by publishing an adverse weather policy or by sending out a circular email to your workforce drawing a line under this week and setting out guidance for next time around. We would be happy to help with this.

If you would like further advice on this issue, or specific circumstances, please get in touch with Polly Rodway (PollyRodway@bdbf.co.uk) who appeared on the Victoria Derbyshire show on BBC 2 discussing these issues on Thursday 1 March 2018.

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