

Adverse weather recommendations for Employers

With a number of weather warnings currently in place across the country the National Meteorological Service has highlighted the associated risks of the severe weather conditions with hazardous road conditions and poor visibility a likely impact. Depending where you are in the country Employers and Employees alike should be mindful that no unnecessary risks are being taken, in particular on their commute to work this morning.

With blended and remote working in operation this will lessen the impact on Organisations for those who are working from home, mitigating any operational disruption. However, for some businesses, extreme and severe weather events can impact on the Employer's ability to operate the business and provide work and also on an Employee's ability to attend for work.

An Organisation's policy on absence due to bad or inclement weather should address the situation where Employees are unable to attend work, or if the Organisation does not have work available, due to weather-related circumstances, other considerations are noted below.

Health & Safety:

Employers are encouraged firstly to look at any adverse weather situations arising to understand if there are any health and safety risks associated with requiring Employees to travel to and from or attend at work during extreme or severe weather conditions – a common-sense approach should be taken by Employers.

Payment:

In the event that the Organisation's premises is unable to open due to inclement weather/natural disaster or some other reason outside of the Organisation's control, a temporary layoff situation could arise and in accordance with the contractual arrangements in place the Organisation should make every effort to notify Employees as soon as possible and Employees will not be entitled to be paid.

Where the Organisation decides that it is possible to open the premises but determines that it is impractical, then in such circumstances Employees will be entitled to be paid.

From a strictly legal standpoint, there is no obligation to pay Employees when they cannot attend for work. Payment in such circumstances is discretionary.

Any more beneficial arrangement is a matter for agreement between the Employer and the Employee. However, Employers are encouraged to take a long-term view of the working relationship, recognising that demonstrating concern for the welfare of Employees and treating Employees fairly translates into a better working environment to the benefit of both the staff and the Employer. The custom and practices in the Organisation in previous similar instances may be of relevance.

However, employment contracts may contain provisions enabling Employers to put Employees on short time working or lay-off when an event outside the Employer's control impacts on work. For those Employers, it may be permissible to send Employees home without having to compensate for the reduced hours of work although caution should be exercised when relying on these clauses for short closures as reasonable notice should be given. For Employers without such a clause in the employment contract, a decision to send Employees home

could amount to a breach of contractual terms. Full pay for the lost hours would therefore be due under the Payment of Wages Act 1991.

Annual leave days to cover the unforeseen absence from work:

Employers may have Employees take annual leave for the day or days covered by the event; in which case they would be paid. Normally there must be a months' notice of the Employer's intention to have Employees take annual leave; however, the Employee may agree to a shorter notice period.

Should an Employee be on annual leave when a weather-related event occurs and is unable to return to work due to travel restrictions, Employers may use a pragmatic approach and allow the Employee to extend their annual leave or authorise unpaid leave during this time.

Working from home:

Where an Employee has the capacity to carry out their work from home for the duration of the disruption, this could be considered and if appropriate can be agreed upon with their manager. This will not be feasible for a number of roles where the Employee's presence is required. This may also put pressure on the Organisation's IT infrastructure as demand increases.

Arriving late and/or leaving early:

Where Employees arrive late or leave early, whilst some flexibility may be provided, Employers need to consider paid leave where the Employees will work up the time missed at a later date, preferably within one month of the occurrence. This is usually more feasible in Organisations that already operate a flexi-time system. Alternatively, the option of unpaid leave or annual leave (broken into hours) may be considered.

Unexcused absence:

Some Employees may fail to attend for work when suitable public transport is impacted. Unless authorisation has been received, this is not a justifiable reason for absence and should be dealt with under the Organisation's disciplinary procedure, as with any unexcused absence.

Schools or crèches closing:

In the case of schools or crèches closing, an emergency leave situation may result for some staff. This does not fall under the legal definition of force majeure leave. Where the Employee is unable to make alternative arrangements due to childcare requirements, annual leave or unpaid leave could be considered on a case-by-case basis.

Conclusion:

Each situation will be different, and common sense will need to be used where there are clear health and safety risks to certain Employees.

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