

Volcanic ash - is it clouding your business?

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With volcanic ash causing air travel chaos and many employees who went away for the Easter holidays unable to get back to work, employers will be asking themselves what they can do to weather the storm. We take a look at some of the most common questions.

Do I have to pay employees who can't get back to work?

Generally, if an employee does not make themselves available for work, an employer does not have to pay them so you may well be able to withhold pay. That said, you should check whether your specific contracts and policies allow you to deduct pay or assign the time as another form of leave.

However, before withholding pay from employees in these circumstances, as part of the employer's duty to act reasonably, it would be sensible to consider whether there are other viable alternatives. It may be that the employee can work remotely overseas for a period of time although for those who went abroad on holiday or for other personal reasons, this may not be a realistic option. However, you could consider alternatives to withholding pay including extending their leave using holiday, assigning the time as unpaid leave or requiring the employees to make up time later.

It is highly unlikely that disciplinary action against a stranded employee would be warranted unless an employer has reasonable grounds to believe that an

Disclaimer: This briefing is not intended to be a complete coverage of the law in this area. Legal advice should always be taken in any particular case.

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employee is not genuine in using this as a reason for absence or is not making reasonable efforts to return as soon as they can.

One of my employees has been stranded abroad on business. Does this make a difference?

If the employee was away on business and now cannot return, the position will be different. It is more likely that the individual may be able usefully to do some work whilst they are waiting to return. Also, it is unlikely to be reasonable to require them to take holiday or unpaid leave in these circumstances as they are absent for business-related reasons.

Do I have to help my employees get back to the UK?

If the employee is stranded overseas because they were away for personal reasons, an employer is unlikely to be obliged to assist their return. However if the employee was away on business, the employer has a duty of care and will need to take reasonable steps to assist them whilst they are waiting overseas, and, potentially, to return to the UK.

What is reasonable will depend upon a variety of factors including the likely delay, the cost of alternative travel and how key it is that the employee returns, both from the employer's point of view and also the employee's. For example, where an employee has childcare or other caring responsibilities, an employer might have to go to greater lengths to help them get back to the UK or help them make appropriate care arrangements.

Unless it is agreed with the employee that they will stay away on holiday, employers are likely to have to pick up the associated expenses of the stranded business traveller. Under EU Aviation regulations where the cancelled flight was due to take off from an EU airport or was returning to an EU airport and was operated by an EU airline, the airline will have to provide the stranded passenger with food and accommodation and some limited financial compensation, but most other non-EU

airlines exclude liabilities for delays they could not prevent.

It would be sensible to check the terms and conditions of travel with individual airlines and check any travel insurance policies in place.

Can I make my employees work additional hours to cover others/deal with extra demand?

Many employees will be having to pick up work for absent colleagues and some businesses will be under pressure to deliver more services as a result of the airline chaos. For example, operators of ferries, trains, coaches, hotels and car hire firms are all being requested to cope with exceptional demand.

This brings its own problems in terms of requiring employees to work extended hours or take on temporary additional duties.

If you do need employees to work longer hours, you will first need to check that your contracts or policies allow for this. Without the specific ability to do so, it is unlikely that you can require employees to work longer hours, although it may be possible to agree extra work through the use of overtime or other incentive payments. Where employees are being asked to work longer hours or take on additional duties, you will still need to ensure this is done fairly and the burden is shared evenly, taking into account each employee's specific circumstances, such as disabilities, childcare and other responsibilities.

It is worth noting that the Working Time Regulations include a specific exception in relation to the usual required rest breaks and compensatory rest in exceptional and unforeseen circumstances. That said, you will still need to comply with the regulations affecting your specific industry and health and safety obligations.

Can I send my employees home if they have nothing to do?

If you are in the air travel or supporting businesses, there may well be too little for some of your employees to do. Unless your contracts or policies include a specific right to lay off or reduce working hours, it will be difficult to send employees home without pay if they are ready and available for work.

If there is flexibility over duties, you may be able to ask employees to undertake other tasks during this short period of disruption. Equally, it is likely that you will be

asking a lot of these employees once UK airspace re-opens so, potentially, reminding them of this and allowing a limited period of downtime for the moment may be the best way through from an employee relations point of view.

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