

The wintry weather has begun early this year. With the earliest widespread snowfall for seventeen years and the cold spell forecast to persist into next week, businesses are keen to avoid a repeat of last winter's chaos.

Therefore, we thought that it would be timely to remind you of some of the common problems that face employers.

Can I require employees to make every effort to get to work?

Employers should make it clear that the expectation in the event of snow is that the business will be open as usual and employees should come to work unless it really is not reasonable for them to do so.

You need to bear in mind that employers have a duty of care towards their employees, so there are potential health and safety issues in forcing employees to take unreasonable risks to come to work. It is sensible to take a balanced approach between encouraging employees to take reasonable steps to attend work and forcing employees to risk serious injury for fear of disciplinary action or losing pay.

Also bear in mind that what is reasonable will vary with the business and the individual. Whilst it may be reasonable to expect a fit and healthy employee to walk for up to an hour or so into work despite snow and icy pavements, this may be too great a risk for a heavily pregnant or disabled employee. Similarly, people living further away from work may struggle with different conditions.

If employees don't turn up for work, do I have to pay them?

The general principle is that you do not have to pay an employee who does not make themselves available for work (assuming they can't work from home). You would

need to check if there is anything specific in your contracts or policies that would prevent non-payment and be especially careful where the reason is childcare (see below).

That said, many employers will exercise their discretion to pay employees, especially if the absence is likely to only last a day or two. Also, if it is the business that decides to close the site, you will need to pay employees for that period.

Even if you are considering not paying employees, as part of your duty to act as a reasonable employer, it would be sensible to consider any viable alternatives first, including:

- requiring employees who can do so to work from home;
- requiring employees to attend an alternative site that is closer to them, even if this is not their normal place of work;
- requiring employees to take holiday or other leave;
- assigning the day as a non-working day or requiring employees to make up the time later.

What if I think certain individuals are using the bad weather as an excuse not to come to work?

If you believe that an individual is not genuine in using weather conditions as a reason for their lateness or absence, you should consider disciplinary action for misconduct.

You would need to investigate (for example, did others living in the same neighbourhood make it into work) and follow a fair disciplinary process in line with your organisation's policy and the ACAS Code.

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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What about employees who need to stay at home because their child's school is shut?

Employees have a legal right to take time off to care for their dependants due to unforeseen circumstances. This is likely to cover the situation where a school closure is announced that morning and an employee is unable to make alternative childcare arrangements. However, if there is advance warning or a situation ongoing for a number of days, it is unlikely that this right would extend to cover the whole period.

The legal right is to unpaid time off, but you will need to check your policy does not state that this will be paid, which may also factor into other decisions about paying absent employees.

Should I reward employees who do make it in to the office?

Many employees who do struggle into work despite the weather can be disgruntled, especially when they have to pick up the work of absent colleagues. In the current economic climate, businesses are unlikely to want to offer financial rewards or additional days' holiday and, ultimately, these employees are not doing anything more than is legitimately required of them.

However, it is always worth making sure that employees know that their efforts have not gone unnoticed. Equally you need to be seen to be dealing with employees who neither make it into the office nor work from home (for example, requiring them to take this as holiday).

Otherwise, such employees might be less inclined to make the effort another time. Managers could consider closing early or even just buying lunch as a token of appreciation.

What steps can I take now to prevent the chaos of last winter?

The easiest way to avoid confusion and unhappiness is to draw up a clear policy stating how your business will deal with extreme weather conditions, including expectations regarding attendance, pay and alternative arrangements. In this way, people know what is expected of them and can react accordingly.

Other practical tips include:

Where bad weather is forecast:

- remind employees to take the necessary work and equipment to ensure that they can work from home;
- suggest that employees leave their cars parked on a main road that is likely to be gritted overnight;
- inform employees who they will need to contact and how the business will keep in touch.

On the day:

- send out texts or emails to tell employees that the business is open, potentially including lists of who is in and who isn't – employees can then see if individuals who live nearby have travelled in, which may mean they are more inclined to make the effort;
- update employees (again by text or email) on what public transport is available and road conditions around the workplace. Situations change throughout the day and, whilst it may not be reasonable for someone to travel first thing, it might be possible later in the day;
- suggest employees take taxis and the business will meet the fares if there is no public transport available or consider hotel expenses for key employees you require to be present.

Contact details

If you need assistance in drawing up or revising policies, or have any other queries, please contact Catharine Cooksley:



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