

Employers' obligations when it snows and staff don't show

A Guest Article by Joanne Perry
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How to handle staff absences when bad weather strikes

In the UK, heavy snowfalls bring widespread travel chaos and businesses suffer the effects of enforced staff absences. Employers are left counting the cost of the lost days.

Organisations such as the TUC and CIPD urge employers not to play "Scrooge" by trying to force employees to get in to work or threatening to dock their pay if they fail to come in. However, the financial burden on an employer can be significant. So, what exactly are employers' obligations in this situation?

"Do I have to pay employees who are unable to get in to work owing to travel difficulties?"

Take a look at your employment contracts and employee handbook. These might specify whether an employee is entitled to be paid on "snow days". If they are silent, however, then the default position is that the obligation is on the employee to get in to work, regardless of any travel difficulties caused by the weather or otherwise. If they do not attend, they are on unauthorised absence and they are arguably not entitled to be paid.

Be careful, however, if you are going to take this approach. First, there is a potential that the employee can argue that failure to make payment in these circumstances is an unauthorised deduction from wages (assuming this is not covered in the employment contract). The defence to this would be that there was no entitlement to pay as no work was done, but it may be an argument you would prefer to avoid.

Second, you should assess whether the financial benefit of withholding pay is outweighed by the impact on staff morale and productivity. This is particularly so if the weather and travel conditions are extreme and, even with the best of intentions, employees are unable to get in.

Above all, you should ensure that your approach is consistent. Ideally, tell staff in advance (in written format, e.g. memo or email) what your approach is going to be or, even better, have a bad weather policy. Consider whether employees are able to work from home or whether alternative travel arrangements can be made. Otherwise, clearly explain to employees which of the following will apply:

- Any time off will be unpaid.
- Time off will be paid but they are expected to make up the time later.
- They can request the time off as paid annual leave or unpaid time off for dependant's leave (see below).

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Prior notification is particularly important if you have made payments in the past in such circumstances.

As an aside, be careful if you are trying to insist on employees taking annual holiday retrospectively. Employees will need to agree to this unless the contract specifically allows for you to do this.

"I have an employee who is able to get in to the office but says he/she cannot come in because his/her child's school has closed. What shall I do?"

Employees with responsibility for a dependant are entitled to emergency time off in circumstances in which there is an unexpected disruption to childcare. Unless the school closure was announced significantly in advance, such that the employee had sufficient time to arrange alternative childcare, this would probably be an emergency situation and employees are entitled to take time off and not suffer any detriment for doing so.

Strictly speaking, the time off is unpaid (unless the contract of employment says otherwise), but again, employers may want to consider the impact on morale that this approach would have. Here too, it is important to be consistent in your approach. You should be especially careful where other employees who are unable to make it in to the office due to travel are being paid.

"One of my employees failed to come in to work today, blaming the snow. I think he is using it as an excuse and could have easily come in. Where do I stand?"

If you believe that an employee is falsely using the weather conditions as an excuse for absence or lateness, this can be treated as a disciplinary matter.

If you consider the matter to be serious enough (e.g. if it is a persistent or blatant case), you should investigate in line with your disciplinary policy and take action as appropriate. However, in less serious or one-off cases, you may be better placed simply having a quiet word with the employee and letting them know that any further time off will have to be taken as holiday or will be unpaid.

Bear in mind that it can often be difficult to prove or disprove an employee's ability to come in to work in bad conditions.

"Am I obliged to allow employees to work from home?"

Home working can be a good alternative for employees who are unable to get in to the office. Use of remote computer access and such devices as BlackBerries

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can mean that employees are able to seamlessly work from home. You do not, however, have to allow employees to work from home if you do not think it is appropriate.

If you do permit home working, be clear on what you expect from employees. A home working policy would be a good idea; it should also cover the health and safety aspects of working from home.

"Some employees who have made it in to work are resentful of the fact that their colleagues are having a day off, while they have to work. Am I obliged to reward them?"

In short, no. They are only doing what they are contractually obliged to do. If their colleagues are not being paid for having time off, or if they are using annual leave, this may address their concerns. However, if you have exercised your discretion to pay employees who do not come in, then those employees who have fought their way in to work may feel that they have been treated unfairly.

It is a generous employer who grants those employees time off in lieu or some other financial reward. However, from a morale point of view, their efforts should not go unnoticed and a word of thanks, or an email to those employees who have made it in, can go a long way.

Employers should also consider any weather warnings and travel advice, and allow employees to go early if necessary to avoid potentially dangerous travel conditions. Also, you wouldn't want staff to be stuck in the office overnight!

The above provides a general guide to issues that might arise. However, each situation is unique and different considerations may apply in your case. We would therefore recommend that you consult a solicitor, or other suitably qualified person, about your specific circumstances.

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If you would like more information on any of the points covered in this Guest Article, please contact **TCii** on **020 7099 2621**.