

Contact Us  
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## HR Helpline

Available 24 hours a day, 7 days a week, Contact with HR Smart can be made via telephone, fax or e-mail.

We provide practical HR advice and answers to questions, as well as offering step by

**HR Support, whatever your concerns we can give you the legal and practical advice and support your Company needs and all for a guaranteed fixed fee.**

## Its only snow, don't you know...

**Sadly, the first full working week of the New Year has been blighted by the weather, leaving employers frustrated by some employees not being able to make it into work, along with employees having to make difficult commutes, some with the additional problem of child care following school closures, lack of deliveries by suppliers, but with business demands and deadlines still to be met.**

Employers face difficult decisions on how to manage employees who have not been able to make it into work. We are urging each of you to take a common sense approach, should you have no formal adverse weather policy or have this covered within your contingency plans.

Unsurprisingly, one of the most popular questions for this week relates to pay for those employees who have not been able to get into work.

In many HR publications out this week, there are two thoughts. The first is that if the place of work is open for business, then employers do not have to pay the employees who do not attend work due to travel difficulties or bad weather. The snow should not be considered by employees as an unplanned and unscheduled additional days leave or duvet day. Given this, employers could

- Set this time as unpaid,
- Unpaid, if taken as dependent leave,
- Paid but the employees need to make up the hours not worked at a later date, or
- Paid but only if taken as annual leave

However, the second viewpoint which is based around law is that unless your contract of employment has an explicit clause relating to non payment of wages due to inclemental weather, then a deduction could be unlawful and result in claims for an unlawful deduction of wages.

Although without getting into the argument of he says/she says the employer could counter state there was no entitlement to pay as no work undertaken.

So now you can see why we are urging common sense, as its possible that neither the employer or employee will be satisfied with the outcome and may result in poor morale across the board.

Before making any decisions, you should speak with the employees so you have the full facts to consider whether the employee could have made it to work with some difficulty, even if late - but chose not to, or whether they were truly snowed in and unable to attend!

So with the pay issue out of the way, now lets look at going forward.

Again this is from two angles, firstly bearing in mind further snow is forecast for next week and looking at the longer term so that each time we have snow, your business does not suffer disruption and uncertainty.

So this afternoon, before your employees go home, we are recommending that you communicate the way forward for next week. We suggest that any communication, preferable face to face, addresses

- The calling in process, including to whom and on what numbers, or where to look for guidance and advice, such as the Company's website.
- Express that employees should make all reasonable endeavours to attend work, if it is safe to do so.
- Request that the employees review the situation on an ongoing hour by hour basis, such as not planning to be away from home the night before, consider making arrangements to stay with relatives closer to the workplace, if travel is not possible first thing, that it is assessed throughout the day, as often there are improvements in the road networks and public transport as the day progresses. Also ask them to consider car sharing or picking up fellow work colleagues.
- Consider if any employees are able to work from home or another temporary location.
- Set and agree work that can be undertaken from home, in advance.
- Reiterate the pay arrangements for anyone not able to attend work.
- Reassure everyone that the Company will protect their well being and that anyone who gets into work, will be assured of getting home safely.
- Thank everyone in advance for their commitment and ongoing support.

**Best wishes to each of you for a Happy 2010 and here's to a prosperous and successful business year.**

Longer term we recommend that you may wish to add an adverse weather policy into your handbook or absence policy, along with building adverse weather into your contingency planning.



Spotted on Worthing seafront—showing its not just employers that are suffering from headaches this week!

Below are some other snow questions and answers that may be of help to you.

**Do employees have to battle the blizzards to get to work?**

If it is safe to travel, employees should come into work as usual. Technically employees must attend work unless they are sick, on holiday or maternity leave, and so on, and this applies even in extreme weather conditions. However, employers may not be able to do this if employees' normal transport is out of action due to severe weather disruption. The employer could encourage employees to explore alternative transport, but shouldn't pressurise employees and risk their safety.

**Can employees be required to take holiday on 'snow days'?**

This is not really an option unless employment contracts contain an express right for the employer to direct when holiday is taken. Employers cannot force employees to take a day's holiday without their consent.

**What happens if severe weather closes schools or affects employees' childcare arrangements?**

Statutory rules protect parents from suffering a detriment for taking time off because of an "unexpected disruption to childcare". Arguably, a school closure is not a disruption to "childcare". However, if it was announced first thing in the morning and alternative childcare arrangements cannot be made, this could constitute an emergency situation and entitle employees to statutory protection for taking the day off. Strictly, the leave would be unpaid but not all employers will stop pay. Whatever they decide, employers should be consistent in their approach both to parents and to employees without children.

**What if employees could have made it into work but chose not to?**

This could be a disciplinary matter. However, most employers would not want to devote time and resources to investigating the circumstances of each individual worker suspected of taking a "snowball day". In blatant or persistent cases, employers may choose to investigate the matter in the usual way and take action in line with disciplinary policies. Alternatively, once conditions improve, employers could let employees know by phone, email or text that any further time off will need to be taken as holiday. Employees may suddenly start finding ways to get in.

**What happens if workplaces are forced to close?**

If business premises are closed at short notice because of unforeseen circumstances, such as heavy snowfall, and there is no work available for employees as a result, employers cannot usually withhold pay without risking unauthorised deduction from wages claims – unless employment contracts have "unpaid lay-off" clauses or employees expressly consent to being laid off without pay. There are complicated rules surrounding lay-off clauses (such as statutory guarantee payments), so legal advice is desirable.

**What cold weather protection do employers have to provide?**

Regulations govern indoor workplace temperatures. Generally the temperature should be at least 16 degrees Celsius. There is no legal minimum outdoor working temperature so employers need to rely on thermal risk assessments. Two major health problems of very cold weather are hypothermia and frostbite. The Health and Safety Executive has extensive guidance on cold weather health issues and management guidelines.

**Should employees who make it to work get a day off in lieu?**

Employees who have battled into work, and then have to cover for those who are absent, can become resentful. Ideally their efforts won't go unnoticed but days off in lieu or other financial rewards are unlikely. Employers should, however, let employees leave when appropriate to avoid treacherous travel conditions on the way home. Employers should never ask staff to disregard official weather and travel advice.



Contact HR Smart Ltd to talk through any employment issues on 0845 6100 651