



# **Dealing with severe weather : Employment issues**

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# Severe weather?

- Heavy snow?
- Gale / Hurricane-force winds
- Rain / flooding
- Disruptions to public transport
- Un-passable roads?
- Severe travel delays
- Police advice on travel



# Issues for employees

Employees may genuinely face:-

- Travel disruption
- Childcare problems
- Unexpected disruptions to day to day arrangements
- Additional costs ( eg taxi)



# Employers will face

- Need to ensure continuity of service
- Fair treatment of staff in unusual circumstances
- Avoidance of claims – ‘encouraging or cajoling’ staff to travel against police advice?
- Avoid unlawful deductions in pay
- Adverse impact on staff morale
- Need to consider compliance with emergency parental leave rights



# Local policy?

- Cover by special leave provisions?
- Specific severe weather / emergency policy?
- Setting out circumstances where the policy may apply to but avoid fettering sensible decision making



# What could happen?

- Be allowed to work from home;
- Take the time as annual leave; or
- Make up for the time at a later date
- Be paid as if he/she had attended work; or
- Take unpaid leave and a deduction will be made from his/her wages.



# Deductions from pay

- If an employer wishes to be able to make deductions from employees' pay in the event that they do not turn up to work it should include a contractual right to do this in its contracts of employment or relevant policy or procedure.
- Likely to be more trouble than it is worth for the employer to start deducting parts of an employee's pay if he or she simply turns up for work late?
- Stopping employees' pay is more likely to be appropriate in circumstances where they do not turn up at all or are seen to be abusing the system.
- Occasional lateness for reasons beyond employees' control is a fact of life !
- Think about impact on staff morale not just finances!

# What law to consider?



- Employment Rights Act 1996  
Health and Safety at Work etc Act 1974  
Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)
- *Relevant case law*
- *Discount Tobacco & Confectionery Ltd v Williamson [1993] IRLR 327 EAT.* The Employment Appeal Tribunal held that, in order for a deduction from wages to be lawful, it is not sufficient that the employee gives written consent before the deduction is made. The employee's written agreement must have been given before the event giving rise to the deduction took place.
- *Delaney v Staples (t/a De Montfort Recruitment) [1991] IRLR 112 CA.* The Court of Appeal held that a deduction from wages occurs when the total amount of an employee's wages is less than the total amount properly due to him or her on that occasion. There is no distinction between a non-payment and a deduction.
- Parental leave rights, flexible working rights

# Health and safety



- While [the Company] will ensure, so far as is reasonably practicable, the health, safety and welfare at work of all its employees, employees are reminded of their duty to take reasonable care for their own health and safety and that of other persons who may be affected by their acts or omissions. This includes taking extra care when travelling to and from work in severe weather conditions.

# Specific consideration on driving



- Employers that have employees who drive or work outdoors should ensure that the general health and safety duties are complied with and also conduct a specific risk assessment in relation to driving at work.
- Such assessment should include consideration of weather conditions and how instructions to employees, clothing and equipment and rest breaks can be adapted to ensure employees' safety in periods of severe weather.
- Employers can refer to [Driving at work: managing work-related road safety \(PDF format, 232K\)](#), available on the Health and Safety Executive website

# Driving to and from work?



- Employers should not encourage employees to travel in severe weather.
- Although an employer would not normally be liable for the acts of its employees when travelling to and from work, the courts have shown an increasing willingness to hold an employer liable for the acts of its employees taking place outside working hours where the act is closely connected with what the employer authorised or expected of the employee in the performance of his or her employment.
- But.....employees should consider alternative means to getting to work by bus, train, tram?

# Thank you for listening



## Any questions????

**LOCAL SERVICES**

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# Contact details

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