

How should employers deal with 'snow days?'

What do you do if your employees can't get to work because of the snow? Do you still have to pay them?

Some lawyers are stating that deductions cannot be made - others say they can. As a matter of contract law, employees must generally show that they have provided consideration for their pay (i.e. actually worked). On the other hand, if they are ready, willing and able to work but something outside their control prevents them, then they may have a case to be entitled to their wages. For example, this would cover the situation of an employer sending staff home or telling them not to come to work. However, even in this case, in certain circumstances staff may lawfully be laid off temporarily if the employment contract permits it.

Employees also have the statutory right not to suffer unauthorised deductions from their pay. This applies only to pay that is lawfully due in the first place.

It is a lot more complex if the employer has not closed nor told staff not to come in. The practical answer is to take each matter on a case-by-case basis and take legal advice if necessary. For example, you may have a case where an employee could easily have got in to work as someone else living near them managed to get in. This could be unauthorised absence (skiving) which you should deal with in accordance with your disciplinary procedures.

On the other hand, you may have staff who can work from home. You would need to have systems in place so they can demonstrate that they have actually worked for the necessary number of hours, rather than make snowmen with their kids!

You should strike a balance between causing resentment to those staff who tried to get to work but failed, and those staff who fought valiantly to get to work but might not bother next time if they are not treated more favourably than those who didn't.

If you already have a bad weather policy (for example, you state that employees must take holiday, unpaid leave or make up the time later) it may be that it has impliedly been incorporated into your employees' contracts of employment. If this is the case then you should carry on with this however you should be prepared to show flexibility in extreme or unusual circumstances (for example, if buses are running but an employee is unable to walk to the bus stop because the pavements are icy and they have dodgy knees or hips).

If you do have any concerns then do not hesitate to contact one of Darbys' Employment Law Team who will be happy to answer any questions you might have on this issue.

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