

Employment E-Bulletin

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Employment ramifications of air space closure



Over the last 10 days, the vast majority of businesses within the UK have had to deal with staffing problems arising from employees who have been stranded abroad as a result of flights being cancelled due to the ash cloud hanging over most of the UK.

Whilst the initial problem for businesses has been how to deal with the day to day problems associated with staff shortages, many employers will now face the additional problem of dealing with enquiries from employees as they return to work wanting to know how their absence will be treated.

Many employers will simply adopt the straightforward approach of agreeing to pay employees despite their absence on the grounds that their inability to return to work was through no fault of their own. Given that it is extremely unlikely any employer would have contractual arrangements in place to deal with situations such as this, should they not wish to adopt such a sympathetic approach, they are not under any duty to do so and are free to simply treat the absence as unpaid leave.

Another option open to employers is to retrospectively treat the period of absence as paid annual leave to be deducted from an employee's annual leave entitlement for the year. Employers need to be alert however to the fact that whilst they are able to dictate when employees take annual leave, this is subject to providing advance notice and therefore any attempt to treat a day's absence as annual leave on a retrospective basis would breach the Working Time Regulations 1998. To avoid this, employers should secure the agreement of employees to such an arrangement and ideally ensure the agreement is recorded in writing on each individual's personnel file.

Alternatively, employers may agree to pay employees throughout the duration of their absence on the condition they agree to make up the lost hours over a period of time. Such an arrangement may not be practical for all employers but for those who are able to implement such an arrangement, they should again ideally ensure the agreement is recorded in case an employee seeks to challenge it at a later stage.

Finally, employers should be alert to situations where members of staff have had to take time off to look after the dependants of relatives who have been unable to return to the UK. As a result of doing so, certain individuals may have unknowingly exercised their statutory right to take time off from work (unpaid) in order to care for dependants. Any detriment suffered by an employee who has exercised this right (i.e. disciplinary action) could give rise to a claim in the Employment Tribunal. Employers should therefore carefully investigate the reasons for any absence from work by employees as an indirect result of the cancellation of flights.

If you require any assistance in connection with issues arising from the recent travel disruption or indeed any other employment law related matters, please do not hesitate to contact a member of the Employment Team who will be more than happy to discuss any queries you may have.



Russell Brown
Partner
rwb@glaisyers.com
dd: 0161 833 5667



Sarah Young
Solicitor
sey@glaisyers.com
dd: 0161 833 5689

If you would like to receive more information regarding the contents of this newsletter or information on any other employment law related matters then please contact Russell Brown at Glaisyers Solicitors LLP, One St James's Square, Manchester M2 6DN. Tel: 0161 832 4666; Fax: 0161 832 1981; Email: rwb@glaisyers.com

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Glaisyers Solicitors LLP
One St James's Square
Manchester
M2 6DN

DX: 14364 Manchester

email: manchester@glaisyers.com
Telephone: 0161 832 4666
Fax: 0161 832 1981

www.glaisyers.com

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