

## **Disruption to work caused by inclement weather**

### **Can my employer deduct wages if I am unable to get to work because of the bad weather?**

The general legal position is that an employer may not make a deduction from wages unless the deduction is made by virtue of a statutory provision, or a relevant provision in the worker's contract, or the worker has previously signified in writing their agreement or consent to the making of the deduction. In the case of an agreement or consent this must be signified before the deduction is made.

It is not unusual for a contract of employment to include a blanket clause purporting to authorise the employer to deduct from an employee's wages any sums which are "properly due" from the employee to the employer. However, such clauses may not be effective in the circumstances where an employee has used reasonable steps to get to work but has been unable to do so because of adverse weather conditions. In the absence of a clause in the contract specifically excluding the employee's right to wages if they do not attend when expected to do so, it is likely that the employer would be prevented by the legislation from deducting wages in spite of the employee's absence from work caused by bad weather.

However, under the general common law, an employee is only entitled to receive payment of wages if they are present, ready and willing to perform the duties required of them. It is possible, therefore, that although an employer cannot make an unauthorised deduction from wages, it is open to the employer to sue the employee for the return of wages in the county court in respect of days of unauthorised absence. This would certainly be regarded as an extreme measure which most reasonable employers would be very unlikely to take.

### **Can my employer force me to use up my holiday entitlement if I am unable to get to work because of bad weather?**

If the employee is able to get to work, but the employee has dependents whose care arrangements are disrupted by the inclement weather, e.g. school closure, Section 57A of the ERA 1996 gives the employee a right to reasonable time off which is necessitated because of unexpected disruption or termination of child care arrangements. However, it is a requirement of this right that the employee must tell the employer as soon as reasonably practicable of their absence and also indicate to the employer how long they expect to be absent. Importantly however the right under Section 57A is a right to unpaid leave.

### **Can the employer require the employee to take the days of absence as holiday?**

In general, under the contract of employment the right to determine which days are taken as holidays will require the agreement of the employer and the employee. Therefore, unless the contract stipulates that the employer may impose holiday absence on the employee, the employer will not be entitled under the contract to require unforeseen absence to be taken as paid holiday.

In terms of the statutory holiday entitlement conferred upon employees under the Working Time Regulations, an employer may require a worker to take paid holiday on particular days but must give notice to the worker before the days of holiday in question are taken. Accordingly it seems that this provision will not entitle the employer to stipulate that unexpected days of absence should be treated as a part of their statutory holiday entitlement.

### **Can my employer insist I work from home?**

Unless the contract stipulates to the contrary it is unlikely that an employer can require the employee to work from home utilising home telephones or computers. In some instances, working from home may breach home contents or buildings insurance contracts, or restrictive covenants in leases which prohibit any work being done on the demised premises.

### **Can I be disciplined for not attending work because of bad weather?**

An employer who has reasonable grounds for believing that an employee failed to attend work without good cause and blamed the weather would be entitled to utilise the disciplinary procedures. It would be a matter of fact and belief whether such allegations could be proved. Disciplinary sanctions could include dismissal or a deduction of wages (if a permitted sanction in the disciplinary procedure itself).

### **Is claiming that I cannot get to work because of bad weather when in reality I could have done so really that serious an offence?**

Yes, both in terms of the employment relationship and under the criminal law where such an action might be deemed theft (i.e. obtaining a pecuniary advantage by deception).