



▶ SHOULD EMPLOYEES BE PAID?

▶ HOW SHOULD EMPLOYEE ABSENCE DUE TO TRANSPORT DISRUPTIONS BE TREATED?

▶ PUTTING IN PLACE AN "ADVERSE WEATHER" POLICY



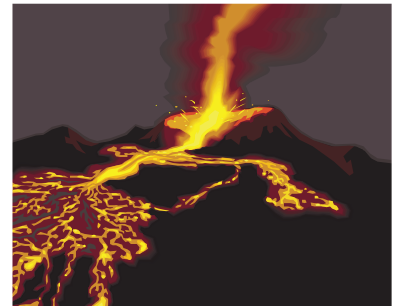
▶ SUMMARY

# 3HR focus

## 悪天候による通勤問題 – 御社にはこれに関する規則がありますか?

火山灰が英国上空を覆った為、旅行やビジネス計画に大きな悪影響を与えました。そしてその結果、想定外の事件のために欠勤になるといった場合、従業員に対する給与はどうすべきかという問題が浮き彫りになりました。

雇用者にとってその従業員が不可抗力の事態の為に職場に通勤できないといった経験は国内の運輸問題(電車/地下鉄/バスのストライキ)や悪天候(積雪)といった状況に限られていることでしょう。しかしながら火山灰による英国の空輸にMost employers' experience of employees being unable to get to work due to circumstances outside their control is likely to be limited to domestic travel disruptions (train and bus strikes) and inclement weather (snowbound employees). However, the same employment-law principles apply to employees who have



### Should employees be paid?

Employers are under no legal obligation to pay employees who are stranded because of the travel chaos caused by the volcanic eruption in Iceland, or any other unforeseen event. More broadly:

- There is no obligation to pay employees who fail to attend work or who arrive late due to disruptions to public transport for the missed time, unless there is specific provision for such absence to be paid in the contract of employment.
- The onus is on the employees to get to work and the obligation to pay under the contract of employment arises only where they are ready, willing and available for work. If employees fail to turn up for work or turn up late in these circumstances, the employer is under no obligation to pay them for time not worked, even though their absence or lateness was through no fault of their own.
- A failure to pay an employee in this situation is not an unlawful deduction of wages under the Employment Rights Act 1996, section 13 because there is no contractual right to any such payment.
- Technically, failure to turn up to work is a disciplinary offence but in cases of international travel problems beyond the control of employees it would probably be inappropriate for the employer to take disciplinary action if the employee has attempted to get back to the UK and taken all reasonable steps to try and do so.
- Some employers will use their discretion and not deduct pay if employees have made serious attempts to get to work.

The Federation of Small Businesses advises that staff whose pay is reduced because they could not get to work may be able to take their employers to tribunal, unless the organisation had a clearly agreed absence policy in place.

## How should employees' absence due to transport disruptions be treated?

- The employer should first encourage the employees to explore alternative means of transport.
- If an employee is still unable to attend work, the employer may wish to give consideration to whether or not the employee could usefully work from home or from an alternative local office until the travel situation improves. The time could even be made up at a later date.
- If these are not viable options, the alternatives available for the employer are to advise the employee that any time off work in these circumstances will be unpaid, paid or paid on a discretionary basis, but in exceptional cases only.
- The employer could also suggest that the employee take paid annual leave if he or she wishes to be paid for the time off. An employer cannot insist that an employee take annual leave without the requisite notice, but there is nothing to stop it asking if an employee would like to take a day's holiday because of being unable to attend work on that day.



### Putting in place an "adverse weather" policy

It is implicit in the employment relationship that employees turn up to work but it is helpful to have agreed policies on this and events that might prevent it. Notwithstanding, just because it is not written down does not mean problems will ensue.

The recent disruption highlights the need for employers to have policies on disruptions to transport and wider disaster contingency plans. It is to be hoped that most employers have these in place, given that in recent years the UK has faced severe weather, the risk of public transport strikes, flu pandemics and terrorist attacks.

If they don't, they should introduce them now, but make their policies broad enough to cover any eventuality.

It would be advisable for employers to put in place an "adverse weather" or "journey into work" policy dealing with such issues as the steps that employees are required to take to try to get into work on time and the consequences of their turning up for work late with regard to, for example, their pay. Having such a policy should mean that there is much less scope for confusion - and hopefully disagreement.

Putting in place an "adverse weather" or similar policy should help to reduce scope for confusion.



### Summary

- If not already in place, introduce a robust "adverse weather" policy
- Consider whether it is necessary for employees to attend the workplace at their normal time or whether there are alternative ways of working
- Consider how absences or lateness due to severe weather or transport disruptions will be treated
- Be aware that employees who are absent from work without authorisation are not entitled to be paid, but consider taking a lenient approach
- Investigate an employee's reasons for non-attendance before stopping his or her pay
- Treat all employees consistently to avoid the risk of discrimination claims
- Allow employees to take reasonable time off to make arrangements for childcare if schools or nurseries are closed due to severe weather
- Remember the obligation to ensure the health, safety and welfare of employees at work