

# CIPD | HR-inform webinars

# Bad Weather



24/7 professional support for businesses, across employment law, HR and health and safety

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**Date:** On demand

**Run time:** Approx 50 mins

# CIPD | HR-inform webinars

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# Today we will cover...

- The impact of bad weather on organisations
- Preparing for bad weather
- Not opening the workplace
- When employees cannot get into work due to childcare
- Closing the workplace early

# Bad weather: As big an impact as before?

- A side-effect of the Covid-19 pandemic has been a mass experience of working from home.
- This winter season, many employers will be able to implement what they have learned during work from home orders to enable their business to keep going, as part of their contingency plans.
- Especially for those that cannot work from home, now is the time to refresh and remind employees of adverse weather plans and policies.

# The impact of bad weather

- Adverse weather can affect staff's ability to get safely into work, and cause significant disruption to business operations such as missed deliveries.
- It can also lead to the complete closure of a workplace or the use of alternative places of work.
- Employees should not be expected to go to dangerous lengths to make it into work - remember that employers have a legal duty to ensure the health, safety and welfare of their employees.

# How can we prepare for what might come?

# When bad weather is forecast

Steps to consider when the forecast is poor:

- Notify employees of the expected bad weather and that they should bear this in mind when travelling into work, and consider asking them to take home necessary equipment (where practical to do so)
- Encourage them to consider alternative modes of travel and allow for more time to get in.
- Ask them to work from home (if possible).
- Reissue any adverse weather, and / or unexpected absence policies

# Policy considerations

- Unusual or unexpected absence, and / or an adverse weather policy is useful in these situations, to outline the response where employees cannot be in work due to bad weather.
- The policy can outline the procedure for notification and what alternative working options are available in these circumstances, and caution employees against taking unnecessary risks.
- For example, it could outline that notification needs to be provided at least one hour before normal start time and provide the name of the person to be told, such as their line manager.
- It could also specify where an alternative place of work can be found, if one is to be used.



# Scotland Severe Weather – Fair Work Charter

Following 2018's 'Beast from the East', the Scottish government and Scottish Trades Union Congress created a charter to provide a set of guiding principles for employers in this situation. Some of the advice includes:

- Take care of staff by not requiring, or incentivising, fulfilment of contractual obligations in severe weather situations
- Risk assess severe weather policies, in particular for disabled or pregnant staff.
- Consider employees ability to get to work, and work safely when there.
- Make relevant policies visible and accessible.

# What if the building has to close?

# Alternative place of work

- If the building has to close, employers might be able to send employees to another branch/ alternative location. This can be identified in relevant policies or communicated separately to staff.
- To enable this, companies can incorporate a mobility clause into contracts of employment that outlines employees may need to work at alternative locations in certain circumstances.
- Without this clause, employers are still able to ask employees to work elsewhere provided this is reasonable and agreement will need to be sought every time.
- If unreasonable, employers may face breach of contract/constructive dismissal claims should they force this measure onto employees.

# Lay-off

- Where no work can be provided due to the closure, the employees will technically be on lay-off.
- This should be at full pay unless there is an unpaid lay-off clause in their contract.
- If there is a clause, employers will not need to pay them at full pay but they may be entitled to statutory guarantee pay.
- Remember that some employees may also be entitled to claim redundancy pay if the period of lay-off lasts for a certain period of time.

# What if the business is open, but employees cannot get into work?

# Legal entitlements

- Staff should be making every reasonable effort to get to work on time, but this should be balanced against the employers duty of care.
- Employers should be understanding of pay, consider other options like working from home where possible but unless required under the contract, staff who cannot get in do not have to be paid, as they have failed to attend work.
- Employers can reserve the right to treat this as unauthorised absence – but they should consider the harshness of doing so.
- Employers are still required to act reasonably: if it would be dangerous to get in, or the employee does not feel confident to do so, not paying them may be reasonable, taking action against them may not.

# Options to consider

- Pay as normal.
- Consider the time unpaid leave.
- Allow the time to be taken as annual leave.
- Permit the employee to use time banked off in lieu.
- Allow the employee to work from home (if possible). Allocate alternative work to them if their work cannot be done from home, but other work can be.
- Direct the employee to an alternative location more accessible to them.
- Instruct the employee to make up the time on return to work.

# What should the employer do?

Once the employee has declared they are not coming to work, the employer should:

- Inform the employee of what is expected of them.
- On their return to work, meet with them to discuss their absence in detail.
- Consider following a disciplinary procedure if there is a concern the employee has misled or lied, but tread carefully as there may be factors the employer is not aware of.



# Childcare and school closures

- There may be times that whilst work is unaffected, schools and other childcare settings and arrangements are closed, leaving employees with childcare issues.
- Employees will have the statutory right to 'Time off for Dependants' here, which is usually unpaid, unless company policy or practice says otherwise.
- Alternatively, the employer can discuss working from home, annual leave or time off in lieu as a practical solution.

# What if we have to close early

# Closing the workplace early

- Keeping the workplace open during bad weather may cause a risk to health and safety, especially if the weather worsens.
- A designated member of staff should be allocated responsibility to review the impact of severe weather and assess if the building should be closed early.
- They should take into account factors such as access roads, the safety of the car park or parking, whether or not public transport is continuing, and any road closures.

# Closing the workplace early

- Where employees are asked to leave early, they will need to be paid in full for the remainder of the day, unless there is a clause allowing for short-time working.
- If an employee chooses to leave early, then the employer will need to make the implications of this clear: will they be paid for the whole day, expected to make up the hours, use annual leave, or continue to work once they get home? Or will their pay be stopped from the moment they stop working?

# Summary

- Employers need to prepare for bad weather and have plans in place, such as in a policy.
- Where the workplace closes, employees should be placed on paid lay-off unless their contracts state otherwise.
- If an employee cannot make it into work, there is no legal requirement to pay them and usual absence procedures can be followed. However, alternative working arrangements should be considered.
- If childcare arrangements fall through, employees have the statutory right to take unpaid time off for dependents.
- Employers should be prepared to close the workplace early if the weather presents danger as the day goes on.

# THANK YOU

## Any questions?



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