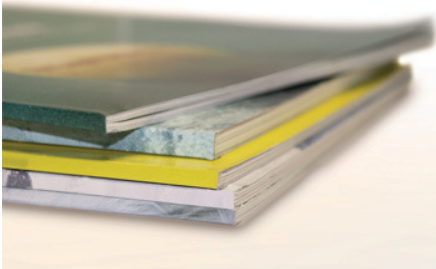


## Average Joe vs. the Volcano – Cloudy Issues for Employers

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BY CAREN HYDE

Air travel has been in recent turmoil after a volcano erupted in Iceland leading to a flight ban which affected most of Europe for six consecutive days. The ban had an unprecedented disruptive impact on both employers and employees as it occurred immediately after the Easter holidays when many people were attempting to return to work. How should employers prepare if another flight ban is imposed due to increased volcanic activity?

### **To Pay or Not To Pay**

Generally employees are only entitled to be paid for work done and employees are required to attend work unless there is a valid reason for attending such as sickness or maternity. This is subject to the provisions of their contract of employment or applicable work policies. If the contract provides that an employee will be paid if they are unable to attend work because of matters beyond their control, there is a contractual right to pay them. In the absence of this an employer can exercise their discretion and pay the employee as a gesture of good will or alternatively provide unpaid leave. Employers may take the view that it would be preferable that alternative action is taken to address this issue, for example:

- Reach agreement with affected employees that they will be paid but will be asked to make up the time on their return.
- Give employees the right to extend their

holiday if they have accrued but untaken holiday left to take.

- Reach agreement with affected employees that they can take time off which will be treated as unpaid leave.

### **Disciplinary Issues**

In some circumstances employers may validly take action if the employee makes no attempt to contact their employer to keep them updated as to their travel plans. An employer can reasonably expect the employee to provide regular information to allow temporary cover to be organised if necessary. Employers not only have a duty to consider employees unable to attend work but also to consider the implications of that employee being absent on the rest of their staff.

An employer can also expect an employee to take reasonable steps to find an alternative way to return to work. However, if the options are limited and expensive, an employer would rarely be justified in forcing an employee to do this. If there is any doubt about the genuineness of the absence, employers may ask to see flight details and enquire as to the efforts staff have made in getting home.

### **Working Remotely**

If appropriate, employers can ask employees to deal with work issues remotely. This may only work for a

particular kind of job but in this modern world many employees have blackberries, laptops and mobile telephones to enable them to carry out some work. Employers may also choose to reimburse employees for any increased cost of working remotely.

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### **Consistent Treatment**

Whatever decision employers make regarding affected employees, they should treat everyone in a similar manner. Employees can consider lodging a formal grievance if they believe they have been treated differently or unfairly.

### **Review of Policies**

Employers should respond sympathetically to this unusual problem. Many employers will not have a policy in place to deal with such an unprecedented situation. It is worthwhile giving consideration to putting in place a policy to deal with unforeseen absences which will cover cases such as snow chaos, swine flu (and other epidemics) and further volcanic ash clouds.

Devising a clear policy will minimise uncertainty and a disgruntled workforce.

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