

Employment

Joe vs The volcano

Chris Bryden & Michael Salter on the employee fallout from the eruption

IN BRIEF

- The widespread effect of the Eyjafjallajökull volcano in Iceland on employment relations.

The potential effects of the eruption of the Eyjafjallajökull volcano in Iceland are far more widespread than simply the recent grounding of much of the world's fleet of airplanes.

The effect of the eruption on employment relations is probably greater than that of the snow in the early part of 2010; the effects are wider, the impact longer and the prognosis less certain. While the snow that blanketed much of the UK had a varying impact on a regional basis, the impact of the ash cloud that spread across much of Europe is multinational and potentially long term. Its impact has affected employees and employers beyond the boundaries of the nation's airports and the airline companies' share price, with stock, employees and contractual obligations often at the wrong end of a plane journey. Though the world's flight hubs are now thrumming with activity as frantic efforts take place to undo the damage caused by the delays seen over the past week, the disruption may not be merely temporary as the lessons of history foretell the potential for greater disruption to air transport: the last eruption of this volcano continued sporadically from 1821 to 1823.

Many companies are concerned about the impact on their businesses of the current disruption, but sympathy is unlikely to be found from the strict application of employment law. Employers may determine not to pay employees who are unable to attend work, seeking to treat such periods as unpaid leave. Employers have been urged to be flexible in this respect.

Disciplinary action

However, employees stranded abroad cannot simply choose to extend their holidays and take advantage of travel chaos in circumstances where they are required by their employers to attend work. Clearly no disciplinary action could reasonably arise from non-attendance due to an unforeseen (and unprecedented) closure of global airspace. However, an employee who fails to take reasonable steps to return, choosing, for example, to wait for a non-urgent flight to become available rather than taking an available ferry or train, could be committing a disciplinary offence.

Employees also cannot rely on their employers picking up the tab for emergency travel home. Any executive seeking to emulate the £3,000 taxi journey of John Cleese across Europe in the belief that they are indispensable to their employer, absent a specific agreement in their contract of employment or a prior assurance that such expenses will be met, may find that their employer can properly refuse to reimburse such costs.

Taking stock

Issues also arise for employers, who may well be required to continue to pay employees who attend work but for whom there is little to do, due to the unavailability of stock or the absence of key personnel. If an employee is salaried, it is likely that the employer remains under an obligation to pay the employee, as the receipt of salary is not dependent on actually carrying out work in most cases. Where pay is dependent upon work (for example where an employee is only paid for the work as and when it

is done) then it is likely an employer can simply lay off that individual. In some unionised workplaces the liability of an employer to have to pay their workforce is likely to turn on whether the employers and union have a policy of lay-off in place. If so, those employees may be entitled to certain payments for a short period of time.

Options open to an employer, whose employees are in attendance, but there is no work for them to do due to, for example, a lack of stock, are in a different situation where no lay-off clause exists. Most contracts do not contain a clause entitling employees to withhold payment in cases of unforeseen circumstances, and in such circumstances although there is likely to be an obligation to continue to pay employees, they may be standing idle. There are, however, a number of options.

Employers have, under the Working Time Regulations 1998, the power to compel employees to take paid holiday during certain periods. However the availability of this right is dependant on the employer giving notice of twice the length of time the employer requires the employee to take as leave. This does give significant protection to the employee, as by its nature, a volcanic eruption is unpredictable in its length. Thus, where an employer foresees a long-term drop in the level of available work, notice could be given, but where the reduction in available work is linked to a natural phenomenon, such a power is not of any great use.

Review

Companies should ensure that they review their policies relating to the matters considered above. While the recent chaos is unprecedented, the increasingly prevalent health and safety culture may result in other natural phenomena having unexpected effects on employment relations. NLJ

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