

HOW TO DEAL WITH UNAUTHORISED ABSENCES

An unauthorised absence is an absence during which an employee fails to attend work but where he or she does not have a statutory or contractual right, or the employer's permission, to be absent. Usually, the employer has failed to contact the Company and people may well be concerned as to the employee's health or safety.

Absences that are due to pre-booked annual leave, genuine and correctly reported sickness absence or family-related (e.g. maternity) leave, or that result from a statutory right to take time off (for example to look for work in a redundancy situation, or for antenatal care) of course do NOT constitute unauthorised absence. Simply put if an employee fails to attend work without a good reason, or without notifying the Company, this will amount to unauthorised absence.

Unauthorised absence may take various forms. It can take the form of an isolated unplanned absence for a good reason (for example to care for a dependant in the event of an emergency) or a persistent pattern of unauthorised absences (for example "Monday morning syndrome"), which are likely to be less acceptable. Alternatively, an employee may "go AWOL", taking an extended period of unauthorised absence. Employers should not therefore deal with every situation in exactly the same way, it is recommended that the length of, and reason for, the absence should determine how the employer deals with it.

While unauthorised absence without good cause is a disciplinary offence, an employer faced with an incidence of unauthorised absence should investigate the situation and hear the employee's explanation, before it takes formal action.

Clearly, employers need to be consistent, fair and non-discriminatory in how they deal with unauthorised absence, or risk being liable in the event of an unfair dismissal and/or unlawful discrimination claim. However, the level of action that is appropriate for an employer to take in respect of unauthorised absence will depend on the circumstances of the case. For example, an employee who takes a one-off day of unauthorised absence for a good reason would normally be treated differently to an employee who has a prolonged period of absence without proper cause and who repeatedly fails to return the employer's attempts to contact him or her.

There is no obligation on employers to pay employees their normal pay for periods of unauthorised absence, whatever the reasons for it. An employer that fails to pay an employee in these circumstances would not normally be in breach of the employee's contract of employment. Non-payment would also not amount to an unlawful deduction from wages because payment would not be "properly payable" (under s.13 (3) of the Employment Rights Act 1996) in the first place. However, to help reduce the likelihood of a dispute about non-payment, employers can include a clause in the contract making clear that employees will not be paid for periods of unauthorised absence.

Whether or not an employer can lawfully dismiss an employee for unauthorised absence depends on the reason for, and length of, the absence and the procedure that the employer fol-

laws. It will be difficult for an employer to argue successfully that its dismissal of an employee for one day's unauthorised absence that was taken for a good reason was fair. However, if the unauthorised absence is prolonged, persistent and/or not for a genuine reason, dismissal is more likely to be fair, provided that the employer follows a fair procedure.

In seeking to follow a fair procedure, the employer should

- provide the employee with details of the allegations against him or her in writing together with any supporting evidence
- write to the employee to invite him or her to attend a disciplinary meeting
- give the employee the opportunity to put his or her case forward
- allow the employee to be accompanied at the disciplinary meeting by a trade union representative or colleague
- and give the employee the right of appeal against the dismissal.

If an employee's absence is prolonged and he or she fails to respond to the employer's attempts to contact him or her, the employer may need to carry out the disciplinary hearing in the employee's absence. It should write to the employee inviting him or her to a hearing and to advise that it will proceed in the employee's absence if necessary.