



LET IT SNOW, LET IT SNOW, BUT DON'T LET IT LEAVE YOUR BUSINESS SNOWED UNDER

The recent 'big freeze' has left many employers short of staff, needing to manage absence and pay for the days taken off due to adverse weather conditions.

We have included a draft memo below which may help you during such times in the future. Please do be advised that if the business closes down for the day, then employees would be entitled to their normal salary for that day.

To All Staff

I am writing with reference to the recent absences that have occurred due to adverse weather conditions. This memo is to help provide you with clear guidance for future instances of this nature. As this is potentially considered emergency time off, you have a choice of either taking it as a holiday or as unpaid leave.

Please note for any future occurrences of this nature, where the business is operating as usual and you are not able to attend work, you must contact (name) in the morning by (time) and agree the time you wish to take off. If time off is not agreed and you fail to attend work as required, then any such absence may be treated as unauthorised absence and may be subject to disciplinary action.

Should you have any further questions regarding the above please see (name).

*Thank you.
(Name)*

HUMAN RESOURCES - SUPPORTING YOUR BUSINESS

Let it snow, let it snow, but don't let it leave your business snowed under

HM Customs and Revenue pay over £10,000.00 to an employee who suffered from a blood clot due to a lack of adequate breaks away from work station

Additional Paternity Leave and pay

Increases to Statutory Maternity, Paternity and Adoption pay

Calculating annual leave and Bank Holidays for Part Time employees

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The Draft Agency Workers Regulations 2010

New 'Fit Note' replaces 'Sick Note'

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How using psychometric testing can help you recruit or measure your senior or specialist talent





HM CUSTOMS AND REVENUE PAY OVER £10,000.00 TO AN EMPLOYEE WHO SUFFERED FROM A BLOOD CLOT DUE TO A LACK OF ADEQUATE BREAKS AWAY FROM WORK STATION

A government worker who developed a life-threatening blood clot after sitting at her desk for hours without a break, has received more than £10,000 in compensation. The employee, 53, nearly died after the work schedule at her office was restructured to reduce the time employees spent away from their desks.

Managers set new routines which meant staff no longer had to leave their desks to do printing or photocopying tasks. The member of staff had suffered a previous blood clot, and although it was successfully treated and she no longer had to take medication, she was told by doctors to take breaks from her desk every 15 minutes. The old work routine meant she was naturally taking those breaks to collect work from the printer.

When the new system was put in place she complained to her line manager, but was told she must abide by the new rules. Within weeks she started to suffer pains in her legs. Her GP diagnosed a blood clot and she had to receive emergency treatment to disperse it.

She must now take blood thinning medication on a daily basis and wear specialist stockings. She also has to attend the hospital every four weeks and still suffers from tired and painful legs. HM Customs and Revenue admitted liability and settled the claim out of court. A PCS national officer in a statement said: 'It is disgraceful that Angela's complaints were ignored despite her medical history. It is a classic case of management putting targets above their staff's health. It should never have taken the threat of legal action for this employee to be allowed to take a break from her desk.'

The relevant government legislation states "Plan work so there are breaks or changes of activity", As the need for breaks depends on the nature and intensity of the work, the Regulations require breaks or changes of activity, but do not specify their timing or length. However the guidance on the Regulations explains general principles, for example short, frequent breaks are better than longer, less frequent ones. Ideally the individual should have some discretion over when to take breaks."

If your business requires DSE assessments / training please contact us for further information.

ADDITIONAL PATERNITY LEAVE AND PAY

The Government has proposed changes to Additional Paternity Leave and pay, which will apply to parents of babies due from 3rd April 2011 onwards. These changes will enable employed fathers to take up to 26 weeks' Additional Paternity Leave, some of which can be paid if the mother of the child has returned to work.

This provision will apply during the second 6 months of the child's life, giving both parents the option of sharing childcare responsibilities and dividing the leave between them.

INCREASES TO STATUTORY MATERNITY, PATERNITY AND ADOPTION PAY

The Government has announced an increase to statutory Maternity, Paternity and Adoption pay from £123.06 to £124.88 from 4th April 2010.





CALCULATING ANNUAL LEAVE AND BANK HOLIDAYS FOR PART TIME EMPLOYEES

Annual leave and Bank Holiday entitlement for Part Time (PT) employees is calculated on a pro-rata basis. We have included some guidance below to help you with calculating leave for your PT employees;

If your Company operates statutory entitlements, then Full Time employees who work 5 days per week will receive 5.6 weeks / 28 days total leave, inclusive of Bank Holidays. A Full Time employee would allocate 8 days towards the Bank Holidays for the year and they would have 20 days annual leave to take off for the year.

For PT employees, you would pro-rata the total entitlement by the number of days per week they work. For example; if an employee works 3 days per week, they would receive 3/5 of the entitlement for a Full Time employee; 17 days, inclusive of Bank Holidays.

If the employee works 2 days per week, they would receive 2/5 of the full time entitlement; 11.5 days total leave. (Please note that leave entitlement should always be rounded up to the nearest half day.)

The above calculations include Bank Holiday entitlement, however not all PT employees would work on all of the days which Bank Holidays would fall on. You would therefore need to calculate which Bank Holidays the PT employee is due to work for the year.

The 8 Bank Holidays for 2010 are as follows;

| | | |
|--------------------------|---------------------------------------|------------------|
| 1st January | New Years Day | Friday |
| 2nd April | Good Friday | Friday |
| 5th April | Easter Monday | Monday |
| 3rd May | May Bank Holiday | Monday |
| 31st May | Spring Bank Holiday | Monday |
| 30th August | Summer Bank Holiday | Monday |
| 27th December | (Substitute for Christmas day) | Monday* |
| 28th December | (Substitute for Boxing Day) | Tuesday** |
| *(25th December | Christmas Day | Saturday) |
| ** (26th December | Boxing Day | Sunday) |

As per above, if a PT employee works 2 days per week their total leave entitlement would be 11.5 days. If they work Wednesday and Fridays, they would need to allocate 2 days from this entitlement towards New Years Day and Good Friday. They would then have 9.5 annual leave days to take off for the year.

As per above, if a PT employee works 3 days per week, their total leave entitlement would be 17 days. If they worked Mondays, Tuesday and Wednesdays, they would need to allocate 6 days towards Bank Holidays, and would have 11 annual leave days to take off for the year.

The above has been based on statutory entitlements, however if your business operates a higher level of leave entitlement, the same calculation methods would apply.



CARE HOME HEALTH AND SAFETY FAILINGS

An inquiry into Rosepark care home near Glasgow has heard how a Health and Safety consultant, James Reid, has admitted to 'serious failings' when he conducted assessments on the home, due to the following;

- The 'worst case scenario' had not been considered
- His assessment had been based on conversations with one of the joint owners of the home, Alan Balmer, and he had not ensured this information was supported with relevant documents and paperwork.
- The computerised check list for those 'at risk' included staff and visitors only, not the elderly residents.
- Mr Reid had accepted Balmer's explanation that doors were left open overnight due to some residents and nurses being too weak to open the doors and some residents becoming distressed when doors were closed.

The inquiry also suggested that although Mr Reid was qualified, he had not conducted assessments on this type of premises before, and that parts of his report may have been 'copied and pasted' from previous research done on another one of Balmer's care homes.

HEALTH AND SAFETY E-LEARNING

Sickness absence costs companies billions of pounds every year. Thus, in addition to the personal benefits, it makes business sense to ensure that all staff take responsibility for health and safety and the environment.

Traditional health & safety training poses the following challenges:

- the need for detailed and accurate records of health and safety
- the requirement to receive training immediately on their first day of employment
- ensuring staff are aware of the risks in their environment, whether it be in the office, working off site or even at home
- ensuring staff understand the range of issues from using display screen equipment to fire safety

OUR APPROACH

Our e-learning design focuses on ensuring staff understand the importance of health and safety. By developing a custom made solution and using scenarios, staff can relate the learning to their own work environment. E-learning can provide a very interactive and engaging approach to training for your business.

Our solutions allow you to record learners and assess their understanding. The recording of such information can be important in the event of a health and safety incident, to demonstrate that you had taken reasonable steps to train staff. Organizations can save significant amounts of money by being able to prove they took reasonable steps and ensured that compliance training was undertaken and is monitored.

THE BENEFITS

The immediate benefits of using e-learning include:

- consistent and readily available learning that staff can refer to at the point of need
 - cost effective delivery to large audiences,
 - messages or toolbox talks can be communicated in an engaging way to ensure awareness of the risks in your workplace, hence reducing the chances of incidents occurring and empowering employees to become more risk aware
 - e-learning can be integrated into a wider range of learning interventions
 - tracking of learner progress and understanding
- (This list is not exhaustive).

Contact BBi Alternative Solutions for further information about our e-learning courses.





THE DRAFT AGENCY WORKERS REGULATIONS 2010

The Temporary Agency Work Directive (2008/104/EC) was adopted on 19th November 2008 and must be implemented in the UK by 5 December 2011. Its overall aim is to ensure the protection of agency workers by providing that they should enjoy the same basic working and employment conditions as if they had been directly employed by the end user.

It is important to note that the Regulations will not indicate a change to the employment status of the agency worker. Following the Court of Appeal decision in *James v London Borough of Greenwich* [2008] IRLR 302 CA, it is generally accepted that the overwhelming majority of agency workers are not employees and have no right to redundancy payments or to claim unfair dismissal.

A key feature of the agreement is that the right to equality should apply only once an agency worker has been engaged for 12 weeks "in a given job". However the following rights will apply from day one, the first day of each assignment;

- access to canteen or other similar facilities;
- access to childcare facilities; and
- the provision of transport services.

WHO IS COVERED BY THE DRAFT AGENCY WORKERS REGULATIONS?

The draft Regulations apply for agency workers supplied by a temporary agency

under the direction of a hirer. An agency worker must be an individual who is either employed or "otherwise engaged" by a temporary work agency.

The draft Regulations also make it clear that an individual is still to be regarded as an agency worker even if his or her services are provided through one or more intermediaries.

Regulation 21 provides that the right to equality in terms of pay does not apply to an agency worker who has a permanent contract of employment with the agency, provided that the contract was entered into before the beginning of the first assignment and sets out the following in writing;

- the scale or rate of remuneration or the method of calculating remuneration;
- the location or locations where the agency worker may be expected to work;
- the expected hours of work during any assignment;
- the maximum number of hours that the agency worker may be asked to work each week during any assignment;
- the minimum number of hours per week that may be offered to the agency worker during any assignment (which must be at least one hour); and
- the nature of the work that the agency worker may expect to be offered, including any relevant requirements relating to qualifications or experience.

THE RIGHT TO EQUALITY

The Regulations key focus is on providing agency workers with the right to the same basic terms and conditions they would receive if they had been directly employed by the hirer.

By 'basic terms and conditions' the Government is referring to 'relevant terms and conditions that are ordinarily included in the contracts of employment of the employees of the hirer whether by collective agreement or otherwise'

The right to equality only applies to "relevant" terms and conditions. These are defined in reg.5 as terms and conditions relating to:

- pay;
- the duration of working time;
- the length of night work;
- rest periods;
- rest breaks; and
- annual leave.

EQUAL PAY

In reg.5, pay is defined as; "any sums payable ... in connection with ... employment ... including any fee, bonus, commission, holiday pay or other emolument". Agency workers will therefore be entitled to be paid the same rate of overtime as employees, and will also be entitled to commission on the same basis.

[article continued on next page...](#)



THE DRAFT AGENCY WORKERS REGULATIONS 2010...cont

The employer's 'ordinary' rate of pay for their employee would form the basis of the rate of pay for the agency worker.

If there is no 'going rate' and no collective agreement or pay scale that can be used as a point of reference, it will be impossible to identify a term relating to pay that is ordinarily included in contracts of employment, so the agency worker will have nothing on which to base a claim for less favourable treatment in relation to pay.

The comparison is further qualified by reg.9 (3), which provides that the right to equality will be deemed to have been complied with if the agency worker is employed on terms equal to those of a "comparable employee", defined as someone employed by the hirer in the same establishment, whose terms and conditions include the relevant terms and conditions ordinarily included in the contracts of employees engaged by the hirer, and who is engaged on the "same or broadly similar work", having regard, where relevant, to whether or not the two have a similar level of qualifications and skills.

AGENCY WORKERS AND MATERNITY RIGHTS

The draft Agency Workers Regulations make some important amendments in relation to agency workers and pregnancy.

Schedule 3 inserts provisions into the Employment Rights Act 1996 giving agency workers the right to time off for antenatal care, as well as the right to be placed on suspension on maternity grounds where health and safety prevents the assignment

from continuing. Where this occurs, the agency has to provide an alternative assignment or pay the worker for the likely duration of the original assignment.

LIABILITY FOR THE AGENCY AND THE HIRER

The draft Regulations are more detailed and complex than expected, for the following reasons;

1. To clarify the onus of liability for failure to provide equality, due to the triangular nature of the relationship between agency worker, the hirer and the agency
2. The Government's wish to ensure that 'umbrella' companies or the use of intermediary companies by agencies or hirers does not avoid the requirements of the Regulations.

Regulation 12 allows for the sharing of liability between agency and hirer, depending on the extent to which each is responsible for the breach of the right to equality.

Although an agency worker's primary contractual relationship is with the agency, the hirer is in the position of knowing what the agency worker would have been paid, if they had been directly employed.

It should be noted here that the agency will not be responsible for the breach of right to equality if it can show that it obtained, or took reasonable steps to obtain, the relevant information from the hirer regarding the basic working conditions in place at the hirer's establishment, and where it received such information, it acted reasonably in

determining what the agency worker's basic working and employment conditions should be.

THE RIGHT TO INFORMATION

Where an agency worker believes they have not been treated in accordance with the right to equality, they can request information relating to the basic working conditions and employment conditions in force at the hirer's establishment. In the first instance, the agency worker must make this request in writing to the agency and if the information is not provided within 28 days of the request, the agency worker would make the request to the hirer, who would have 28 days to respond.

For information relating to Regulation 10, rights from day one, the agency worker should put their written request directly to the hirer.

A breach of the right to information is not actionable in itself, but a tribunal can take into account a failure to comply with a written request in determining whether or not there has been an infringement of either reg.9 or reg.10.

The draft Regulations indicate that they will come into force on 1 October 2011. Although this article has been based on the draft Regulations, we can expect much of the above to form the final draft.



NEW 'FIT NOTE' REPLACES 'SICK NOTE'

The new "Statement of Fitness for Work" (Fit Note) replaces the current Med 3 / Sickness Certificate that GP's currently use. The new Fit Note will be used from 6th April 2010 in England, Scotland and Wales.

Previously GP's have completed Sick Certificates to advise of the illness or injury of an employee and whether or not they are fit for work. The new Fit Note will allow Doctors to advise if their patient is;

- Not fit for work
- May be fit for work

The Doctor can select the 'May be fit for work' option and give advice on support or adjustments to be considered by the employer to enable the employee to return to work.

Whilst you are not required to act upon the GP's recommendation, you may wish to consider the adjustments that would be suitable in line with the business needs, to

reduce unnecessary sickness absence. Should you decide not to make any adjustments for the employee due the recommendations not being reasonable or practicable for your business, then the employee would be put onto sick pay.

Your obligation to pay statutory sick pay and make reasonable adjustments under the Disability Discrimination Act 1995 does not change and it is therefore important for you to keep a record of the business reason why reasonable adjustments were not considered in each case, where the employee has been placed on sick pay when their GP has advised they 'may be fit for work'. This would help with any future potential claims of failing to make reasonable adjustments.

Further guidance can be found at <http://www.dwp.gov.uk/fitnote/> and should you have any further queries with the Fit Note or any recommended adjustments, please contact us.



WHO IS KEY TO YOUR BUSINESS?

As part of your business continuity plan, have you identified your key personnel? It could be yourself and or other members of staff.

To help determine who is key, you need to calculate the contribution each key person makes to the income of your business in order to establish the impact it would have if they were lost.

If that person should die or become seriously ill, what would the consequences be? You may need to consider some or all of the following:

- What specialist skills/knowledge did they have?
- Could anyone else do his or her work?
- Would you need to recruit and train a replacement?
- How long could you survive without a replacement?

- How quickly would you need more money?
- Would you need a cash injection?
- Could you recover without an injection of funds to replace the loss of profits?
- Company reputation and sustainability, particularly if the person is a director who has long standing client relationships i.e. potential loss of consumer confidence

There are a variety of ways you can protect your business to cover these eventualities and it may not be as costly as you think. In fact, think what the cost to your business could be if you don't protect it.

For further information or a no obligation quote please contact Sarah Herd at BBi Berns Brett on tel. 020 8559 2111.



PROMOTIONAL ARTICLE

HOW USING PSYCHOMETRIC TESTING CAN HELP YOU RECRUIT OR MEASURE YOUR SENIOR OR SPECIALIST TALENT

SHL is the world's leading provider of psychometric assessment and development solutions and has supported organisations for over 30 years with selection, recruitment and development of talented people at all levels. With an unrivalled reputation for delivering excellence, SHL products are used globally by organisations of all sizes and across all sectors. SHL also services the needs of small to medium sized organisations through a well-established network of partners who are qualified practitioners and can provide a cost effective service using high quality tools for recruitment and development purposes.

Research suggests that the behaviours of individuals and teams in the workplace have a huge impact on the success of the organisation. SHL's scientific and validated behavioural tools can help differentiate between high performers and average performers.

- **Have you** struggled to get the right person to fill that senior or key position?
- **Do you** want to ensure you have a balance of behavioural skills across your management team?
- **Are you** looking for a way of identifying leadership skills?

By enhancing your recruitment process statistically you will have an improved chance of achieving that goal.

The OPQ 32 personality questionnaires are managed on-line, so there is no time-consuming administration involved, and there is a large range of reports to meet your needs. Reports are produced within 48 hours and face-to-face feedback is provided as part of the package cost.

As a Recruiter Partner, **Kerry McGowan of Birchanger HR Solutions** is able to offer clients an enhanced service that includes:

- Competency based role profiling
- Access to questionnaires that measure and predict key behaviours essential for high performance
- On-line assessments
- Face-to-face feedback for client and interviewees
- A range of reports relevant to clients needs

Kerry will work with you to create solutions ranging from designing a competency framework to supporting your recruitment & development programmes or restructuring & redeployment programmes. If you would like to discuss this further please contact Michelle Brinklow of BBi Alternative Solutions.

Over the last couple of years the number of cases reaching Tribunal has hugely increased, it is thought to be by more than 50%. Many of you may have experienced this for yourselves, the increases being driven by disputes about equal pay, unfair dismissal, age, sex, race and disability discrimination.

With this being high on the agenda, we are able to offer our clients with not only hands on consultancy but also, an insured/legal expenses cover of up to £75,000 per claim.

For further information please contact Michelle Brinklow at BBi Alternative Solutions:

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