



VOLCANIC ASH AND EMPLOYMENT LAW – AN UNUSUAL CORRELATION

It is impossible to be oblivious to the 'Volcanic Ash' situation that occurred this month. As the chaos continued into a second week, the realisation began to dawn on millions of people in terms of how this situation could impact on them. Employers were potentially being affected two-fold in that, firstly, those within the aviation business or in some way linked to the aviation industry had a situation on their hands where they may not have any work for their employees as flights continue to remain at a standstill and secondly, some of their employees were left stranded in another part of the world unable to report for work. So where do employers stand and how do they handle these very unusual circumstances?

Where there is no work available as a result of a natural disaster?

Where employees are making themselves available for work and employers are unable to provide any work, strictly speaking employees are entitled to be paid for their normal rostered hours. The only exception to this is where an employer has provided for a 'temporary shortage of work' policy within the employees' terms and conditions, they are entitled to place employees on short time or layoff for the duration of this unusual situation. This means the employer does not have to pay the employee during any period of layoff or short time, however, the employee may be entitled to claim monetary assistance from Social Welfare.

So what if there is no 'temporary shortage of work' policy? Employers can look at resorting some of the possibilities below;

- Ask for volunteers to take unpaid leave. If the employee agrees to unpaid leave then it is a mutual agreement and you are therefore not obliged to pay them. Be sure to get their agreement in writing so you have a record of this in the event of any future dispute
- Allow employees to take annual leave for this period of time if they have accrued enough leave during the current annual leave year
- Speak to employees and reach some compromise where any reduction in hours is spread out evenly amongst all employees (if employees do not agree and there is no policy allowing for this in their terms and conditions, you will need to resort to one of the above alternatives)
- Where no other alternatives are available and you are left paying employees during this time, perhaps use the opportunity to get backlogged paperwork done or ad-hoc jobs that have been put on the long-finger until now – you may as well get some value for your money!

Employees who are stranded abroad and unable to attend work

For those employees who were unfortunate enough to go on holidays before a situation such as the Volcanic Ash but were unable to return back to work because of flight/ travel restrictions. Where does that leave employers?

- Once the employee makes contact with you to explain they are stranded abroad, the first thing you should make clear is that they are required to keep in regular contact with you throughout this time and keep you fully informed of any developments as and when they arise. Before you end the call, always agree a day when you expect a call from the employee even where there may not be any further developments
- You are not obliged to pay employees if they are unable to attend for work, therefore look at giving the employee the option to take unpaid leave or annual leave for their period of absence
- Obviously the sooner the employee is back to work, the sooner your business can get back to work, so while there is no obligation on you, why not try and assist the employee in finding an alternative method of travel? If they are in a remote part of the world with limited access to phones and email, provide them with contact numbers and coach/ferry times etc... to facilitate their return to work sooner

Employees who had booked annual leave but wish to cancel it now due to travel restrictions

There are many employees out there who apply for annual leave before the time of travel disruption. If travel arrangements are cancelled many of these employees are no longer in a position to travel and may wish to cancel their annual leave so they can rebook it again for a time when safe travelling is permitted. Are employers obliged to agree to their cancellation request?

The short answer is no, you are not obliged to agree to their request to cancel their annual leave. However, it might be wise to take into account the business circumstances at the time and make a decision on that basis. If you have employees stranded abroad who are due to work, it may be better to allow other employees cancel their leave request so at least your staffing levels do not suffer significantly. Where you have made arrangements to cover a period of annual leave and there is no way to change this, then you should explain this situation to the employee and let them know you are unable to cancel their annual leave as a result.