

## School closures | Time off for dependants during coronavirus

### Introduction

On 18 March 2020, the Education Minister announced that all schools in the UK will close from 20 March 2020 for the foreseeable future. As a result, many employees may need to take time off work to deal with the fallout from this decision.

Under UK law, employees have the right to take a "reasonable" amount of unpaid time off work to take "necessary" action to deal with situations affecting their dependants, such as a school closure.

Provided the reasons for such a request are genuine and the employee informs you as soon as possible that they need this time off, they should be allowed reasonable unpaid time off work to deal with such emergencies.

Most employers will have an emergency leave policy as part of their Employee Handbook. That should be used to guide processes and decision making in this situation and the guidance below should be read in conjunction with any existing policy.

### Dependants

In the current context, the most relevant definition of a dependant is a child. However, employers should note that this right has a wider context than just school closures. A dependant is the employee's husband, wife or civil partner, child or parent, or someone living with them as part of their family who can be considered as depending on the employee. Others who rely on the employee for help in an emergency may also qualify.

### Emergency

The right to time off is essentially intended to cover unexpected emergencies involving dependants. The right does not extend to, for example, time off to deal with a burst pipe or wait for the gas man.

In the current climate, the school closures are likely to be regarded as an emergency. The mere fact that the employee knows in advance that the schools are going to close and that this will affect childcare arrangements does not prevent them having the right to time off if they are unable to make alternative arrangements in the meantime.

In a wider context, an emergency is where:

- A dependant needs assistance because they have fallen ill, given birth or been injured or assaulted;
- The employee needs to make arrangements for the provision of care for a dependant who is ill or injured;
- A dependant has died;
- The employee needs to deal with an incident involving the employee's child which occurs unexpectedly at a time when school is responsible for the child's care; or
- The employee needs to deal with an unexpected disruption or breakdown in care arrangements, for example for a parent or child.

### Length of time off

This is often the trickiest part. Employees can only take off as much time as it takes to deal with the immediate emergency. For example, if a school has closed at short notice or childcare has been cancelled, the employee can take enough time off to deal with the dependant's initial needs, such as arranging alternative childcare.

Employees cannot take time off work to provide continuing care themselves and will need to make alternative arrangements. If the employee wants to stay off work longer to provide care, they will normally need to take this as part of their annual leave entitlement.

As a general benchmark, no more than a day or so emergency leave should be necessary. The employee is under no duty to provide evidence to substantiate the request, albeit the employer could request such evidence. No request for time off should unreasonably be refused by the employer and an employer cannot refuse on the grounds of business reasons. The only objection an employer can ever make is that the employee is taking an unreasonable amount of time off. If there is evidence of abuse of the right, the matter should be dealt with by way of the disciplinary process. An unreasonable refusal by an employer could result in the employee bringing an Employment Tribunal claim, or even resigning and claiming constructive dismissal (if the employee has the necessary continuous service) or indirect sex discrimination.

#### **Notice**

The employee must tell the employer as soon as possible why they are away from work and how long they expect to be off. In extreme cases of emergency where employees cannot inform the employer of their absence before their return to work, on their return they should still inform their supervisor or line manager why they were absent.