



TIME OFF FOR DEPENDANTS

Guidance Notes

These notes cover an individual's entitlements to take time off for a dependant in the UK.

INTRODUCTION

Employees, both male and female, have the right to take reasonable time off for dependants in the event of any of the following circumstances:

- where a dependant falls ill, is injured or is assaulted
- to making arrangements for the provision of care
- where the employee has to make arrangements for the provision of care for a dependant
- in the case of the death of a dependant
- where the arrangements for the care of a dependant have been unexpectedly disrupted or terminated (eg a child-minder fails to turn up)
- where there has been an unexpected incident involving the employee's child at school.

There is no qualifying service period required to entitle an employee to take time off work to care for a dependant, but the time off is unpaid.

For the employee to be entitled to time off work, the circumstances must be unforeseen. The intention behind the law is to allow employees to take time off work in the event of an emergency situation involving a dependant, and to be protected against any detriment for doing so.

Also key to the definition is the involvement of a dependant in the emergency at hand. For this reason, emergencies relating to other domestic circumstances eg a flood at home will not be covered under this right.

DEFINITION OF A DEPENDANT

A dependant of an employee is defined in the

law as one of the following:

- husband or wife or partner
- child
- parent
- someone else who is regarded as part of the family and lives with an employee (but not tenants, boarders, lodgers or employees)
- anyone else who is reliant on an employee in emergency situations.

USE OF THIS RIGHT

The right to take time off to care for dependants is intended to be to deal with emergency situations. It does not cover situations such as taking a dependant to a previously agreed hospital appointment. As set out above, it is on the occasion of unforeseen events.

GUIDELINES

The employment tribunal has previously set out guidelines to be used when determining whether it is appropriate for an employee to take time off for dependants.

In determining whether the leave is 'necessary' the following factors should be considered:

- the availability of someone else who can help in the circumstances
- the nature of the incident
- the relationship of the employee with the dependant.

The entitlement is to a 'reasonable amount of time off'. In assessing this, the employer cannot take into account the needs of the business and any disruption that the employee's time off might cause. However, if the employee has taken time off to care for dependants on previous occasions, the employer can take into consideration the following:



- the number of times the employee has taken time off
- the length of time off that the employee has taken
- when the time off was taken
- whether on each occasion the employer was informed of the absences.

Employers should hold a return to work interview with an employee on their return to work after a period of time off for dependants, noting the number of days taken and any support to be offered to the employee.

RESPONSIBILITIES OF THE EMPLOYEE

The right to take time off to care for dependants is in an emergency only. The very nature of the entitlement to time off for dependants means that the employer cannot plan for the time off.

However, the employee is required to inform the employer as soon as reasonably practicable about the absence, the reason for it and the anticipated length. Any extension to the originally anticipated length must be notified to the employer as soon as is reasonably practicable. The employee is not required to give 'daily updates' if the absence goes on for more than one day, but he or she is expected to keep the employer informed.

If the employee agrees a length of absence with the employer, the employee cannot extend that without agreement.

REFUSAL TO ALLOW TIME OFF

In many situations, the employer will not have the opportunity to refuse the leave, because the employee will be informing the employer after the event of the emergency. However, there are two main grounds on which time off can be refused:

- where it is not necessary to take the time off (for example, if a child has had a serious accident it would be reasonable for both parents to go to the hospital, but if a childminder was ill it would not be reasonable for both

parents to leave their work to care for the child) or

- where the amount of time off requested by the employee is unreasonable.

Under normal circumstances, an employer is likely to only deal with a relatively small number of instances of time off for dependants throughout the year. However, on rare occasions, the number of instances may well increase due to unprecedented situations like coronavirus.

Even when this happens, it is not within the discretion of the employer to deny the right to time off for dependants. Employers are encouraged to open up communication with employees about how an extended period of time off will be dealt with. Homeworking, annual leave or a temporary period of flexible working may help.

LENGTH OF THE LEAVE

The legislation requires that the length of the leave is 'reasonable'. The Department for Business, Energy and Industrial Strategy (BEIS) advises that this should not usually be more than two days - but it will depend on the situation.

The employer is not permitted to require an employee who has requested or taken time off to care for dependants to rearrange their working hours, or make up the time that has been lost.

Employers must take a common sense approach when establishing principles around a 'reasonable' amount of time. An Employment Tribunal has held that a total of seven days, spanning six instances of absence, within a period of 12 months was 'reasonable'.

REQUESTS FOR EXTENDED LEAVE

The right to take time off for dependants extends to the amount of time necessary to make arrangements in consequence of an emergency situation. In the circumstances of a death, the amount of time to be taken would cover, for example, making funeral arrangements but does not cover time taken by an employee in order to grieve.



PENINSULA

Time off to grieve would normally be covered under an employer's compassionate/bereavement leave policy. Entitlements are at the discretion of the employer. However, from 6 April 2020, 'bereaved parents' are entitled to take a maximum of 2 weeks' leave as parental bereavement leave in the event that they lose a child under the age of 18. This is the only type of statutory bereavement leave available.

TERMS AND CONDITIONS OF EMPLOYMENT

During any period when the employee is absent from work under the time off to care for dependants provisions, he or she is not entitled to pay. Continuity of service will, however, not be affected.

REMEDIES FOR REFUSAL

An employee can make a complaint to the employment tribunal that he or she has been unreasonably refused time off to care for dependants. This claim carries no service qualification. If the complaint is found to be justified, the tribunal will make a declaration that the refusal was unfair, and award compensation that is 'just and equitable'. This is determined

with consideration of any loss that the employee might have suffered and having regard to the employer's default.

DISMISSAL AND DETRIMENT

Dismissing an employee because he or she exercised the right to take time off to care for dependants will be automatically unfair. Similarly, employees must not be subjected to any detriment for exercising this right. This means that the normal two year qualifying service rule will not apply; employees can make this claim from day one of employment. Compensation for a dismissal of this kind is capped at the current statutory limit.

Occupational Health intervention and Employee Assistance Programmes are essential tools to effectively manage absence in the workplace, to support staff and to add value to your business. We can provide you with the details of Health Assured, a company who can provide such services. For further information, please speak to your HR Expert and visit: www.healthassured.co.uk

Need Further Advice?

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