

Time Off for Dependants

This advice note summarises the law in England and Wales relating to an employee's statutory right to take time off to deal with emergencies involving their dependants.

Introduction

Employees have the right to take a 'reasonable' amount of unpaid time off work to take 'necessary' action to deal with immediate crisis affecting their dependants.

Who is eligible?

The right applies to all employees (except the armed forces, members of the police and certain fishermen), irrespective of their length of service, whether they work fulltime or part-time or are employed on a permanent, temporary or fixed-term basis. Workers and the self-employed are excluded.

When can an employee take time off?

An employee only has a statutory right to take 'reasonable' time off where it is 'necessary' and if the situation falls within the categories below.

To provide assistance if a dependant falls ill, gives birth, is injured or assaulted:

- This applies when the dependant has fallen ill unexpectedly and thus the employee is dealing with something unforeseen;
- This includes mental illness or injury;
- The injury need not be serious or life-threatening;
- In the case of assault it is enough that the dependant is distressed and needs comforting or assistance.

To make arrangements for the provision of care for a dependant who is ill or injured:

- This right does not enable the employee to take additional or ongoing time off to care for the dependant themselves;
- Arrangements could include organising a temporary carer or taking a sick child to stay with relatives.

As a consequence of the death of a dependant:

- This only enables an employee to deal with the logistical matters that arise as a result of death. These include arranging a funeral and where appropriate, applying for probate and meeting with probate officers;
- If the dependant's funeral is overseas, the employer and employee should agree a length of absence, which is reasonable in the circumstances.

To deal with the 'unexpected' disruption, termination or breakdown of arrangements for the care of a dependant:

- An event is 'unexpected' at the moment the employee learns of it. Once aware, they should try and make alternative arrangements to provide cover but, if this is not possible, it will become necessary for the employee to take time off.

To deal with an unexpected incident involving the employee's child during school hours.

Who is a dependant?

A 'dependant' is defined as a spouse, civil partner, child or parent (but not grandparent) of the employee or a person who lives in the same household as the employee (excluding tenants, lodgers boarders and employees) or anyone who reasonably relies on the employee for assistance, for example, an elderly neighbour living alone, who falls and breaks a leg, where the employee is closest at hand.

When is action 'necessary'?

What is 'necessary' will depend on the circumstances of the case. Factors to consider will include the nature of the incident, the closeness of the relationship between the employee and the dependant, whether anyone else was available to help and the duration of time between learning of a risk of disruption and the disruption taking place.

What is "reasonable" time off?

Again this is dependent on the individual circumstances. In the vast majority of cases, reasonable time off will be no longer than a few hours or a few days.

Disruption to the employer's business will not be a relevant factor to consider in determining whether a period of time off is reasonable.

Procedural requirements

Notice

The right to time off only applies if the employee tells their employer the reason for their absence and how long they expect to be away from work as soon as reasonably practicable. There may be exceptional circumstances where an employee is not able to notify an employer. In this situation, they should notify the employer of the reason for absence as soon as possible: at the latest on their return to work.

There is no requirement for the notice to be in writing but the employee needs to give the employer sufficient information to enable them to determine that the time off is to care for a dependant.

Evidence

The employee is not required to produce any evidence for their need to take time off, however, the employer can request appropriate evidence provided it has reasonable grounds to make the request and it does not act in a way that could be viewed as discriminatory or that subjects the employee to a detriment.

Enforcement and remedy

If the employer unreasonably refuses to permit the employee to take time off, subjects the employee to a detriment or (unfairly) dismisses them for taking (or seeking to take) time off, the employee may present a complaint to an employment tribunal within three months less one day of the refusal, detriment or dismissal, unless the employment tribunal is satisfied that it was not reasonably practicable for the employee to have submitted their claim in that time.

The employment tribunal can make a declaration that there was breach or detriment and award compensation to the employee, or if unfairly dismissed, it may order reengagement or pay compensation.

If you require further advice regarding the above, please contact Nick Jones on 0117 904 5912 or njones@lyonsdavidson.co.uk

The purpose of this general advice note is to provide a general summary of information around a specific topic. It should not however be taken as legal advice and should not be relied on as such. We recommend that you always obtain specific legal advice in respect of a particular issue or matter. Please contact our employment team if you have a question about anything related to the subject matter of this note.

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