

stop press

EMPLOYMENT DEPARTMENT

Riot Damage – both employers and employees to bear the cost

Mid-August saw the most startling disruption outside of war-time on our streets. Those who own the stores, hair salons and restaurants are just getting over the clean up and looking to their insurance but what happens to their employees? What are employees obliged to do if they can't work due to these or other disruptions such as strikes on public transport?

Thankfully most employers will be of sufficient size that their businesses will be able to resume trading swiftly. Staff may be asked to work from home during repairs or redeployed to other branches in the area until a normal service resumes. This guarantees those employees a continued salary this month. But what happens where the business has been gravely affected?

Where the business has been damaged or closed, there may be no need for employees to undertake their work. If they are ready and able to perform their job however they should be paid. This is the case unless the employer has the right under the employees' contracts, to lay them off without pay (when they may then be entitled to a guarantee minimum payment only) or unless the employer formally brings the employment to an end. In the latter case, the employee may well be redundant, so they should still be paid redundancy and notice pay.

In extreme circumstances, such as for the family-owned furniture business which burned down in Croydon, the employment contract may have become impossible to perform. The employment relationship is then "frustrated" and ends automatically. This releases the parties from any ongoing duties they owe. The employer no longer

has to pay the employee and the employee is not bound to work for them nor to comply with any non-competition restrictions. As this is not a dismissal, the employee is not entitled to redundancy pay and cannot claim they have been unfairly dismissed.

In the event of riots, train strikes, winter weather or the Olympics, employees may also be prevented from getting to work. Again, the issue arises of whether they should be paid. An employee who is unable to attend/undertake their work, even through no fault of their own, would not usually have a right to be paid. This may be avoided by employees working from home, taking the day as paid leave or if their employer chooses to pay them (which some customarily do).

It is helpful for all staff to know what arrangements are in place for them and what they are required to do. Most contracts and absence policies set out who staff must notify and when if they are unable to attend work. This is all the more important in times of business disruption, as employers are tasked with ensuring the safety of the people that work for them.

Now is the time for businesses to review their contracts and policies so that they are sufficiently robust to deal with future business disruptions. For employees, familiarisation with and compliance with their employer's requirements is key and will ensure they minimise how much they will pay in future.

For more information, assistance or advice please contact:

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SAVE THE DATE!

We will hold the following breakfast seminar at our offices on Thursday 13 October 2011:

"Riots, Train Strikes, The Wrong Kind of Snow, The Olympics ..."
An Employer's Guide to Business Disruption

We will lead you through and provide hot tips on:

- When must an absent employee be paid? How much?
- When is absence misconduct?
- How to take action to warn or dismiss.
- What are an employer's duties of care?
- How do you maximise the chance of business continuity and protect your business?

For more information, please contact Ysaline Clero at yclero@pe-legal.com or visit our website at www.pe-legal.com/media_centre.