

SNOW BOUND STAFF

With reports that many employees cannot make it to work because of the weather, growers may be interested to know their legal rights and obligations.

The rights of individual employees are determined by their employment agreement and law. Growers need to check the employment agreements they have with employees before establishing a position. If you are unsure then you should take advice from a qualified person.

Many growers have employment agreements that provide for flexible working hours/days based on crop availability, weather and the like. In this case most employers will not be contractually obliged to pay staff but that will depend on your particular employment agreement so please check it carefully. It is also useful if the employment agreement has a deductions clause permitting deductions for unauthorised leave. Issues such as notice of when work is or is not available and minimum hours per week may come into play.

Generally speaking the position is typically:

1. If employees cannot get to work due to the weather or stays at home to look after a child because the school is shut due to the weather employers are not (subject to any contractual terms) obliged to pay the staff member but can come to some other arrangement with the employee such as,
 - a. The employee agreeing to take leave (the same as using accumulated holiday pay). If the employee has accumulated annual leave or holiday pay and the employee agrees to take the missed day as annual leave get them to sign a note stating that they have requested that the day be treated as annual leave. If you are paying holiday pay as you go then this arrangement is not available as there is no accumulated leave or holiday pay.
 - b. Working additional "make up" hours on another day by agreement
 - c. Working from home on the day they were unable to be at work due to the weather
 - d. There are instances where employers accept a genuine effort to attend work was made but the intervention of weather made it impossible. The employer can make a full or partial "ex gratia" payment and need to bear in mind factors such as how this will affect morale and will employees who made the effort to come in feel aggrieved.
 - e. You may want to check any insurance that you have as well.
2. Subject to employment agreements terms and conditions, businesses that are forced to close by the weather when the staff are available to attend work are obliged to pay those staff.

Lastly we remind employers there was a change to employment law that came into effect last month making it mandatory for employers to retain copies of all employment terms and employment agreement (including variations) and making invalid any unsigned individual employment agreements.