

Those lazy days of summer- not so good if you have to work

It is looking more as though the summer of 2009 will prove to be a warm one. Although we all love the idea for our holidays its not so great if you have to work and it presents a whole bunch of new problems for employers. Here are my thoughts about how to tackle these.

Hot, hot, hot

It is inevitable that if it is hot outside it will also be hot indoors and have an impact by creating a hot, stuffy and uncomfortable environment particularly where no air conditioning facilities exist. Regulation 7 of the Workplace (Health, Safety and Welfare) Regulations 1992 states that the temperature in all workplaces inside buildings must be reasonable, but no upper temperature limit is specified.

Regardless of this lack of guidance and the use of that word “reasonable” it is likely that employees' will work more slowly if they are too warm and they are likely to lack concentration. For these reasons, it is a benefit to the employer to take steps to deal with the problem. You could make sure that window blinds are working correctly, provide fans, give regular breaks for cold drinks, and be flexible about dress codes and working hours.

There is guidance on the Health and Safety Executive website, which offers advice to employers and employees on achieving comfortable working conditions. It is recognised that a comfortable temperature is more than just a how hot the room is but other environmental and personal factors may also have an impact.

Employers should consider complaints about heat at work seriously and investigate further. The number of employees complaining may indicate the extent of the problem. Employers should check the temperature and carry out risk assessments to establish the extent of the problem and take steps to mitigate it.

It may be possible to take disciplinary action against an employee who refuses to work due to the heat but this will depend on the circumstances. Employees are protected against dismissal where they take steps to protect themselves in circumstances of danger that they reasonably believe to be serious and imminent. An employer that takes action against an employee who refuses to work due to the heat must consider the risks of this carefully before going ahead.

Think I'll wear my shorts today?

As an employer you may decide that it would be good to be flexible about normal dress during hot weather. However, hot weather sometimes leads employees to take a more relaxed attitude to their dress than their employers would like, regardless of whether or not the employer has agreed a temporary changes to take into account the heat.

Employers that decide they would like to have rules about dress regardless of the temperature need to ensure that they do so in a fair and non-discriminatory way. It is sometimes perceived by employees that rules about dress are applied more strictly to men than women and this is particularly so during the summer.

Many employers allow female employees to come to work in sandals and sleeveless tops, but men still need to wear suits and ties. This may leave them open to sex discrimination claims. Employers need to make sure that their dress code is fair and applied equally across all employees.

During periods of hot weather, employers need to set guidelines from the outset explaining what they consider is acceptable for their employees to wear. They should also be very clear about types of dress that are excluded. Employers should always make sure that their requirements are reasonable and necessary- not only will this make it easier to enforce but employees are more likely to accept it.

There may be genuine health and safety or hygiene reasons for imposing certain dress rules. Alternatively, the dress code may be needed to support a professional image to clients or customers or promote a certain image. Employers should decide whether they are prepared to relax the code during hot weather. It may be possible to simply say that employees may wear cooler clothing, provided that they keep smart clothes at work to change into in the event of a business meeting.

Factors that should be considered when taking disciplinary action against an employee who falls foul of the rules on dress codes will be:

- Are the rules reasonable and relevant to the business and the employees position;
- Can the dress rules be relaxed without risk to the business; and
- Why did the employee fail to comply with the code?

What is that smell?

Hot offices and shops can exacerbate personal hygiene problems which would otherwise remain unnoticed and employers tend to expect that their employees will turn up for work in clean clothes having washed and applied deodorant.

When this does not happen or this becomes a problem because of the warm weather, employers need to talk to the employee concerned as soon as they can. If they don't do this other employees are likely to complain and customers may decide to go elsewhere.

This is very straightforward and a simple informal conversation with the employee concerned and it will generally sort out the problem. During this conversation, you are aiming to find out if there are good reasons for the employee's problem. For example there may be domestic or financial issues or an illness or medical condition causing it. An informal meeting will help you to decide whether or not anything can be done to help the employee, such as providing washing and changing facilities at work, or a loan or salary advance in cases of financial hardship. It will also give you a chance to reaffirm the standards required and why rules are needed in your business.

Employees who do not have a good reason for failing to comply with acceptable personal hygiene standards or who simply fail to improve after the informal meeting should know that the next step is likely to be part of the formal disciplinary procedure.

I've booked a last minute holiday-can I go?

Hot weather makes us all think about booking a holiday and this can impact on work as employees tend to make last minute holiday requests. Employers need to ensure that they treat requests for holiday fairly and normally these are dealt with on a "first come, first served" basis. You are not obliged to grant holiday to an employee at a specific time, provided that employees are able to take their leave entitlement during the leave year.

Your contract of employment or employee handbook will generally set out the notice employees must give to request holiday and it is always wise to record these rules. It helps you to deal with requests fairly and quickly and prevents the temptation of making up the rules as you go along. In the absence of any arrangement like this or agreement to the contrary the Working Time Regulations 1998 require workers to give notice of a request to take annual leave of at least twice the period of annual leave requested. The employer can then serve counter-notice refusing the leave request. The employer's counter-notice must be at least as long as the period of leave that the employee requested.

Think I feel like a day off

Some businesses notice an increase in unauthorised and unexpected absence during warm weather. Sometimes employees do not return from holiday on time, or take a day off to enjoy the sunshine or watch sports events, using sickness as the reason for being away.

If you notice a pattern of absenteeism you should first of all have a meeting with your employee to discuss this. Some businesses have policies that mean employees must attend a return to work meeting after any absence. These return to work meetings are proved to discourage those unexpected days off and the meeting is a useful way to spot underlying reasons for absenteeism which could include stress or bullying.

If an employee is away because of genuine travel problems returning from holiday or other unforeseen circumstances and the employee has not attempted to deceive you by claiming that the absence is due to sickness, you can use your discretion to decide whether or not the absence should be treated as holiday or give unpaid leave

Disciplinary action against employees who have a genuine reason for being unable to return to work from holiday on time, is not advisable and is most likely to be seen as unreasonable. You may decide that this point should be covered in your employee handbook to avoid doubt when a decision needs to be made. Unauthorised holidays should normally be dealt with in your disciplinary procedure, unless the absence qualifies under any of the statutory time off provisions or illness in which case the normal sickness absence procedure applies

OptionsHR provides a human resource service especially designed to suit the small owner managed business sector and is able to advise on all aspects of employment legislation and the employer/employee relationship.

If you have a question or need further help please contact Sue Ferguson, OptionsHR on 0118 940 3032 or email sueferguson@optionshr.co.uk.