

Bulletin 206

June 2011

TEACHER'S STRIKE - TIME OFF FOR PARENTS TO LOOK AFTER CHILDREN WHERE SCHOOLS CLOSE

The National Union of Teachers (NUT) and the Association of Teachers and Lecturers (ATL) recently announced that they will strike for 1 day on Thursday 30 June 2011 campaigning against changes to teachers' pensions.

It is envisaged that the strike will cause disruption to thousands of schools throughout the county which in turn may have an adverse effect on employers due to parents taking the day off work to care for their children.

All employees, irrespective of their length of service have a statutory right to take "reasonable" unpaid time off work to take "necessary" action to deal with particular situations affecting their dependants. Dependants includes children and one such situation outlined in the Employment Rights Act 1996, where an employee may be granted unpaid time off is where an employee needs to deal with an unexpected incident involving an employee's child during school hours.

There is a problem for employees in the situation outlined above; this being that the statute provides for time off to deal with an "unexpected incident" involving the child during school hours. The strike was announced after the ballot by the NUT and ATL on the 14 June 2011. It is likely that parents were informed about the strike by their children's school as soon as possible and therefore highly likely that parents have known about the proposed strike for 2 weeks making it not such an "unexpected incident". However in a previous Employment Appeal Tribunal decision (*Royal Bank of Scotland Plc v Harrison UKEAT/0093/08*) an employee was made aware on the 8 December 2006 that her child minder would be unavailable on the 22 December 2006. The employer argued that the disruption to the employee's arrangements were not unexpected. The Employment Appeal Tribunal disagreed and held that the word "unexpected" does not involve a time element. An event is unexpected at the moment the employee learns of it. Once aware of it they will try to make alternative arrangements to provide cover but if not possible it will become necessary for the employee to take time off.

Employees affected by the strike should already have made a request for time off to care for their children on Thursday 30 June. It is important that employers consider all requests from employees, given that an employee can present a claim to an employment tribunal where a request is refused or where an employee is subjected to a detriment for taking or seeking to take time off.

Alternatively some employees may request to take annual leave to deal with the strike, again employers should be flexible to grant employees with the required annual leave.

Practical Tip

Employers should consider carefully before taking action against employee parents who are absent without authority on the day of the strike and consider whether in each particular case, and depending on when the employee became aware of the strike, whether this falls within the statutory right to take unpaid time off for dependants.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to kimberley.malcolm@brabnerscs.com

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