

## As another volcanic ash cloud blows in from Iceland – what are your rights to be paid if you are adversely affected?

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**As another volcanic ash cloud makes inroads into UK airspace and with half term looming, we could be set for another major disruption in the workplace if you are stuck abroad or connected with the airline industry. In April 2010, the volcanic ash over the UK and Europe from Iceland caused disruption to the aviation industry on a scale not seen in this country since World War II. Many thousands of people were stuck abroad for weeks until the cloud dispersed.**

### **What are your rights if you stuck abroad?**

If you cannot get back to work, then the starting point is whether your employer has an “unauthorised absence” provision in your contract of employment or staff handbook that would still entitle you to be paid. Many employers have reviewed their policies since last April and have tried to make them as robust and as possible to ensure that you would not receive payment, save for exceptional circumstances which may be listed.

In the absence of such a policy, employers have a discretion whether or not to continue paying you as the obligation is to only pay for work that you have actually carried out. You could therefore either be forced to take the days as unpaid leave, or as part of your annual leave, although there are notice provisions required by your employer where they want you to take the time as annual leave.

Employment regulations require that to require an employee to take annual leave, an employer must give at least twice the length of notice of the holiday they wish an employee to take. Therefore, if an employer wishes an employee to take two days leave, they must give four days notice. It is important to note however, that the legislation does allow employers to exclude this obligation in their contracts of employment and many will have done so. In this case, employers can require staff to treat the days as annual leave without the need for notice.

The situation may be different if you were abroad on business (as opposed to being on holiday). You should argue in these circumstances that it is through no fault of your own that you cannot get back to the UK and it is unreasonable for there to be any adverse impact against you as a result- after all, you were abroad as a result of company business in the first place.

Employers can require employees to take reasonable steps to find alternative means of getting to work or working remotely. Indeed last April, there were reports of many people who were able to undertake at least some work remotely especially where such work was computer or telephone based. Employers can also insist that employees follow company procedures relating to unauthorised absence and give proper notification and updates to their employer. A failure to follow such process could lead to disciplinary action even though the reasons behind the absence are legitimate.

Whatever decision employers make with regard to affected employees, they should treat everyone in a consistent manner and you should consider lodging a formal grievance if you believe your employer has treated you unfairly in this regard.

### **What are your rights to be paid where you are ready and willing to work?**

There are many thousands of workers that are connected with the airline industry, from pilots, air stewards, security and ground staff to cleaners and caterers. If you are such an employee, what are your rights if the airports close?

Well in these circumstances, you are still entitled to be paid your salary and cannot be forced you to make up the time later on or to take it as part of your holiday. This is because you are ready and willing to work. You may be asked to relocate for the period reflecting the disruption, but such relocation must be reasonable in nature and distance from where you were originally based.

You may be eligible for a “statutory guarantee payment”, but you must have been employed continuously for at least 1 month, and not have refused any reasonable alternative work or be involved in industrial action.

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The statutory guarantee payment kicks in if your daily pay is less than £22.20 and is for each day that you are laid-off, up to a maximum of 5 days in a 3 month period. The actual amount you can receive will depend on the number of hours per day you would have worked, but it is up to a maximum of £22.20 per day. It should be noted that if there is a collective agreement between your union and your employer that the statutory guarantee payment scheme should not apply, then you will not be entitled to rely on the scheme.

### **Re-arranging your holiday plans**

Employees whose holiday plans have been disrupted may request their employer to rearrange pre-booked annual leave. An employer does not have to agree to this, but their response should be reasonable and consistent.

### **Employers attitude**

The TUC and other employee forums have insisted in the past that employers exercise their discretion to pay employees favourably in these fairly unique circumstances. It remains to be seen whether or not they do so this time around.

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