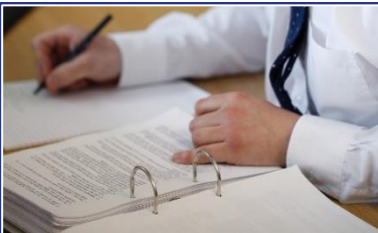


The termly e-newsletter from the Education HR team

HR BYTES

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Recent case law updates

We look at two key cases this term and consider the implications of these cases for schools.

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Industrial Relations Update & Reforms to Holiday Pay 2024

We look in detail at two open consultations on Minimum Service Levels in Education and the use of agency workers during strike action.

We also review changes to holiday pay coming in 2024.

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Winter HR Issues

The weather may have been somewhat unpredictable this year, but we take a look at the HR issues that tend to crop up over the colder months. Here we've come up with Q&As to support you with managing some of these HR headaches.

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RECENT CASE LAW UPDATES

Supreme Court's landmark holiday pay ruling Chief Constable of the Police Service of Northern Ireland v Agnew – October 2023

For the second time in just over a year, the Supreme Court has been asked to deliver a judgment on a claim related to holiday pay, which has the potential to significantly impact the claims that may be brought for non-payment by employees.

The Supreme Court's latest decision in *Chief Constable of the Police Service of Northern Ireland v Agnew* relates to situations where an employee is claiming for non-payment of holiday pay and is looking to claim back for a "series" of deductions.

Before exploring the facts of this case, it is worth considering what was previously, understood to be the general position for making such claims.

Under the Employment Rights Act, an employee has the possibility of claiming against an employer where they have been underpaid. There is a strict time limit of three months from the date of such an underpayment, for a claim to be brought. The Tribunal would, however, allow for claims to be brought for deductions going back more than three months, provided that they formed part of a "series" of deductions. However, the rule was generally understood to mean that to be considered a series of deductions, there could not be a gap of more than three months.

This is the key point that the decision in the *Agnew* case addressed. The case concerned police officers in Northern Ireland, who brought claims against the police service relating to underpaid holiday pay, going back as far as 1998. It was accepted by the Respondent that they had underpaid holiday pay, as this had been incorrectly calculated. However, the Respondent argued that the police officers could not claim back to 1998, as the relevant Regulations in Ireland restricted claims to underpayments made three months before the claim was brought, and as above, that for a series of deductions to exist there needed to be a gap of no more than three months between the deductions.

An Industrial Tribunal found in favour of the police officers, and the claim was appealed numerous times all the way to the Supreme Court. The Supreme Court dismissed the appeal, again finding in favour of the police officers.



Comment

When considering what correctly amounted to a "series" of deductions, the Court found that the fact that there was more than three months between deductions did not prevent them from forming a series. The Court assessed the meaning of the word "series", which it found depended entirely on the context rather than being limited to a gap of three months.

When determining whether or not a claim in respect of more than one deduction correctly constitutes a series of deductions, this is a question of fact that a Court or Tribunal would need to determine. This should be done by reference to all of the circumstances of each individual case. It is not necessary for there to be a specific pattern, and the fact that there may be more than three months between the deductions does not prevent them from being linked for the purpose of bringing a claim.

This judgment, therefore, whilst not specifically influencing the way in which employers should calculate holiday pay to the extent that the 2022 judgment of *Harpur Trust v Brazel* did, should still act as a warning to employers. If they face a claim by an employee or former employee for non-payment of holiday pay, provided that the claim is brought within three months of the latest alleged deduction, the employee may now be able to claim back for previous non-payments if they can show that these formed a "series" of deductions on the facts. It will no longer be open to the employer to argue that the employee is barred from claiming them because there were more than three months between the deductions.

RECENT CASE LAW UPDATES:

The risk of overlooking disability in Redundancy Marks and Spencer Plc. V Ms R Jandu – March 2022



Ms Jandu was employed by Marks and Spencer as a layout planner between 2013 and 2020. Ms Jandu was diagnosed with dyslexia while a mature university student in 2009.

Given the issues Ms Jandu faced with work, she was clear with managers from the start about the support she would need. Most managers were happy to support her by reading through important emails that would be sent to wider teams, colour-coding emails sent to help her identify key points/passages, and similar.

Prior to Ms Jandu's consultation for redundancy, she had not asked for further support to manage her disability, since she felt that she had managerial support. No formal issues with her work style and quality were raised.

In July 2020 Ms Jandu was placed into a redundancy consultation, in which she was given a low score in a matrix for leadership and communication. In meetings following this scoring, explanations provided included that Ms Jandu's emails "appeared rushed" and not "thought through". This, along with other traits, were found to be linked to Ms Jandu's dyslexia.

Raising dyslexia as a potential contributory factor, Ms Jandu was told that the meetings were not linked to her dyslexia. On appeal of her eventual dismissal for redundancy, Marks and Spencer's managerial team confirmed that Ms Jandu's dyslexia had in their view "nothing to do" with the eventual outcome of the redundancy consultation, which was dismissal.

The employment tribunal fundamentally disagreed with Marks and Spencer's handling of Ms Jandu's redundancy consultation and awarded her £50,000 following her successful unfair dismissal and discrimination claims.

Here are some of the key points noted by the tribunal:

- Ms Jandu's dyslexia was clearly a disability, having more than a minor effect on her day-to-day activities.
- Her managers clearly knew about her disability.
- Not making any change to the redundancy consultation process, such as scoring, to consider a disability was a failure to make reasonable adjustments.
- Marks and Spencer's arguments regarding a "legitimate aim" defence to discrimination, namely that they were applying consistent metrics to the entire redundancy pool to retain the best talent, were rejected.
- Making the relevant adjustments regarding Ms Jandu's disability in the scoring would have cost nothing to the employer and would potentially have resolved the issue.
- The selection criteria on which employees were scored in the redundancy matrix was extremely unclear.

Comment

This is an interesting case to consider workplace issues arising from **neurodivergent disabilities** and what consequently constitutes a reasonable adjustment.

Dyslexia is a difficult but potentially all-encompassing disability; in Ms Jandu's case her dyslexia affected every part of her working day, including her organisation and planning, her accuracy, and her tone of email. It can take many forms and have specific effects on individuals. Employers should be careful not to treat all employees who raise issues of dyslexia identically.

It is evident that Ms Jandu's employer did not seek further support and understanding concerning her disability from professionals before reaching a judgment. The assertion that Ms Jandu's dyslexia had not been a factor in redundancy did not absolve Marks and Spencer's obligation to understand the claimant's issues further. Courts will consider the size of an employer in regard to potential reasonable adjustments. Marks and Spencer were expected to have sought medical information in this case.

Redundancy procedures should be objective as far as possible. It is important for employers to consider an employee's circumstances and to ensure that they are making reasonable adjustments where necessary, so as to avoid putting those who do fit the definition of disabled under the law at a disadvantage.

INDUSTRIAL RELATIONS ROUND UP

A detailed look at some of the most recent developments in the law surrounding industrial action



Use of agency workers during strike action

On 16 November the government launched a consultation on removing regulation 7 (of the Conduct of Employment Agencies and Employment Businesses Regulations 2003) (SI 2003/3319)) across all sectors. ***This regulation prevents employment businesses supplying agency workers to cover the duties normally performed by a worker who is taking part in an official strike or other industrial action.***

The announcement follows the decision of the High Court on 13 July 2023 in which it held that the *Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022 (SI 2022/852)* made by the Government to lift the previous ban on the use of temporary workers to cover strike action, were **unlawful and should be quashed with effect from 10 August 2023.**

At present any employers who are facing the threat of industrial action will need to ensure their mitigation plans do not include the use of agency workers, and agencies will run the risk of criminal charges if they supply agency workers for the prohibited purposes.

We will report on the outcome of the consultation once findings are published. Closing date is 16 January 2024 to respond and share your views click [here](#).

Minimum Service Levels during strike action

On 20 October the Department for Education announced new measures proposing to introduce Minimum service levels in schools and colleges.

The Education Secretary, Gillian Keegan, wrote to union leaders inviting them to discuss proposals on a voluntary basis in the first instance.

The Strikes (Minimum Service Levels) Act

The Strikes (Minimum Service Levels) Act is a legislative measure introduced by the government in July 2023 to address the issue of disruption caused by strikes in essential public services.

The Act aims to:

- strike a balance between the rights of workers to strike and the rights of the public to receive essential services, which they pay for and expect to be available even during periods of strike action
- mandates the implementation of minimum service levels (MSLs) during periods of strike action. This means that even when employees are on strike, there will be a minimum level of service that continues to operate in specified services

The government has been actively working to implement minimum service levels in various sectors, including passenger rail services, ambulance services, and fire and rescue services.

The announcement by the Department for Education follows the disruption during industrial action last academic year, which resulted in over 10 days of action in schools.

Minimum Service Levels in Education contd.



On 28th November the Department for Education (DfE) published a [consultation](#) seeking views on introducing regulations to implement minimum service levels in education services during strike action.

The proposals included in the consultation are summarised below:

Pupil cohorts to remain in school

The Department for Education (DfE) has set out two proposals for certain cohorts to continue receiving education in schools during strikes as part of its minimum service level plan.

- Option one: Allows "vulnerable children and young people," those taking public exams, and children of critical workers to continue receiving education during strikes.
- Option two: A "hybrid approach," with all primary pupils and priority cohorts in secondary and further education settings continuing their education.

Determination of Staffing Levels

It is proposed that headteachers determine appropriate staffing levels to deliver a minimum service level during strikes as they are 'best placed to understand the needs of their staff, children and young people'.

Enforcement of Minimum Service Levels

It is proposed that service levels would be enforced by

the delivery of "work notices" to employees, and the DfE has said it would be at the "discretion of individual employers" whether or not to issue work notices rather than DfE centrally dictating what percentages of staff are expected to be in school on a strike day.

Operation of 'Work Notices'

Work notices would be delivered a minimum of seven days before the strike day, "but can be varied by the employer up to four days before". The DfE expects those named in a work notice could include the following:

- Headteachers or principals
- Teachers and lecturers, including special educational needs and disabilities coordinators
- Teaching assistants
- Teaching and learning support staff
- Designated safeguarding leads
- Administration staff
- Other non-teaching staff important to the running of the setting, such as caretakers, technicians, cleaners and kitchen staff.

Usage of Rotas

The DfE also suggests using rotas for extended strike periods (five consecutive school days or more), to ensure that all children and young people receive some face-to-face and on-site education. The use of rotas would be in addition to the provision for the priority cohorts in proposal one, and all those covered by Option two.

Implementation

The DfE plans to implement changes from the next academic year, subject to parliamentary approval.

The NEU has described the proposals as a fundamental attack on the democratic freedoms and rights of school staff demonstrating the Government's 'incredible lack of understanding of the provision that schools already ensure is in place for students on strike days'.

The Confederation of School Trusts (CST) has stated they are 'worried about whether the proposals would be implementable' and are seeking advice on the matter.

To respond to consultation which closes 30 January 2024 click [here](#).

REFORMS TO THE CALCULATION OF HOLIDAY PAY COMING IN 2024



Changes to holiday pay, subject to parliamentary approval, are to be implemented under the ***Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023***.

These regulations don't change existing workers' rights in the UK the aim is to bring clarity and simplify the calculation process for holiday pay for part-year workers.

The government won't be providing one single pot of 5.6 weeks' holiday with the same entitlements applying to each originally proposed in the consultation earlier this year.

Separate entitlements of four weeks' leave derived from the EU Working Time Directive and 1.6 weeks' leave derived from domestic UK Working Time Regulations entitlement will remain in place with their own arrangements, for example when determining the rate of holiday pay.

Several changes to holiday entitlement and pay are effective on **1 January 2024**.

A new regime that will apply to irregular hours and/or part-year workers is delayed slightly to apply to any leave years starting on or after **1 April 2024**

Changes detailed in the draft regulations include:

Accrual Method for Holiday Entitlement (effective 1 April 2024):

- Holiday entitlement for irregular hours and part-year workers will accrue at 12.07% of hours worked in a pay period

Rolled-Up Holiday Pay for Irregular Hours Workers and Part-Year Workers (effective 1 April 2024):

- Rolled-up holiday pay, previously unlawful under EU law, will now be permitted for irregular hours workers and part-year workers.
- Employers can choose to implement rolled-up holiday pay, calculated at 12.07% of the worker's earnings during the pay period, paid alongside regular wages

REFORMS TO THE CALCULATION OF HOLIDAY PAY COMING IN 2024 contd.

Carry-Over of Holiday for Family-Related and Long-Term Sick Leave (effective 1 January 2024):

- Workers on family-related leave and long-term sick leave must be allowed to carry over unused holiday into the next holiday year.
- Carried forward holiday entitlement must be taken within 18 months of the end of the holiday year in which it accrued.

Carry-Over of Untaken Leave (effective 1 January 2024):

- Workers who haven't had a reasonable opportunity to take holiday must be allowed to carry it over.
- Employers must encourage workers to take leave, failing which the untaken leave can be carried forward indefinitely.

Inclusion of Overtime and Commission in Normal Pay (effective 1 January 2024):

- When calculating holiday pay, normal pay (*based on the 1.6 weeks leave entitlement derived from the UK Working Time Regulations*) includes overtime, commission, and other relevant payments

Exclusion of Coronavirus-Related Leave Carry-Over (effective 1 January 2024):

- Workers can no longer carry over leave that was untaken due to coronavirus after 31 March 2024.

Additionally, the regulations address other employment law developments, such as direct TUPE consultation for small businesses from 1 July 2024 and clarification of working time record-keeping duties effective 1 January 2024.

For a more detailed look at what these changes mean in practice visit our [HR Resources Hub](#).

What actions do HR Departments need to take in advance of implementation?

These new proposals change the existing holiday entitlement and pay structures in fundamental ways for some workers.

Employers need to understand how the two distinct groups (irregular hours and/or part-year workers, and then all other workers) fit their current workforce so that they can be clear on what statutory regime will apply to each worker, and how it will affect:

- existing and any new contracts of employment
- existing policies
- current payroll approaches to averaging

As the holiday entitlement and pay provisions for irregular hours and part-year workers will apply in respect of any leave year that begins on or after 1 April 2024 up until that new leave year, the existing rules apply, as required under the Brazel judgment.

The Local Government Association (LGA) has indicated they will be reviewing the Part 4.12 Green Book guidance on term-time-only employees in light of these changes so schools using Green Book Terms and Conditions for Support Staff may wish to wait for publication before making any changes to processes and procedures.

We are in the process of reviewing and updating our resources on the [HR Resources Hub](#).

PAY UPDATES 2023



The [School Teachers' Pay and Conditions Document 2023](#) was published on 13 October by Gov.uk and came into force on 4 November 2023.

The core provisions of the Document have retrospective effect from 1 September 2023. They include:

- A 6.5% pay raise for teachers (including school leaders) in England from September 2023
- Starting salaries outside London and the fringe rising to £30,000 from September 2023 resulting in:
 - A raise of 7.1% for teachers outside London
 - A raise of 6.8% for teachers in Outer London

The Government has announced **National Minimum Wage** rates from 1 April 2024, including the National Living Wage.

The National Living Wage (NLW) will increase by 9.8% for those aged 21 and over from £10.42 to £11.44 per hour, an increase of £1.02. Higher percentage increases apply to those under 21 years of age and apprentices.

The projected increase in the NLW will achieve the target first set by the Government in 2019 – with the NLW equal to two-thirds of median hourly pay for those aged 21 and over. In addition, from April 2024 the NLW will be extended to 21 and 22-year-olds for the first time.

NJC for Local Government Services: Pay Agreement 2023-24

On 1 November, the pay agreement for 2023-24 was finalised an agreement was reached on rates of pay applicable from 1st April 2023.

The final pay offer was as follows:

- From 1 April 2023 - an increase of £1,925 (pro rata for part-time employees) to be paid as a consolidated, permanent addition on all NJC pay points 2 to 43 inclusive.
- From 1 April 2023 - an increase of 3.88% on all pay points above the maximum of the pay spine but graded below deputy chief officer (in accordance with Green Book Part 2 Para 5.42)
- From 1 April 2023 - an increase of 3.88% on all allowances.

We have updated the **Support Staff Pay and Allowances** pages of our HR Resources Hub available to HR customers.

WINTER HR ISSUES

Q&As

The weather

What is the minimum temperature below which staff in schools/colleges cannot be expected to work?

This is a perennial issue in colder weather but there is no prescribed **minimum** temperature for workplaces (including schools and colleges) in health and safety legislation. However, the DfE advises that the temperatures in classrooms should normally be at least 18°C. The Workplace (Health, Safety and Welfare) Regulations 1992 state that the temperature in all workplaces inside buildings during working hours shall be "reasonable". The approved code of practice suggests that at least 16°C should be the norm (or 13°C if much of the work being undertaken is physical).

Although there is no minimum temperature in law that employees can be expected to work in, the employer does, of course, still owe a general duty of care to all staff, particularly those working outdoors. The HSE advises that simple controls may be the most effective, such as ensuring easy access to hot drinks, introducing more frequent rest breaks and relaxing dress codes.

If snow is forecast, how can we prepare in advance to minimise the disruption caused by potential staff absences?

In planning for disruption caused by snow or other adverse weather conditions it will help to minimise the impact if you can advise staff

in advance (or direct them to a policy or other document if you have one) what your expectations are of them in terms of making reasonable efforts to get into work and staying in touch about any delays or difficulties with doing so. For example, how do you expect staff to communicate with the school/college? Have you advised staff to look at their transport plans (the best route to get in by, likely disruption to public transport, the need to set off earlier than usual to allow extra time for the journey)? Have employees thought about contingency plans if their own child's school or nursery is closed?

You will also, of course, need to plan for the possible impact of staff absences. The DfE advises that headteachers/principals should attempt to keep schools and colleges open as far as reasonably possible and that schools have the flexibility to bring together groups and classes with teachers and support staff working together.

There is no statutory right for staff to be paid for time taken off work when travel disruption prevents them from getting into school,

although it is advisable to check you don't have a policy which specifies something different or an unwritten custom and practice that has been followed in the past.

Some staff, depending on the nature of their role and with permission from their line manager or headteacher, may be able to work from home temporarily. Schools that collaborate in formal partnerships or as part of a multi-academy trust may be able in some cases to facilitate staff working from another site closer to home. Again, this will not always be appropriate bearing in mind roles but having access to IT and other facilities may allow some employees to perform at least a few of their usual tasks.

Other alternatives to agreeing unpaid leave would be to allow individuals to take paid holiday (where employed full year) or to receive paid leave on the basis that they will be expected to make up the time on an agreed date. If adopting such a policy, you may want to limit the number of days that an employee can be paid in this way.

It is helpful to ensure that employees know in advance what the employer's approach will be to absences caused by adverse weather situations to avoid disputes arising at a later stage if pay is deducted.



WINTER HR ISSUES (cont.)

Q&As

Unexpected disruption to childcare arrangements would entitle a parent/guardian to take 'time off for dependants', usually only for as long as it took to make alternative arrangements for the child's care. Under the statutory scheme this is only an entitlement to take unpaid leave. Employers should, however, ensure there is a consistent approach to paying for absences caused by adverse weather: it would not, for example, be appropriate to pay staff who were unable to get into work because of travel difficulties but to withhold pay from those who could not get into work because the weather resulted in a breakdown to usual childcare arrangements.

If employees are prevented from attending work because the school/college has been closed it is not possible to withhold pay. Staff could, however, be expected to undertake suitable work from home if appropriate so, again, forward planning for what work could be performed remotely is worth considering.



How do we deal with an employee who could be using the weather as an excuse not to come into work?

If an employee is falsely using snow or travel disruption as an excuse for failing to turn up to work this would clearly be a disciplinary matter. It can, however, be difficult to prove. The degree to which it is worthwhile investigating and pursuing in respect of one or two days of absence has to be taken into account. You should also bear in mind that employees need to make their own judgements about whether it is safe to travel based on the local conditions and the advice from relevant agencies. Employers must not encourage employees to take unnecessary risks, or they may be held liable for any resulting incidents. Older employees, pregnant employees

or those with a disability, for example, may feel more vulnerable walking on slippery pavements and inexperienced drivers may feel less able to cope with challenging driving conditions.

If you are concerned about lack of effort, talk to the employee about their concerns and whether there are alternative transport arrangements; make sure that they have assessed the situation before deciding not to travel, but avoid putting them under undue pressure.

Those who have managed to get in might resent those absentees who they may feel (rightly or wrongly) haven't made equivalent effort. Others who have managed to get in to work and who may have had to cover for others.

Make sure that you acknowledge the extra contribution of those who have managed to get in to work and who may have had to cover for others.

Gift giving and festive customs

Should we be managing in some way the gifts that staff often receive from parents at Christmas?

Most members of staff will have the sense to know when a gift is or isn't appropriate, for example because it's too valuable. It can, however, be helpful to have a policy or just some simple guidelines for staff on gifts in order to give them the confidence to know what they should and shouldn't accept. These can be included in a code of conduct. Academy trusts are expected to have a policy and register on the acceptance of gifts, hospitality and other benefits and ensure that staff are aware of it. This is good practice for other settings too.

As a general rule, token non-cash gifts are acceptable and should not need to be declared or approved. You might want to put an upper value on what is deemed acceptable. Gifts which are clearly more than a token offering should be politely declined or, if the member of staff feels unable to do so, the item should be passed on to a senior manager or the headteacher to determine the best course of action.

All schools' activities are covered to some extent by the Bribery Act 2010, more so academies and independent schools, as corporate bodies. An employer will be liable for the actions of employees where it has failed to prevent bribery taking place but will have a defence if it can demonstrate there were adequate procedures in place to prevent bribery. Such procedures should be proportionate to the assessed risk. Whilst schools are generally considered low-risk environments from the perspective of bribery this is another reason why having a gifts and hospitality policies in place is a good idea.

[Download our example gifts and hospitality guidelines](#)

There is a custom and practice of allowing staff to take a Christmas shopping half-day before the end of the autumn term. This is disruptive to the running of the school, and we would like to stop it from happening in future – can we just tell staff that we won't be offering it in future?

been customarily operated. There is, however, a relatively high bar set in such situations. Case law has set out that a custom or practice must be "reasonable, notorious and certain" for it to be capable of attaining contractual status and, significantly, the conduct of the parties must suggest that compliance with the practice arose from a sense of legal obligation, i.e., the actions of both employer and employee indicate that it was accepted by all that the arrangement had become contractual. Whilst the exact circumstances need to be looked at before a judgement is made, informal arrangements put in place for the convenience of certain employees are not generally likely to meet this test. As always, explaining why you feel it is not appropriate for such time off to be granted is an important part of gaining acceptance for the change. Given that the practice was probably introduced as a means of rewarding staff effort and loyalty it would be worth considering if an alternative benefit – one which is less disruptive to the operation of the school – can be offered instead.

Parties and alcohol

An informal party took place at the end of term at a local pub. A lot of 'festive spirit' was consumed and two members of staff managed to get into an argument that became physical, although neither of them were injured. We only know about this because of comments on

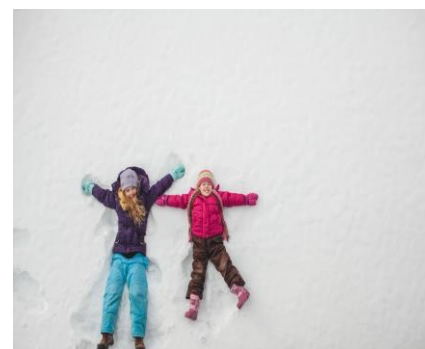
social media which someone drew to our attention. Technically it's nothing to do with the school – do we need to take any action?

Purely because misconduct occurs outside work does not mean that an employer has no legitimate interest in investigating it and taking appropriate action. The fact that it took place at a work-related event, whether that event was sanctioned or organised by the school or not, also means that the employer could be held vicariously liable for the actions of its employees, such as if one employee harasses another.

Conduct outside work can still impact on the working environment: it may raise concerns about a person's suitability to perform a particular role and there may be reputational issues if misconduct occurs in a public place, particularly in a local venue where members of the community may have witnessed what occurred.

An investigation should therefore be conducted to establish as far as possible what happened and depending on the outcome of this, disciplinary action against either or both members of staff may be an appropriate response.

An investigation should therefore



WINTER HR ISSUES (contd.)

Q&As

We have an employee who we think has a problem with alcohol which has become really obvious over the Christmas season. I can't say that it's directly affected their performance at work – yet – so I don't know if I should just leave it, as it's a personal issue?

Sometimes the festive season can bring an alcohol dependency issue to the fore with problem drinking spilling over into work time. Inevitably such a sensitive matter must be addressed proactively but in a supportive way initially.

An alcohol problem should be treated in the same way as any other medical or psychological condition and therefore the manager should discuss with the employee that he or she has concerns that the employee's drinking may be a health problem and that a referral to occupational health will be made so that the school/college can get advice on how best to support them. The manager should encourage openness on the employee's part whilst also accepting that many people with a drinking problem find it very difficult to accept the situation. If the manager is clear that the concerns are being treated as a health matter rather than a disciplinary one then the employee may be more willing to cooperate.

Managing the situation from there will depend on the outcome of the occupational health report but the employer should be supportive of any treatment or counselling suggestions made. An employer is not expected to ignore the impact

of alcohol abuse on the workplace, even where there is an underlying dependency issue. This is particularly so in safety critical environments where a 'zero tolerance' stance may need to be taken. A supportive position should, however, always be the first approach wherever possible with disciplinary action a last resort, following attempts to help the employee address his or her problems.

Understandably many managers find approaching an employee on such a sensitive subject very difficult. If you haven't had to deal with a similar situation before, you may find it helpful to seek some HR advice on how to broach the topic appropriately.

Absence issues



We have an employee who simply didn't turn up for work after the Christmas closure period. We felt that they may have been unhappy at work for a while, but we've heard nothing at all despite efforts to ring and email. Where do we go from here?

It is not uncommon for the break over Christmas and New Year to be a catalyst for people to rethink their priorities, including their

career aspirations, and decide to make some changes in their life. It is not, of course, appropriate for an employee simply to disappear off the radar with no explanation, however you shouldn't make assumptions about the reason for their absence without first making reasonable efforts to ascertain what has happened.

If there is no apparent reason for their non-attendance, as the employer you are likely to be concerned for their wellbeing first and foremost. If continued efforts to contact the employee are unsuccessful it may become necessary to contact their next of kin. If there is no contact from the employee within a couple of days you should then write to and urge them to get in touch. It should be assumed, until there are any indications to the contrary, that the absence has been caused by genuine reasons.

If the employee still does not get in touch a follow-up letter should generally be sent in a similar vein but explaining the actions the school will have to take if there is no contact. Keep a note of all communications. Ultimately it may become necessary to assume that the employee has simply made a New Year's resolution to get a new job and arrangements made for her to be treated as a leaver. HR advice would be desirable before taking this final step.

If the employee does suddenly get in touch or show up for work then how this absence should be treated will depend on the employee's explanation for their absence and lack of contact.

WINTER HR ISSUES (cont.)

Q&As

A member of staff has taken sick leave in the last week of term, but someone has suggested that they might actually have jetted off on a winter holiday. Can we do anything if we have no proof?

If you have concerns that the absence may not be for genuine reasons, it is important to gather as much information and evidence as reasonably possible about the surrounding circumstances before taking any further action. Is there any basis for the rumours you've heard, such as posts someone has seen on social media, or is it just idle speculation? If there is no evidence at all then that's likely to be the end of the matter.



If there is evidence, hold a meeting on their return and put the suspicions to them, along with the evidence that supports the suggestion that the illness may not have been genuine. Ensure that the employee is given the opportunity to put forward their explanation. Ultimately whether disciplinary action is warranted will depend on the facts, the evidence collected and the employee's explanation: the employer is not expected to prove that the illness was feigned but must have

undertaken sufficient investigation to establish the basis for a genuine belief that it was.

We are experiencing a high level of sickness due to winter illnesses. The level of absence is costing us and making it hard to keep the school running normally. Is there anything we can do to minimise absence for these sorts of reasons?

Sickness absence levels tend to peak between January and March and there is little that can be done to prevent staff picking up infections outside the school gates. However, inside school there are various measures that can be taken to reduce virus transmission, the same that has been implemented in the past couple of years for COVID-19. So, reducing the number of people in one place, increasing ventilation, keeping up enhanced cleaning regimes and encouraging hand hygiene will help reduce the prevalence of all viruses.

Other steps you can take include:

- Encouraging staff to get the flu jab: some LAs provide vaccination programmes for maintained schools. You could also consider flu jab vouchers or even just make staff aware of local pharmacies offering the jab. Remember that the vaccine is also free for over 50s this year.
- Help staff to stay healthy as much as possible: people who exercise regularly and eat a healthier diet are statistically less likely to pick up colds and

other viruses. Signpost wellness articles from reputable sites (such as NHS Live Well), organise fitness activities and encourage staff to get out into the fresh air as much as possible.

- Discourage presenteeism: it is important not to encourage staff to come into school when they are unwell. The benefit of their presence is likely to be more than wiped out by the damage they unintentionally cause by spreading viruses further.



Christmas Office Closure
Our offices will be closed
from 27 December 2023
until 2 January 2024

Wishing you and your
teams a very merry
Christmas and a happy
new year!

We look forward to
working with you in
2024!

TEACHER WELLBEING INDEX 2023



The Teacher Wellbeing Index 2023 was published on 15 November by Education Support. The survey, with over 3,000 participants, indicates a decline in wellbeing, particularly for senior leaders and classroom teachers highlighting the importance of embedding a wellbeing strategy as part of an overarching people strategy in your setting. Key findings are summarised below:

	2023	% Change from 2022
Stress	78%	+3%
Burnout	36%	+9%
Insomnia	51%	+6%

Loneliness and isolation are identified as prevalent issues, with staff feeling twice as lonely at work compared to the national population. The report also questions the effectiveness of OFSTED inspections, with 73% of respondents believing inspections are not 'it for purpose, 64% think they do not deliver reliable judgments, and 71% feel inspections negatively impact mental health.

The conclusions highlight a significant decline in teacher wellbeing, specific risks of suicide in certain cohorts, serious concerns about the mental health of school and college leaders, and a lack of trust in the inspection system.

Recommendations for the Department for Education include:

- developing a coherent strategy for improving wellbeing
- prioritizing suicide prevention
- overhauling the inspection system
- investing in soft leadership skills
- matching funding to current demands
- adequately funding wider public services
- a review of training frameworks embedding mental health and wellbeing in their design

We offer a range of services to support employee health and wellbeing empowering your school to foster a supportive and nurturing culture by proactively identifying and resolving difficulties early on. Find out more here:

[Employee Health & Wellbeing | Strictly Education.](#)

Our [HR Resources Hub](#) contains a range of open-access resources to support your school on our Wellbeing at Work pages including detailed guidance and template policies.

Online Training Spring Term 2024

Course Title	Date(s)	Time	Price & Booking Link
Managing the Single Central Record	24 January	9:30-12:30pm	£140
Managing Difficult Conversations	1 February	9:30-12:00pm	£140
Safer Recruitment for School Managers	8 February	9:30-12:00pm	£140
Managing and Processing DBS Checks	28 February & 6 March	9:30-12:00pm	£250
Managing Absence and Supporting Staff Wellbeing	29 February	9:30- 12:30pm	£140
The Foundations of HR in Education	12, 14, 19 & 21 March	9:30-12:30pm	£495
Safer Recruitment for School Managers	20 March	9:30-12:00pm	£140
Managing the Single Central Record	27 March	9:30-12:30pm	£140



Bespoke training

Don't forget we also provide a wide range of group training workshops in the management of human resources as well as whole staff workshops which can be delivered at your individual school or setting at a time to suit you. The content and duration can be tailored to your particular requirements.

[To arrange a call to find out more click here>>](#)

The contents of this newsletter are for information and guidance purposes and should not therefore be relied upon as a substitute for specific, tailored HR or legal advice.