

Lay-offs and short-time working

inform

advise

train

work
with you

Acas can help *with your employment relations needs*

Every year Acas helps employers and employees from thousands of workplaces. That means we keep right up to date with today's employment relations issues – such as discipline and grievance handling, preventing discrimination and communicating effectively in workplaces. Make the most of our practical experience for your organisation – find out what we can do for you.

We inform

We answer your questions, give you the facts you need and talk through your options. You can then make informed decisions. Contact us to keep on top of what employment rights legislation means in practice – before it gets on top of you. Call our helpline **08457 47 47 47** or visit our website www.acas.org.uk.

We advise and guide

We give you practical know-how on setting up and keeping good relations in your organisation. Look at our publications on the website or ask our helpline to put you in touch with your local Acas adviser. Our Equality Direct helpline **08456 00 34 44** advises on equality issues, such as discrimination.

We train

From a two-hour session on the key points of new legislation or employing people to courses specially designed for people in your organisation, we offer training to suit you. Look on the website for what is coming up in your area and to book a place or talk to your local Acas office about our tailored services.

We work with you

We offer hands-on practical help and support to tackle issues in your business with you. This might be through one of our well-known problem-solving services. Or a programme we have worked out together to put your business firmly on track for effective employment relations. You will meet your Acas adviser and discuss exactly what is needed before giving any go-ahead.

A carefully developed strategy for managing the recruitment and turnover of employees can help

minimise the need for lay-offs or short-time working. Even in the best run company, however, circumstances can arise which lead to a temporary reduction in work.

This leaflet gives general advice about lay-offs and short-time working and is not an authoritative statement of the law. It is for the tribunals and courts to determine the law.

What is a lay-off?

- When employees are not provided with work by their employer, and the situation is expected to be temporary, they are regarded as laid off.
- Where the lay-off amounts to dismissal (see page 3 *What is a wrongful lay-off?*), the employees may have an entitlement to redundancy pay or, subject to certain conditions, they may be able to complain of unfair dismissal to an employment tribunal.

Is there a right to lay off employees?

There is a general right at common law to tell most employees not to turn up for work but there is no general right not to pay them because work is not available.

In what circumstances can an employer lay off employees?

- This can be done where there is an express contractual right agreed between employer and employee. Alternatively, there may be an agreement covering the issue between the company and the union, or a national agreement for the industry which the employer follows. Such an agreement has contractual force only if it is incorporated into the individual employee's contract of employment.
- The right of an employer to lay off may also be implied if it can be shown (by clear evidence) that it has been established over a long period by custom and practice.

Can employees be laid off if there are no express or implied rights to lay off?

Both parties may agree to alter the contract terms so that the lay-off is not a unilateral act by the employer but by mutual agreement (for example, where the only alternative is redundancy). This will not necessarily mean that the employee has agreed to a variation in the employment contract giving the employer the power to lay off unilaterally without pay in the future.

Do employees have any right to payment during a period of lay-off?

- Employees can be laid off without pay where there is a specific term in their contract allowing the employer to do so.
- When employees are laid off, they may be entitled to a statutory guarantee payment from the employer. Payment is limited to a maximum of five days in any period of three months and the daily amount is subject to an upper limit which is reviewed annually. (Go to www.berr.gov.uk/employment/ and see the guidance on 'Limits on payments and awards').
- On days on which a guarantee payment is not payable, employees may be able to claim Jobseekers Allowance and should contact their local Jobcentre office about eligibility.

What happens when there is a collective agreement providing for guarantee payments?

In these circumstances, on the application of all parties to the agreement, the Secretary of State can make an exemption order excluding employees from the statutory right to a guarantee payment.

In practice an exemption order will be granted only where the collective agreement or order contains guaranteed pay provisions which are at least as favourable overall as the statutory scheme.

How long can a lay-off last?

This will depend on the terms specified in the contract. However, the employee may in certain circumstances give his or her employer written notice of an intention to claim a redundancy payment (see page 4).

What is a wrongful lay-off?

If there is no contractual right to lay-off without pay but the employer does so, he or she will be acting in breach of contract.

The employee may:

- choose to accept the breach of contract and treat the contract as continuing, while claiming a statutory guarantee payment (go to www.berr.gov.uk/)
- sue for damages for breach of contract in the civil court or, in certain circumstances, at an Employment Tribunal
- claim before an Employment Tribunal that there has been an unlawful deduction of wages under Part II of the Employment Rights Act 1996
- claim that the employer's action amounted to a dismissal (constructive or otherwise), giving rise to a potential claim of unfair dismissal and/or, if eligible, redundancy pay. (This is a complex area and further advice should be sought, for example from a solicitor or your trade union.)

What is short-time working?

- Short-time working occurs when employees are laid off for a number of contractual days each week, or for a number of hours during a working day.
- As in the case of a lay-off, the employer must have an express or implied power in order lawfully to reduce the amount of pay. Normal practice would be for the workforce or their union to agree to short-time working as an alternative to redundancies.
- Where there are no express or implied rights to short-time working, employees may claim that the employer's action amounted to a dismissal (constructive or otherwise) and complain to an Employment Tribunal of unfair dismissal. (This is a complex area and further advice should be sought, for example from a solicitor or your trade union). They may also sue for loss of wages in a civil court or, in certain circumstances, in an Employment Tribunal or claim that the employer has made an unlawful deduction of wages under Part II of the Employment Rights Act 1996 (to an Employment Tribunal only).
- Employees placed on short-time working may be able to claim Jobseekers Allowance for the balance of the hours they do not work. Advice on eligibility may be obtained through a local Jobcentre.

Can a claim be made for a redundancy payment because of lay-off or short-time working?

If an employee is either laid off (that is, receives no wages) or put on short-time working (that is, receives less than half a week's pay) for four consecutive weeks – or for six weeks in a period of 13 weeks – because of a shortage of work, the employee can give the employer written notice that he or she intends to claim a redundancy payment. (Go to www.berr.gov.uk for more information.)

Information in this booklet has been revised up to the date of the last reprint – see date below. For more up-to-date information, please check the Acas website at www.acas.org.uk.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

Acas aims to improve organisations and working life through better employment relations. We provide up-to-date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance.

We are an independent, publicly-funded organisation and many of our services are free.

May 2009

Acas main offices

Acas National

22nd Floor, Euston Tower,
286 Euston Road, London NW1 3JJ

East Midlands

Lancaster House, 10 Sherwood Rise,
Nottingham NG7 6JE

East of England

Acas House, Kempson Way, Suffolk
Business Park, Bury St. Edmunds,
Suffolk IP32 7AR

London

23rd Floor, Euston Tower,
286 Euston Road, London NW1 3JJ

North East

Cross House, Westgate Road,
Newcastle upon Tyne NE1 4XX

North West

Commercial Union House,
2-10 Albert Square, Manchester M60 8AD

Pavilion 1, The Matchworks, Speke Road,
Speke, Liverpool L19 2PH

Scotland

151 West George Street, Glasgow G2 2JJ

South East

Cygnus House, Ground Floor, Waterfront
Business Park, Fleet, Hampshire GU51 3 QT

Suites 3-5, Business Centre,
1-7 Commercial Road, Paddock Wood,
Kent TN12 6EN

South West

The Waterfront, Welsh Back,
Bristol BS1 4SB

Wales

3 Purbeck House, Lambourne Crescent,
Llanishen, Cardiff CF14 5GJ

West Midlands

Apex House, 3 Embassy Drive,
Edgbaston, Birmingham B15 1TR

Yorkshire & Humber

The Cube, 123 Albion Street,
Leeds LS2 8ER

Helpline **08457 47 47 47**

08456 06 16 00

for Minicom users

08457 38 37 36

Acas Customer Services Team
for details of services and training in your area

08456 00 34 44

for questions on managing
equality in the workplace



INVESTOR IN PEOPLE

www.acas.org.uk