

Lay-offs and short-time working

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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 0300 123 1100 for free confidential advice (open 8am-8pm, Monday to Friday and 9am-1pm Saturday) or visit our website www.acas.org.uk.

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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. Go to www.acas.org.uk/training to find out more.

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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. Go to www.acas.org.uk/businesssolutions for more details.

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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. If you are (or expect to be) affected by such an issue, see Appendix 1 on important changes to making a tribunal claim.

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.gov.uk for further information).
- 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.gov.uk for further information)
- 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, your trade union or call the Acas Helpline 0300 123 1100 open Monday – Friday 8am-8pm & Saturday 9am-1pm.)

Refer to appendix 1 which outlines important changes to making Employment tribunal claims.

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). If you are (or expect to be) affected by such an issue, see Appendix 1 on important changes to making a tribunal claim.
- 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.gov.uk for more information)

Appendix 1: Important changes to making Employment Tribunal claims

Previously, an employee could go straight to the tribunal service, but this will change. From 6 April 2014, if an employee is considering making an Employment Tribunal claim against their employer, they should notify Acas that they intend to submit a claim.

Details of how and where to do this are given below.

Acas will, in most circumstances, offer to assist in settling differences between employee and employer. Employers intending to make a counter-claim against an employee must follow a similar procedure.

The process for agreeing settlement is called Early Conciliation. It is handled by experienced Acas conciliators and support officers and is:

- free of charge
- impartial and non-judgmental
- confidential
- independent of the Employment Tribunal service
- offered in addition to existing conciliation services.

Early Conciliation focuses on resolving matters on terms that employee and employer agree.

Early Conciliation may not resolve matters in every claim. When this is the case Acas will issue a certificate that is now required for a claim to be submitted to an Employment Tribunal.

From July 2013, employees have been required to pay a fee to “lodge” a claim at the Employment Tribunal, followed by another fee if the claim progresses to a tribunal hearing. In some cases, other fees may also apply. If a claim is successful, the employee may apply for the costs of the fees to be covered by the employer. Some employees, including those on low incomes, may be exempt from fees.

Remember, when a claim is lodged with a tribunal, Acas will continue to offer conciliation to both sides until the tribunal makes a judgment and, if the claim is successful, a remedy decision (usually financial compensation) has been made.

To find out more about Early Conciliation, go to
www.acas.org.uk/earlyconciliation

To find out more about Employment Tribunal fees, go to
www.justice.gov.uk/tribunals/employment

Acas Training

Our training is carried out by experienced Acas staff who work with businesses every day. They will show you the value to your business of following best practice in employment matters and how to avoid the common pitfalls. We also run special training sessions on new legislation.

Look at the Acas website for up-to-date information about all our training or if you want to book a place online, just go to www.acas.org.uk/training or call the Acas customer services team on 0300 123 1150.

Training sessions are specially designed for smaller companies and our current programme includes:

- Managing discipline and grievances at work
- Managing absence at work
- Employment law update
- HR management for beginners
- Having difficult conversations
- Contracts of employment: how to get it right
- New employment legislation
- Redundancy and restructuring.

We also have free online learning to help you – just go to www.acas.org.uk and click on e-learning to look at the topics covered.

Acas Publications

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Whether you need to know how to write a contract of employment, how much holiday you are entitled to or about the latest employment legislation, our range of publications give practical information and advice for both employers and employees on employment matters.

View and order online at www.acas.org.uk/publications

You can also sign up for Acas' free e-newsletter. It will keep you informed about the latest developments in employment legislation as well as best practice advice on a range of employment-related topics.

If you would like to join our mailing list, subscribe online at www.acas.org.uk/subscribe

Information in this booklet has been revised up to the date of the last reprint – see date below. For more up-to-date information go to the Acas website 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.

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