



## April 2010

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### News

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#### **Volcanic ash**

The hottest topic of the moment: who'd have thought that volcano ash from Iceland could have such an impact on our lives?

One of the major complications has been the impact on Schools across the South West as teachers and indeed students are stranded in various places around the world and unable to attend class. But how should a School deal with teachers who cannot teach their classes and what is the legal position? It is similar to the effect of the January big freeze when people were not able to attend work due to the snow. The two key questions are:-

- is that member of staff still entitled to be paid; and
- if not, what will be the School's approach?

Unless your contract of employment and/or staff policies expressly provide otherwise, then contrary to what some staff or union representatives may tell you, you are not legally obliged to pay staff for work that they have not performed.

So, what are the School's options?

1. Offer staff the option of taking the days that they are absent as unpaid leave;
2. Require staff to take the days that they are absent as annual leave;
3. Pay staff and offer them the option of making up the hours later that term;
4. Exercise discretion and continue to pay staff as usual as a gesture of goodwill.

Certainly, the first three options have their financial attractions; however, the flip side is the message that these options could send to the staff. The fourth option is the "carrot" approach whereby a School could exercise discretion and pay those staff who comply with the absence policy their normal wages or salary. Treating staff well in an unusual situation like this could pay dividends in the future through good morale and increased employee motivation.

Whatever option you choose, remember that employees do have a statutory right to care for dependants in cases of genuine emergency. Consequently, there may be cases where those left

behind have to care for children where a School is closed, or those with elderly or other protected dependents may need support where usual carers are unable to work. Unless your staff policies are more generous, such leave will be unpaid and can last between 1 – 2 days.

### **Simpler Skills System formally comes into effect**

The new system for allocating Government funding to further education and training in England came into effect on the 1 April 2010. The skills Funding Agency will fund and regulate adult further education and skills in England through the four direct routes into employment for employers and learners – Train to Gain, the National Apprenticeship Service, and the Adult Advancement and Careers Service, as well as FE Colleges and training organisations.

At the same date the Young People's Learning Agency took up its responsibilities for 16 – 19 provision working with Government and Local Authorities.

### **Children, Schools and Families Bill**

Amendments have been tabled to the Bill to enable some parts of it to be passed into law before Parliament is dissolved. Some key provisions have been taken out because no agreement could be reached between the Government and opposition parties. Some of the policy areas are:

- Pupil and Parent Guarantees.
- Home School Agreement.
- Reform of the Primary Curriculum.
- Introduction of PSHE as compulsory education.
- Licence to practise for teachers.
- Registration and monitoring of Home Education.

Provisions that remain are:

- SEN – provisions for inspectors to report specifically on SEN provision and parental appeals.
- LEA to have duty to provide full time education for pupils not in School but in alternative provisions.
- Governing bodies of Schools to be given greater powers in how they use their budgets.
- Safeguarding improvements to ensure effective information sharing.
- Greater media reporting of Family Court proceedings – to build public confidence.
- The role of the Local Government Ombudsman through an amendment to the Apprentices, Skills, Children and Learning Act.

## **Case Reports**

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### **H v Crown Prosecution Service (2010)**

This case concerns the question of whether a teacher, by working at a School for children with special needs, including behavioural problems, impliedly consented to the use of violence against him.

The case concerned a boy who had been a pupil at a School specialising in the education of Children with emotional, behavioural and social needs. He suffered from ADHD and conduct disorder. The teacher was assaulted twice and the boy was arrested and convicted in a Youth Court on two accounts of common assault.

The boy appealed and argued that the situation was analogous to implied consent in sport where during contact sport any teacher would have expected to encounter minor violence and impliedly consented to the situation.

It was held that criminal conviction in the context of contact sports was reserved to cases where the conduct complained of was grave. It was held that there was no new analysis or policy that allowed consent to an assault to be implied to a teacher at a School specialising in Special Education Needs. In the case of contact sports there were comprehensive rules governing instances of inappropriate conduct and reciprocity between players that assaults would not be tolerated.

The point was further made that if the boy's appeal was accepted it would extend to dinner ladies, support staff and other students and accordingly they would all be taken to have given implied consent.

The Appeal was dismissed.

## Q & A

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If you have a topic or question you would like answered and which can be covered in the bulletin, please forward it to us. The question will be edited so the identity of the questioner will not be given and anonymity assured.

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