

Blake Laphorn Tarlo Lyons' nursery and childcare news

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staff rights to unpaid leave

The unexpected absence of staff members generally presents a setting with challenges, not least because of the need to maintain the necessary staff:child ratios. Most operators have policies to deal with many types of absence, such as holidays and sickness. However every employee, irrespective of length of employment, is entitled to take a reasonable amount of unpaid leave without notice, in certain circumstances, to deal with unexpected emergencies.

These circumstances are:

- to help when a dependent gives birth, falls ill, is injured or assaulted
- to make longer term arrangements for care of a sick or injured dependent
- as a result of a dependent's death
- to cope with arrangements for a dependent's break down
- to deal with an unexpected incident involving a dependent child during school time

A dependent is defined as a husband, wife, civil partner, child or parent, or someone living with the employee as a member of their family. However, the definition can also include someone who reasonably relies on the employee for assistance as their primary carer.

The law allows such absence to be unpaid. If you decide to pay staff in such situations you need to act consistently.

There is no prescribed period of time an employee is allowed to take off in one of these emergency situations. It will depend on what is reasonable in the circumstances faced by the individual member of staff. The inconvenience to the setting is not a factor that can be taken into account. In most cases one or

two days will be sufficient to deal with the immediate problem and sort out any long-term issues.

There has been a recent case in which the tribunal was asked to consider whether it would be reasonable for a father to take a month off work to care for his children when his partner left. The tribunal held that despite the fact that he could not afford to pay for child care and had no relatives who could help, the legislation only entitled him to take time off to make arrangements for the long-term care of the children. The circumstances did not permit him to become the children's carer beyond the period required to make such arrangements. The tribunal said that a period of one month or longer for care by a parent would rarely, if ever, fall within the provision for taking time off for dependents.

points to note:

- Although parental leave may be available for longer periods of absence it does not apply in an emergency situation
- Operators should know why an employee needs to take leave so that both parties are clear what type of leave is being requested and whether it is permitted under the circumstances



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