

Dependant care leave - necessity

Since 1999 employees have had the right to take a reasonable amount of time off work to take necessary action in certain situations that impact on their dependants. These include situations in which action is necessary:

- to provide assistance when a dependant falls ill, gives birth, is injured or is assaulted;
- to make arrangements for the provision of care for a dependant who is ill or injured;
- in consequence of the death of a dependant;
- because of the unexpected disruption or termination of arrangements for the care of a dependant; or
- to deal with an incident that involves the employee's child which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for him.

Dependant is defined as a spouse, child or parent of the employee, or a person who lives in the same household as the employee or any person who reasonably relies on the employee to assist him if ill or injured or to provide care for him.

To exercise the right to dependant care

leave, an employee must tell the employer that he or she will be absent as soon as reasonably practicable, and how long for.

The case of *RBS plc v Harrison* has recently examined the issue of what constitutes action which is necessary and what is meant by unexpected.

Facts

Mrs Harrison worked for RBS three days a week during which time Mrs Harrison's children were looked after by a child minder. On 8th December 2006 Mrs Harrison was told that her child minder would be unavailable to work on 22nd December. Mrs Harrison tried to find an alternate carer, but was unable to do so. As such, she informed RBS that she would have to take 22nd December off work.

RBS refused to allow Mrs Harrison to take the time off, and when she did so she was issued with a verbal warning.

Claim

Mrs Harrison issued a claim in the Employment Tribunal that she had been subjected to a detriment as a result of her verbal warning.

RBS argued that the disruption to the childcare arrangements had not been 'unexpected' on the basis that 'unexpected' should apply where a situation arose suddenly, or in an emergency.

However, the Employment Appeals Tribunal disagreed and held that 'unexpected' does not necessarily involve a time element. It also held

that an event is only 'unexpected' when an employee hears of it, as was the case here on 8th December 2006.

In terms of whether it was 'necessary' for Mrs Harrison to take the time off, it was relevant to consider how much warning that Mrs Harrison had of the unavailability of her child minder and the steps that were taken in that period. Although Mrs Harrison had a reasonable period of notice of the unavailability of her child minder, she had taken all reasonable steps to find alternate cover.

As a result, the Employment Appeals Tribunal upheld the original finding of the Employment Tribunal that she had been subjected to a detriment in the issuing of a verbal warning.

For further details on this topic, or any employment law issue that you may be facing, please contact Mark Minns.

21st November 2008

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