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Human Resources & Health and Safety



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Do you employ staff?

Time off for Dependants;

When and How it Should be Used?

What Is It?

Time off for Dependants, sometimes referred to as “Emergency Leave”, is the legal right to take a reasonable amount of time off work to deal with an emergency or unexpected event involving a dependant. This time is not intended to be used to provide the dependant with care, but to allow the employee to arrange suitable care for the dependant. There is no legal requirement to pay employees whilst they are away from the Company for this reason, however many employers choose to pay the employee for the first day of their leave, due to the emergent nature of the time out of work. Before deciding whether or not to pay your employee, you should check the wording of their contract where there may already be a clause detailing the Company's position.

In line with employment law and for this purpose, dependants are defined as:

- The employee's spouse or civil partner
- The employee's child or parent
- A person who lives in the same house as the employee, who is not a tenant, lodger or employee
- A person who reasonably relies on the employee for assistance in the event of an accident / illness / case of emergency e.g. an elderly neighbour
- A person who reasonably relies on the employee to make arrangements for the provision of care

Time off for Dependants is a day one right, meaning that employees do not have to work for their employer for a certain amount of time before they are considered “eligible” for this type of leave. Employers are also reminded not to discriminate against an employee (treat an employee less favourably) if they request this leave.

When Should It Be Used?

The legislation surrounding this right sets out specific reasons for when an employee can request this type of leave:

1. To provide assistance when a dependant falls ill, gives birth, is injured or assaulted.

For example; providing a dependant with immediate care or helping a dependant seek medical assistance. This is not limited to serious medical care, and can be used by a parent or a partner if it is to attend hospital with a dependant who is in labour. However, this cannot be used if the employee wants to take a dependant to a scheduled appointment, or the employee wants to use the time to provide non-emergent care e.g. to look after / visit a dependant who is already under the care of another person.

2. To make arrangements to provide care to a dependant who is ill or injured.

For example; taking time off work to ensure the appropriate care is arranged for a dependant who is incapacitated due to illness or injury and is expected to be incapacitated for some time e.g. a broken leg or the flu. This could involve contacting relatives who may be available, making plans with neighbours, hiring a childminder, etc. The employee cannot use this leave to provide the care themselves, as it would be long-term and non-emergent.

3. To deal with the death of a dependant.

For example; leaving work / not coming to work immediately after learning of the death of a dependant, making the appropriate arrangements, and attending the funeral. This may sound like Compassionate Leave, but whilst they are similar Compassionate Leave is not a statutory right, whereas Time off for Dependants is. However, extended leave from work to grieve, or time away from work to attend bereavement counselling, etc. would not be covered under this right. Some compassionate leave policies may allow this, or it may be covered by normal absence management procedures, but that is a choice for each individual employer to make, and is often discretionary on a "case by case" basis depending upon the individual circumstances.

4. To deal with the unexpected disruption or termination of arrangements for the care of a dependant.

For example; an employee needs to leave work / can't come into work because their child's childminder has fallen ill, leaving them with no childcare. The employee can use this leave to provide the care themselves (in the short term) or to make other childcare arrangements. A similar example would be if an employee and their siblings shared the care of an elderly relative, and the employee's sibling was unable to care for the dependant due to illness etc. This can only ever be used in the short term and the focus should be on making alternative arrangements as quickly as possible.

5. To deal with an incident involving the employee's child during school hours.

For example; an employee may be called to their child's school if their child has been injured, fallen ill, or been involved in a serious situation such as bullying. This does not involve an employee needing to leave work to attend a scheduled meeting with a teacher, a school governors meeting, or a parents evening, etc.

How Long Should It Last?

There is no set length of time that is deemed appropriate or inappropriate in the legislation relating to Time off for Dependants. Each situation is different; there are many factors that are relevant when determining what can be considered a "reasonable" period of time. Managers will be required to use their judgement when deciding what length of time is appropriate. If an employee is called into their child's school due to a case of bullying, most managers would expect them to be in work the next day. However, if an employee's spouse has been in a car accident and is undertaking several emergency surgeries, the employee may need several days out of work to be by their side, and will only be able to return to work when the situation is non-emergent. Decisions will need to be made on a case-by-case basis, but employers should be mindful of the precedent they are setting for any future employees who may also request Time off for Dependants.

It is important to be aware, the legislation does not permit employers to include the needs of the Company into their considerations when determining what they consider to be "reasonable". The employee may have several pending deadlines, and their colleagues may be struggling to work with a team member absent, but this does not lessen the employee's right to the leave, and does not allow an employer to ask an employee to return. As frustrating as this may be, emergencies and unexpected events cannot be planned or scheduled around an employee's workload. Similarly, there is no limit to how often an employee may use this leave, however if an employee is considered to be using this leave excessively / unreasonably, it could be managed in line with the Company's disciplinary procedure.

Managing Misuse

There may be occasions where a manager is concerned an employee is misusing Time off for Dependants. For example, the manager may think the amount of time the employee is requesting is unreasonable, or the manager may be concerned the employee is using the leave to provide non-emergent care themselves rather than arranging care. When a manager suspects the leave is not being used as it is intended, they should investigate this with the employee in a sensitive, respectful and understanding way. In certain circumstances, it may be appropriate to ask an employee to provide evidence of the situation (although there is no legal requirement for an employee to agree to this), or a manager may discuss the use of annual leave with an employee who wants to remain off work. Any employee who is deliberately misusing this statutory right, as proven following a thorough and objective investigation, could be managed under the company's disciplinary procedure.

How We Can Help

If you would like help creating a Time off for Dependants Policy, or if you have any queries relating to any of the above please don't hesitate to contact us at [hradvice@hasslefreehr.co.uk](mailto:hRADVICE@hasslefreehr.co.uk)

