

Employment contracts:

Balancing employer flexibility and employee rights

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The recent case of *Mr B Mendy v Manchester City Football Club Ltd* 2411709/2023 has underscored the importance for employers to carefully assess the language used in employment contracts.

Specifically, it is crucial to determine whether the contract grants the employer adequate leeway to withhold wages when an employee, though 'ready and willing to work', is hindered from doing so because of external constraints, such as bail conditions or decisions made by third-party regulators.

Employers often face challenges in investigating the circumstances that prevent an employee from attending work due to conduct issues. This difficulty arises particularly when the incidents occur outside the company's purview or are under active police investigation. Any employer-led inquiry into the same matters could potentially disrupt the police's efforts.

Being left paying an employee who is unable to work, of course, is frustrating and costly. Some employers have already adopted a clause in their [employment contracts](#) which permits them to reduce an employee's pay to zero in the event they cannot work due to such issues. Others who do not have such a contractual term sometimes turn to dismissing the employee for the fair reason of 'Some Other Substantial Reason' on the basis that the employee is unable to attend work for a sufficiently long period so as to justify dismissal in the absence of any alternative work for the employee. Neither is risk-free and advice should be sought before relying on either.

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