



What about Annual Leave?

3 April 2020

We have been asked this question a lot in the past week or so, particularly with the Easter Holidays coming up and employees being furloughed – *"what about Annual leave?"*

Annual leave for Furloughed Employees

Workers will continue to accrue annual leave during furlough leave because they remain employed and retain their right to accrue annual leave under the Working Time Regulations. As a minimum this would include the 20 days' European leave but it is not entirely clear whether the additional 8 days' UK statutory leave or any additional contractual leave will continue to accrue. This will depend in part on what is stated in the relevant contract of employment and any further guidance from the Government.

It is also not entirely clear whether employees can take their annual leave allowance while furloughed. The Government has yet to provide any guidance on this point. There is also currently no guidance on what employees should be paid if taking holiday during furlough leave. We expect it should be their full normal pay rather than just 80% of salary and employers may be able to reclaim the 80% from the Government scheme.

Employers can require employees to take annual leave at any time (subject to either the right to do so in the employment contract or the right under the Working Time Regulations (NI) 2016 which requires the employer to give notice that is at least double the amount of leave they want the employee to take). However, in exercising this right employers should give some consideration to individual circumstances. So, for example, if an employee has already been given permission to take 5 weeks' holiday to visit relatives abroad in December and has booked flights etc. it may be unreasonable to insist that they take some of that leave now.

GB Carry Over of Annual Leave

In GB, the Government has announced it is allowing workers to carry over up to 4 weeks' annual leave (not the 5.6 weeks in the UK) into the next two leave years. The NI Assembly has yet to introduce the change here but it may well do so shortly.

The Working Time (Coronavirus) (Amendment) Regulations 2020 amend regulation 13 of the Working Time Regulations to allow workers to carry over EU holiday into the next two leave years, where it is not reasonably practicable for them to take some, or all, of the holiday they are entitled to due to coronavirus. The new GB Regulations only deal with the four weeks' provided under European law. The balance of 1.6 weeks' statutory leave in GB legislation will not be affected (although it can be carried over for up to a year by agreement under existing law).

The change is aimed at allowing businesses under particular pressure from the impacts of COVID-19 the flexibility to better manage their workforce, while protecting workers' right to paid holiday.

Leave can only be carried over if the "effects" of coronavirus mean it was not reasonably practicable to take it in the current leave year. "Effects" is defined quite widely, including effects on the worker, the employer or the wider economy or society. This may not cover practical difficulties in taking annual leave caused by Coronavirus, such as cancellation of holidays abroad, as opposed to work pressures in key industries, such as the NHS. However, the Regulations may well provide some assistance for your GB operation if it has been seriously affected by Coronavirus and you have employees working from home or on furlough leave, who might otherwise want to use all of their statutory entitlement on return to the workplace before the leave year ends. You may also want to consider the practicalities of dealing with GB employees who have a potentially large volume of annual leave left to take as and when they return to the workplace.

This article does not constitute legal advice and specific advice should be sought in respect of particular cases.