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Managing annual leave during coronavirus

With coronavirus still creating numerous issues for companies, many employers may be wondering how they should manage annual leave requests. Ben McCarthy, lead researcher and employment law writer at Croner-i, examines this in more detail below.

There is no doubt that attempting to take a holiday has been a difficult prospect for staff over the last few months. Although the relaxation of lockdown has allowed people to leave their homes, localised restrictions and travel quarantining requirements could still have left staff with high amounts of annual leave left to take before the end of the year. Some may even have avoided taking their leave, whether due to the ongoing coronavirus threat or because of the level of work they are experiencing as the company tries to navigate through these uncertain times.

Initially, employers may be happy to let staff cancel their leave or not take it at all, especially if faced with situations where they may need to self-isolate. However, there are several things they should bear in mind.

Annual leave entitlements

The Working Time Regulations 1998 set out that all employees and workers are entitled to 5.6 weeks (28 days) of paid annual leave per leave year. If an individual works on a part-time basis they are entitled to the appropriate amount of annual leave on a *pro rata* basis. To this end, while businesses reserve the right to refuse leave requests, employers are legally obliged to provide opportunity for staff to take their full leave entitlements. Leave years can be set by the company and tend to fall either between April and March or January and December.

Employers may be concerned over when their staff will be provided the opportunity in which to take their leave in 2021, especially if the leave year does run between January



and December. After all, many staff may have saved up their leave to use after all restrictions are due to be lifted on 19 July 2021 or when more options become available for international travel. The result may be large numbers of staff wanting to use up leave before the leave year ends — something an employer may not be able to facilitate.

The law may be able to help in this situation, with the Working Time Regulations 1998 being amended to allow for four weeks of leave to be carried over into the next two leave years after the 2020 leave year, where it was not reasonably practicable to take leave as a result of the effects of coronavirus (including on the worker, the employer or the wider economy or society). This now means that all statutory minimum annual leave can be carried over, albeit carrying over the 1.6 weeks of additional leave is still subject to agreement by the employer and can only be carried over into the next leave year. A relevant agreement must be in place to permit the additional leave to be carried forward. While there is no requirement to give notice to a worker that their leave will be carried over, it may be useful to set out, at the appropriate time, how much will be carried over and how. Permitting this may help to avoid a “bottleneck” scenario towards the end of the leave year.

When considering whether it was not reasonably practicable for workers to take leave in the current leave year, Government guidance suggests that employers take account of:

- whether the business has faced a significant increase in demand due to coronavirus that would reasonably require the worker to continue to be at work and cannot be met through alternative practical measures
- the extent to which the business’ workforce is disrupted by the coronavirus and the practical options available to the business to provide temporary cover of essential activities
- the health of the worker and how soon they need to take a period of rest and relaxation
- the length of time remaining in the worker’s leave year, to enable the worker to take holiday at a later date within the leave year

- the extent to which the worker taking leave would impact on wider society's response to, and recovery from, the coronavirus situation
- the ability of the remainder of the available workforce to provide cover for the worker going on leave.

Employers should do everything reasonably practicable to ensure that the worker is able to take as much of their leave as possible in the year to which it relates, and where leave is carried forward, it is best practice to give workers the opportunity to take holiday at the earliest practicable opportunity.

Encouraging staff to take their leave

Although the coronavirus situation continues to impact on all of our lives, it is important that employees are provided the opportunity in which to take their leave. Employers should not underestimate the importance of annual leave in helping to refresh staff and keeping them as productive as possible when they are at work. As outlined above, it should be made clear to employees how much leave they have to take in a leave year, and they should be regularly reminded of the leave they have left to take. Employers should also aim to avoid permitting staff to cancel pre-booked periods of leave, however their reasons behind this request should be considered.

For those who are struggling with their workload, and therefore concerned they have too much on to take this leave, employers should hold further discussions with them to plan how their work can be better distributed. Tasks should always be handed out to staff in a fair and even way; no employee should be made to feel they cannot take leave due to having too much work to get done.

If necessary, employers can also seek to enforce a period of annual leave, provided at least twice the amount of time is given in notice. For example, if employers want staff to take one week of leave, two weeks' notice should be given. However, this should be a last case resort; staff may not respond well to being expected to take leave when they do not wish to, especially if they are currently being subjected to coronavirus restrictions.

Leave while on furlough

For staff who are placed on furlough, statutory minimum annual leave entitlement will continue to accrue because the contract of employment is still in existence. In response, employers may want to agree that contractual leave in excess of the statutory minimum does not accrue; however, this may present a blocker to obtaining employees' agreement to be furloughed.

Recent Government guidance confirms that furloughed staff can take annual leave; however, they need to be paid in full for this leave regardless of what is provided by the Government at that time. Employers may wish to let staff use leave now to avoid large amounts of leave being left to take when they return from furlough. Staff may also wish to request leave in order to be paid in full for a period. Ultimately, as usual, it is down to the employer if they permit staff to take leave; it may not be possible for them to fund the remaining amount required to top up wages to full pay.

Government guidance published on 13 May 2020 confirmed that an employer can require a worker to take leave during furlough (subject to normal notice requirements). However, the employer should consider whether the purpose of annual leave, ie rest, relaxation and enjoyment, can be achieved if there are restrictions on the employee, such as localised lockdown.

Conclusion

The ongoing coronavirus situation is difficult for everyone and it currently remains unclear how long it will last. To this end, it is advisable to maintain open communications with staff, including updates on how they will be able to take their leave alongside all steps the organisation is taking to combat the spread of the virus. The right of workers to carry over leave, as set out above, into the next two leave years will certainly help ease any bottleneck towards the end of the leave year.