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Opeyemi Ogundeji, researcher and employment law writer at Croner-i, explores how employers can manage annual leave requests and the possibility of enforcing it.

Employees are entitled to a minimum of 5.6 working weeks' paid annual leave each year, which works out as 28 days for those who work a five-day week. What this entitlement means is that employers must give their employees the opportunity to take this amount of annual leave per year as a minimum.

The summer months are edging closer and, in light of the coronavirus pandemic and the Government's roadmap for getting England back to some form of normality, an increasing number of employees may wish to book holidays around the same time as each other. England's new roadmap reads that all restrictions will be lifted in the country on 19 July 2021, delayed from the original date of 21 June 2021. This means that most annual leave bookings may fall towards this period.

Employers have flexibility to refuse annual leave requests, decide when leave can or cannot be taken, and how it is taken. With that in mind, employers may be happy to let their employees reserve their annual leave until the summer months, meaning they will need to think carefully about how their business needs will be prioritised.

Managing leave requests

For an employer, its business needs will be a priority, as will its duty of care towards safeguarding their employees' health and safety. Mental health has been a rising topic of discussion in the past year as the coronavirus makes lasting changes on how we, as human beings, interact. For this reason, and a number of other reasons, employers may feel inclined to grant leave requests at a time when relaxation and enjoyment is somewhat guaranteed.

However, when it comes to the business itself, employers will need to consider how an employee's workload will be managed and how best to manage multiple requests around the same time.

HR or line managers can assess the situation on a case-by-case basis to determine whether leave can be taken at any given time and by any number of people at once. They will also be able to determine the likelihood of work being reshuffled around the team when a member is on leave, or whether those going on leave can meet their deadlines before their holiday begins.

Enforcing take-up

Contrary to popular belief, staff do not have a right to take annual leave whenever they wish. They must request leave and, by implication, that means employers have the right to turn down that request. Employers also have the ability to enforce take-up of annual leave; however, although employers have this right, they must give staff double the length of the enforced leave as notice. For example, if employers want an employee to take three days' worth of leave, notice of six days must be given in advance.

This may mean that a period of pre-booked leave will need to be cancelled but this is likely to cause complications with the employee — they may well have made arrangements and so are not likely to be happy, potentially affecting morale and even retention. If annual leave is cancelled without good business reasons and the employee suffers financial loss, there may be cause for a claim of constructive dismissal so employers should tread carefully here.

Furloughed employees

Annual leave can be taken at the same time as furlough. Employers may want to consider requiring a specific number of days to be taken each month that furlough lasts to avoid a bottleneck situation once furlough ends.

There may be an argument that this circumvents the point of annual leave in that the employee is already not working so employers are seemingly denying them the ability to take the time as a break. It should be noted though that furlough has not been described as a period of holiday, as furloughed employees can be called back to work at any time, and should not be taken as such.

Instead, enforcing take-up of leave amongst those on furlough should be seen as an opportunity for them to earn their full pay. This is because, if employees who are registered as being on furlough take a period of annual leave while they are still furloughed, they are entitled to 100% of their wages — paid in full by the employer — rather than the 80% grant from the Government.

Carrying-over annual leave

Despite enforcing annual leave, employers may find that their business needs due to the impact of coronavirus affect their employees' ability to take all their leave in the year in which it is accrued. Under normal circumstances, at least four weeks' of the 5.6 weeks' leave entitlement must be taken in its year of accrual, except in the following circumstances:

- Up to 5.6 weeks of annual leave can be carried over into the next leave year where family leave is concerned, eg maternity leave, etc.
- Up to four weeks of annual leave can be carried over and used within 18 months of sick leave ending.

The impact of coronavirus has led the Government to pass emergency legislation to allow the carry-over of the four weeks of leave that could not usually be carried over. This is in the case that it is not “reasonably practicable” to take it in the current leave year as the Government still expects that employers should encourage take-up of leave where possible. Indeed, they have also clearly specified the reasons why carry-over will be permitted.

What does all this mean?

Employers will need to think carefully about how they manage annual leave as coronavirus restrictions are eased across the UK. It is important that employers keep their business needs in mind, but it is also important to consider that annual leave requests may need to be granted in order to relieve an employee's stress and help them with any mental health issues they may be facing.