

30 April 2021

3CS Newsletter

Employment

Holidaying in a pandemic

The pandemic has created many novel issues for our clients to handle. One of the trickier ones is holidays. Normally a straightforward thing to deal with, many firms are unclear about how holiday entitlement is affected by furlough and Covid-19, and the inability of people to travel. Others are worried about staff returning and wanting leave at the same time or rushing to take it at the end of a holiday year. Here we have a look at some of the most common questions that get asked and we set out some key rules that might assist with planning - and help you avoid dealing with grievances and tribunal claims.

Can we require staff to take holiday?

Yes. Sometimes leave days are fixed in a written contract or are taken by all the staff together because the workplace is closed (for example, around Christmas time). But you can also instruct your staff to take holiday. To do this you give them notice to do so that is twice as much as the length of the break - so, for example, two weeks' notice to take one week's leave. You can also refuse holiday requests. This ability to refuse leave and require leave to be taken might help your business planning by ensuring that staff do not end up taking all their leave all at once.

Is this affected by furlough?

No, the same rules apply. Even though staff may be at home on furlough (or under a flexible furlough arrangement) and not working, you can still require them to take their leave. It does not matter that they are not able to travel due to pandemic restrictions. Note that, if you do this, you must pay them 100 percent of their normal pay for the period they are on leave, even though they might be on reduced pay because of furlough.

Why should we encourage staff to take holiday?

Because, from their point of view, they could lose it if they have not taken their full entitlement by the end of the year - and holidays are important for mental health and morale. They might be able to carry some leave over to the new holiday year (see below) but that does not apply to all of it. And, from your point of view, a worker can bring a claim under the Working Time Regulations 1998 for compensation if they have not taken their leave because you discouraged them from taking it or made it too difficult. This applies just as much during furlough leave as in normal periods. So, it is good practice to send regular reminders to staff to take holiday, even if they are not necessarily thinking of going on holiday.

If staff have not taken holiday during furlough, can we allow more carry-over of holiday this year or next year?

Yes, but only to a limited extent and it's complicated. The good news is that any unused leave over four weeks (that is, 20 days for a full-time employee) can normally be dealt with by agreement. Firms usually have policies for carrying days over, limiting the number of days to five or eight with maybe a condition that it must be taken within a certain period afterwards. You could amend your staff contracts, temporarily if necessary or just relax your policy. As an alternative, firms can even 'buy out' unused leave but that is only possible with contractual leave - that is, any leave over and above the statutory minimum of 5.6 weeks (or 28 days for a full-time employee).

What if there is more unused leave to carry over?

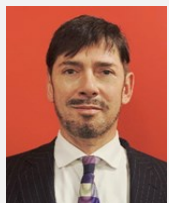
This is probably not going to be possible in many cases. The problem lies in the fact that four weeks of the statutory minimum leave must be taken in the *current* holiday year. Recognising that some workers might struggle to take their four weeks during the pandemic, the government introduced a new rule, The Working Time (Coronavirus) (Amendment) Regulations 2020. This allows the carry-over of the four weeks for two holiday years after the current one if, 'in any leave year it was not reasonably practicable for a worker to take some or all of [their] leave entitlement as a result of the effects of coronavirus (including on the worker, the employer or the wider economy or society)'. This has been interpreted to mean they have had to be at work for operational or business reasons - it would not cover just being on furlough. If furloughed staff have not taken their four weeks, and you cannot apply the new rule, they will probably have lost their holiday permanently. So, to ensure that you are not liable in these circumstances, you should encourage the taking of leave.

What about staff on maternity or long-term sick leave?

These groups are subject to special rules because they cannot take holiday. Holiday continues to accrue and then can be taken when their maternity or sick leave ends.

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