



Employment Law Newsletter - How furlough affects holidays

The Government has found it difficult to decide what to do about holidays and holiday pay. You will be concerned that when people return to work, you will need all hands on deck and will not want your workforce to be taking lengthy periods of annual leave. Your workers may not want to take annual leave while the country is in lockdown as they may feel unable to truly enjoy it.

Yesterday, the Government explained how employees' entitlement to holiday and pay differs from the normal statutory rules during the coronavirus pandemic.

Can you make furloughed workers take holiday before returning to work?

Yes, providing you give workers sufficient notice you can require them to take holiday at a time of your choosing. The normal notice requirements apply, so the notice must be double the length of the holiday that you require them to take. That means you must give two weeks' notice if you require them to take one week's holiday. The day you give notice does not count. Time starts to run the day after you give notice.

You can give less notice if the worker agrees.

You may receive resistance from workers who may already be struggling on reduced pay, dealing with home schooling, or worrying about the health of their loved ones. Speak to them about the reason for your requirement and how it will benefit them and the business before imposing a requirement to take or cancel holiday

What if a worker has booked a holiday and you want them to cancel it?

Your furloughed workers will be entitled to full pay when taking holiday. You may not be able to afford it. You must give the same notice as the planned holiday. So, give one week's notice if you require them to cancel one week's holiday.

As with requiring a worker to take holiday on particular days, you can give less notice if the worker agrees.

If your written holiday rules provide for a different notice period, then that agreement is binding on you and your workers.

Does taking holiday break furlough?

No. Workers on furlough can take holiday without disrupting their furlough.

What about bank holidays?

If bank holidays are included in your workers' holiday entitlement, the same rules apply on requiring them to take or cancel holiday. If you require them to work it, you will need to replace it with another day to ensure that they receive the number of holidays required by their contract.

The terms of the worker's contract must not go below the statutory minimum of 5.6 weeks a year.

What if a bank holiday falls during furlough?

If the worker would normally have worked that day, then they are unaffected.

If they would have taken it as holiday, you can allow them to take it as annual leave on full pay or require them to take it at a later date using the notice periods above and ensure that they receive their full entitlement.

What should you pay a furloughed worker on holiday?

You should pay normal holiday pay even if this means that you have to top up the grant that you have claimed for the worker through the Coronavirus Job Retention Scheme.

The Government has standard guidance on calculating holiday entitlement and pay at <https://www.gov.uk/holiday-entitlement-rights/holiday-pay-the-basics>.

What are the new rules on carrying annual leave into future leave years?

On 26th March 2020, the Government amended the Working Time Regulations 1998 (WTR). The change means workers can carry up to four weeks of unused leave into the next two leave years 'where it is not reasonably practicable for a worker to take some, or all, of the holiday to which they are entitled due to the coronavirus', the Government said. It aims to allow businesses under particular pressure from the effects of COVID-19 the flexibility to manage their workforce better, while protecting workers' right to paid holiday.

The phrase 'due to the coronavirus' includes effects on the worker, the employer, or the wider economy or society. This includes increased demand caused by coronavirus. As explained above, you can still require a worker not to take this carried-over annual leave on particular days where you have good reason to do so.

The phrase 'reasonably practicable' includes factors such as increased demand, the ability to cover holiday and workers' health, any of which may have affected their ability to take annual leave in the current holiday year.

You remain under an obligation to ensure that workers have adequate opportunity to take their holiday, so it should not be replaced with pay in lieu unless the worker is leaving your business.

If your holiday matches the calendar year, your workers may have ample opportunity to take annual leave in the current leave year.

What if a worker can't take annual leave for other reasons?

Where a worker cannot take annual leave owing to maternity leave or sickness, you must still allow them to carry their annual leave forwards. These rights remain unaffected by furlough.

Can you just pay workers for their holiday so that they can keep working?

This rule is unchanged. You should allow your workers to take their annual leave in the current leave year or carry it over if they cannot take it. However, if their employment ends, you can pay them for any leave that they have accrued but not taken.

Will workers continue to accrue holiday during furlough?

Yes, they will continue to accrue holiday on furlough as they would do normally when working.

If you would like to discuss these or any other issues facing your organisation please speak to your usual contact at Watershed or Keith Morgan on +44 161 703 5611

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