

Annual Leave

Background

Under the Working Time Regulations 1998 workers are entitled to paid statutory annual leave and prior to 1 October 2007 a worker was entitled to 4 weeks' statutory paid leave. As a result of amended regulations statutory paid leave was increased to 4.8 weeks annually (or 24 days for an employee working 5 days per week) from 1 October 2007 and increased to 5.6 weeks from 1 April 2009. This increase will move more UK workers' annual leave entitlement closer to that of workers in other European countries, where holiday allowance is typically more generous. Workers in Ireland are entitled to 29 days; the highest minimum entitlement is in Austria at 38 days.

Therefore, for a leave year on or after 1 April 2009 the new minimum annual entitlement will be capped at 5.6 weeks or 28 days if the employee works five days a week. This basic entitlement is inclusive of bank holidays. If employees receive paid time off for bank holidays in addition to the 4 weeks entitlement then the holiday entitlement has not been increased.

The effect of the new regulations

For a leave year on or after 1 April 2009 the new minimum annual entitlement will be capped at 5.6 weeks or 28 days if the employee works five days a week. As the additional entitlement has been introduced in stages unless the annual leave year starts on or after 1 April 2009 then the statutory minimum entitlement will depend on the date of commencement of the leave year. For instance, a worker whose annual leave begins after 1 April 2008 but before 1 April 2009 will be entitled to receive 4.8 weeks' statutory leave, as well as a proportion of a further additional 0.8 weeks, depending on what proportion of the leave year is after 1 April 2009. This basic entitlement is inclusive of bank holidays. If employees receive paid time off for bank holidays in addition to the 4 weeks entitlement then the holiday entitlement has not been increased.

Payment for annual leave

A worker is entitled to be paid in respect of any period of annual leave for which they are entitled, at a rate of one week's pay for each week's leave. For employees with normal working hours a week's pay is the pay due for the basic hours the employee is contracted to work. Any regular contractual bonuses or allowances (except expense allowances) which do not vary with the amount of work done are also included. Voluntary overtime and commission payments are excluded.

Under the Regulations any statutory annual leave may not be replaced by a payment in lieu, except on termination of employment. In such cases, a payment can be made for any untaken leave in the leave year that termination occurs, although

no payments can be made for any untaken leave with regard to previous leave years

However, between 1 October 2007 and 1 April 2009 employers can pay in lieu of the extra 0.8 week. This was a temporary measure to help employers manage transitional arrangements such as recruiting extra staff or providing extra training. After 1 April 2009 payment in lieu of accrued untaken statutory holiday can only be made on termination.

Rolled up leave

The ECJ has ruled that it is unlawful for employers to roll up workers' annual leave payments. In accordance with this it is recommended that employers renegotiate contracts involving such pay for existing workers as soon as possible so that payment for statutory annual leave is made at the time when the leave is taken.

Requesting leave

Employees should be allowed to choose when they take some of their leave although many employers do set certain conditions, for example that only a certain number of workers may take leave at the same time or that workers may not take more than a certain number of consecutive working days off in one go.

It is common for employers to have a procedure in place for these instances and it should include the procedure for notification. If this is excluded then the legal position is that an employee requesting a period of leave must give notice of at least twice the period of leave to his or her employer. A similar arrangement of notice must be given by the employer if they are requesting the employee to take leave at specific times.

First year of employment

Workers accrue their annual leave entitlement on a pro rata basis during their first year of employment. This is calculated in relation to the proportion of the employment year worked. Therefore, the annual leave entitlement will accrue over the course of the worker's first year of employment at the rate of 1/12 of the annual entitlement starting on the first day of each month. If the calculation does not result in an exact number of days then the figure will be rounded up to the nearest half day.

Annual leave and part time employees

Under the Regulations time off for bank holidays should be pro rated. Part time workers are currently entitled to 5.6 weeks' holiday, based on the hours a week that they work, regardless of whether they work on days on which bank holidays fall.

Contractual annual leave entitlement

An employer can increase a worker's statutory annual leave entitlement via a contractual arrangement. In such cases any unused additional annual leave may be carried over to the next leave year. This is often a matter of employer discretion and will depend on the terms of the contract.

It is recommended to review any contractual documentation and handbooks to take into account the recent developments.

Annual leave and maternity

An employee continues to accrue their statutory annual leave entitlement of 5.6 weeks throughout both ordinary maternity leave (OML) and additional maternity leave (AML).

In addition, from October 2008, contractual annual leave entitlement - ie any holiday entitlement over and above the statutory minimum – also continues to accrue during OML and AML.

How we can help

We will be more than happy to provide you with assistance or any additional information required. Please contact us for more detailed advice.

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