



Thomas More Chambers

COVID-19 Holiday Leave Entitlement Statutory Changes

The Working Time Regulations (“WTR”) are being amended to allow workers with outstanding holiday leave entitlement in the current holiday year to be able to carry that over for two years.

Current Statutory Position

The WTR govern statutory holiday entitlement.

Workers have a statutory right to 5.6 weeks paid holiday entitlement per year (pro-rated for part-time workers). Four weeks is required by European law – Basic Leave, an additional 1.6 weeks is required by domestic UK law – Additional Leave. Workers may have additional paid holiday entitlement under their contracts of employment.

Under the WTR, workers must take their Basic Leave entitlement in the leave year in which it accrues. The 1.6 weeks Additional Leave entitlement may be carried over in to the next leave year if there is a relevant agreement, for example where that is permitted in the contract of employment. This is subject to certain exceptions relating to maternity and sickness absence. Employers are obliged to given workers an effective opportunity to take holiday leave entitlement in the holiday year in which it accrues. It is not possible for employers to make a payment in lieu of accrued statutory holiday entitlement except on termination.

The Changes

The Government has announced [changes](#) which will apply to the four weeks’ Basic Leave entitlement. [The Working Time Coronavirus \(Amendment\) Regulations 2020 SI 2020/365](#)



will amend the WTR so as to allow workers to carry over up to four weeks' holiday from the current holiday year into the next two holiday years.

This amendment will apply when it was not “reasonably practicable” for a worker to take some or all of their holiday entitlement due to coronavirus. What is or is not “reasonably practicable” has not yet been defined. In the current circumstances, it is likely to be a relatively easy test to meet.

The purpose of these changes is to ensure that key workers can continue working in the national effort against the coronavirus without losing out on their annual leave entitlement. The change will provide employers with the flexibility to allow workers to carry over leave when granting annual leave could leave them short staffed at this critical time. Employers will not be penalised if workers do not take their up to four weeks' holiday in the current holiday year.

The change will apply to all workers, including agency workers, those who work irregular hours and workers on zero hours contracts.

Employers retain the right to refuse holiday requests providing they give adequate notice (at least one day's notice for each day of holiday leave requested). The amendment Regulations, however, add in a qualifying criteria namely in refusing a holiday leave request the employer must have “a good reason to do”. It is highly likely that requiring key workers to continue providing their services during the lockdown and beyond will qualify as a good reason.

Employers retain, unamended, the right to instruct employees when they must take holiday leave providing they give a minimum of two days' notice for each day of holiday leave.

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The Thomas More Chambers Employment Law Team is able to assist instructing sources on any employment law issues, including those arising from the Covid-19 pandemic. We are well used to working remotely and can arrange for confidential telephone or video conferences and meetings on a variety of platforms with you and our mutual clients. In addition, we all are well used to paperless working and to dealing with remote hearings and are always happy to assist in setting them up.

The Thomas More Chambers Employment Law Team is able to assist instructing sources on any employment law issues arising from the Coronavirus crisis. If you need such assistance, please contact Craig Brown, Senior Civil Clerk on 020 7404 7000 or at cbrown@thomasmore.co.uk.

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