

Happy Holidays? What do I need to know?



With summer holidays fast approaching, employers should ensure they are fully up to date with the legal position regarding holidays and entitlement. What are the main issues that can arise?

How many holidays are staff entitled to?

Workers (a widely defined term that extends beyond those who are employees) are entitled to 5.6 weeks' holiday a year. Employers should encourage workers to take their leave. Remember, it is possible to offer workers more than the strict statutory entitlement (and any such leave would be governed by the terms of the contract).

How is holiday pay calculated?

This may be governed by the terms of the contract. Care is needed because there are statutory rules about the calculation of holiday pay. The rules are complex and it is worth double checking how they apply to your organisation. The way in which holiday pay is calculated depends on whether the worker has normal working hours, works shift work, or, where pay varies depending upon output.

What have the recent cases told us about holiday pay?

In short, when a worker goes on holiday (for at least 4 weeks of the annual

entitlement), they should receive "normal remuneration". "Normal remuneration" means the sums a worker normally receives for working and is likely to include overtime, commission payments and other allowances. Workers may have claims for back pay if previous holiday payments did not contain the proper amounts. This is complex and advice should be sought to ascertain and then minimise any risks.

What if a worker is off work sick but has booked holidays?

A worker cannot be on sick leave and annual leave at the same time. However, a worker can elect which leave to take (and your policies in this area should be followed). Thus, a worker who is sick may decide to cancel their annual leave and use that period as sick leave. Equally, a worker who is off sick may decide to take accrued annual leave.

What if a worker is off work sick but takes a foreign holiday?

There is no express prohibition that prevents a worker who is sick from going abroad. Employers should not automatically assume the worker is "at it". In some cases, it may be that going abroad could aid recovery.

Can a worker carry forward unused annual leave?

Assuming the contract does not permit carrying forward annual leave (and this is something that should be checked), a worker who has been prevented from taking the "basic" 4 weeks' annual leave because of sickness is likely to be entitled to carry forward that period of leave into, at least, the next holiday year.

Employers should check their approach to holidays and make sure all managers (and staff) are fully aware of the organisation's rules, and the legal requirements, to ensure that they are fairly and consistently applied.

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Happy Holidays? What do I need to know?

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SPL: Don't Score an own Goal: Keep up to date with Family Friendly Rights

The rules governing Shared Parental Leave (SPL) are now in force. Here is a summary of the fiendishly complex rules and regulations that apply to SPL and shared parental pay:

Eligibility: SPL can only be used by 2 people: the mother and the father or partner (if it is the partner who will have responsibility for looking after the child). There are other criteria that need to be satisfied too, including the mother being entitled to statutory maternity leave or pay or maternity allowance. There are also rules as to continuity of employment (and an earnings test). Similar provisions apply in relation to adoptions. The leave can only be taken during the baby's first year.

The procedure: Those wishing to take SPL need to provide the employer with different types of notifications and declarations. The rules specify the type of information that needs to be included in the documentation

Case Update

A number of recent employment decisions are worth noting before heading off on summer holidays:

Way v Spectrum is authority for the proposition that a dismissal will be unfair if it relies on a final written warning (FWW) which was issued in bad faith, even if the employer argues that the employee should have been on his best behaviour given the existence of the FWW.

The case of **Chestertons** considered the fairly recent requirement that to count as a protected disclosure under whistleblowing legislation, a disclosure must be in the public interest and cannot relate solely to that particular employee. This case held that disclosure of wrongdoing, that affected a group of the employer's staff in relation to calculation of bonuses, and not the wider public, was in the public interest and so was a protected disclosure. This is a fairly generous interpretation of "public interest".

(and when this should be provided). There are also timescales to be followed in relation to the giving of notices. Employers should ordinarily be given 8 weeks' notice of any leave. Leave can be sought on a continuous basis (consecutive weeks) or discontinuous basis. There is no obligation to agree to discontinuous leave. An application for continuous leave must be granted. Up to 3 separate requests can be made.

Protections: It is unlawful to discriminate against employees who rely upon their entitlement to SPL. There are also rules about the job to which staff can return following SPL and entitlements to reasonable contact and keeping in touch while on SPL.

The rules are complex and employers need to familiarise themselves with the details. Expert advice should be sought to ensure the new rules are properly understood and applied in your organisation.

Salmon v Castlebeck Care considered an employee who lodged an appeal against dismissal, following a contractual right of appeal. It was held, surprisingly, that when the appeal hearer decides that the appeal should be upheld, that is enough for the employment to revive and the employee to be reinstated, there being no need for that decision to be communicated to the employee.

In the long running **Woolworths** litigation, the European Court decided that collective consultation about redundancies is triggered by a plan for 20+ redundancies at a particular location/business unit, not across the business as a whole. This is a relief for large employers who faced having to consult collectively in a far greater range of scenarios.

Employment law is fascinating and developing at a fast pace. Contact **bto's** employment team to keep up to date.

Update

What were the Conservatives' Manifesto Pledges on Employment?

- Restrictions on strike action
- Encourage payment of "living wage"
- Equal pay reporting for large employers
- Prevent abuse of zero hours contracts
- Paid leave for volunteering work

Reminder of Current Tribunal Limits:

- A week's pay: £475
- Maximum basic award: £14250
- Maximum compensatory award ("normal" unfair dismissal): the lower of £78,335 or 52 weeks' pay.

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