

Holiday and Leave during Coronavirus – FAQs

1. What changes have the Government made to the Working Time Regulations 1998?

Employees and workers who have not taken all their statutory annual leave entitlement due to Covid-19 (coronavirus) will now be able to carry over up to four weeks' paid holiday into the next two holiday leave years. This amendment is covered in the Working Time (Coronavirus) (Amendment) Regulations 2020.

This temporary new law applies to assist the situations where an employee or worker cannot take their holiday leave because of coronavirus.

2. Why have these changes been made?

The Working Time Regulations as they stood meant that most of an employee's entitlement could not be carried forward each year, meaning employees would lose their holiday leave if they did not take it. In addition, employers would face a financial penalty if they failed to ensure their employees took their statutory entitlement in any one year.

In making an amendment to the Working Time Regulations, address this to account for those affected by coronavirus by allowing statutory leave to be carried forward and removing liability for financial penalties in these circumstances.

3. Does this mean that employees and workers do not need to use their holiday leave in the current year?

No. There is still an obligation from an employer to ensure that their employees have an adequate opportunity to take their holiday, except in circumstances where coronavirus has prevented this from happening. ACAS guidance advises that reasons for being unable to take leave could include:

- self-isolating or being too ill to take leave
- being temporarily laid off or furloughed
- having to work through holidays.

Any holiday entitlement that has not been taken cannot be replaced with a payment in lieu unless the employee is leaving employment.

In most situations, employees and workers should use their paid holiday in the current leave year. This is important because taking holidays helps people get enough rest and keep healthy, both physically and mentally.

4. What should the approach of employers, employees and workers be to holiday leave now?

It is expected that employers, employees and workers should be as flexible as they can about holiday during the coronavirus pandemic. As is current best practice, employers and their employees/workers should manage holiday leave.

ACAS advises it is a good idea to:

- talk about any plans to use or cancel holiday during coronavirus as soon as possible
- discuss why holiday might need to be taken or cancelled
- listen to any concerns, either from the employee/worker or the employer
- welcome and suggest ideas for other options
- consider everyone's physical and mental wellbeing
- be aware that it's a difficult time for both employers and employees/workers.

Whilst this amendment has been made to the Working Time Regulations, it is still expected and encouraged that employees and workers take their leave during the current holiday year.

5. As an employer, can we require employee and workers to take or cancel holiday?

Yes. Employers have the right to tell employees and workers when to take holiday. However, employers cannot do this, for any employees or workers who are on sick leave or family leave, such as maternity leave.

If you do need tell employees or workers when to take holiday, for example to shut the offices for a week, you must tell employees/workers at least twice as many days before as the amount of days they need people to take.

You can also discuss with individuals, that you would like them to take holiday leave. If an employee/worker refuses to take leave, there is no specific statutory way to ensure an employee takes their holiday, although employers can specify employees/workers take leave on certain dates. However, employers do have a

contractual obligation to take care of employees'/workers' health. If staff are exhibiting signs of stress and exhaustion, employers must consider ways of alleviating this, which could include requiring them to take a period of holiday leave.

If an employer wishes to cancel pre-booked paid holiday, they must give employees/worker at least the same number of days' notice as the original holiday request.

In any of the above scenarios, due thought and consideration should be given before proceeding, so it is always useful to seek HR advice prior to doing this.

6. What should employers do next?

If you have not already done so, review any outstanding holiday entitlement and start having discussions with your employees/workers to manage whether leave can be taken this year and get a clear picture of any holiday entitlement that needs to be considered to be carried forward into the next year. Remind managers across the organisation of the importance of managing the holiday leave of their teams.

It is good practice in any event to encourage employees and workers to request their holiday as far in advance as possible and remind them how much holiday they have left. It is also helpful to ask those who have not submitted holiday dates to do so well before the end of the holiday year.

7. What if an employer provides holiday entitlement to its employees and workers above the statutory holiday leave?

The minimum amount of annual leave which an employer must provide to a full-time worker is currently 28 days a year (or 5.6 weeks). This entitlement can include Bank Holidays.

If an employer does not already have an agreement in place, they can decide whether they will allow extra holiday (more than the 4 weeks' paid holiday) to be carried over.

8. Can an employer buy-back leave from their employees?

The Working Time Regulations 1998 give employees and workers the right to a statutory minimum of 5.6 weeks' paid annual leave, which can include bank

holidays. This equates to 28 days for a full-time employee/worker. You cannot buy-back leave that would take them below the statutory minimum.

However, if you offer any contractual holiday above the statutory minimum, you are well within your rights to buy these days back should you wish to. However, this would need to be agreed with the employee first. Some organisations also allow staff to buy more holiday, in exchange for some of their salary.

You should also consider whether this is a one-off arrangement and be clear in your communications, so employees/workers are clear moving forward.

Should this be something you wish to explore, please get in touch and we will be happy to assist you.

9. Do you have additional queries?

Should you have any further questions, and you are a member of the WSA, you can access help through our WSA Members Helpline. Bookings for helpline support can be made via email at admin@wsa.wales.