



# RealityHR

People Driven Business Growth

# HOLIDAYS AND ANNUAL LEAVE

## FACTSHEET

### JULY 2020

GET IN TOUCH TO FIND OUT HOW WE CAN HELP...



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This has been a year of disruption to workers in all industries and sectors, but all employees still need their annual holiday entitlement, and all employers still need to ensure that holiday is taken.

## THE WORKING TIME REGULATIONS 1998

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This legislation sets out that all UK workers are entitled to 5.6 weeks paid holiday per year, split into 4 weeks derived from EU law, and an additional 1.6 weeks from UK law (so 28 days for someone who works 5 days per week). This can include all bank/public holidays.

Your duty as an employer is to make sure that employees take all of their statutory entitlement every year, as they are required to have adequate rest and recuperation under health and safety guidance. Employers who fail to allow employees to take their statutory leave can incur a financial penalty.

20 days statutory holiday must usually be taken in the leave year in which it is accrued. The extra 1.6 weeks of accrual (the equivalent of the bank/public holidays) can be carried forward for one year if it is written in your policy or contract. This is an unusual clause that is rarely (if ever) included in terms and conditions of employment. The 20 days minimum can normally only be carried forward to another leave year when the employee is on maternity, parental leave or sick leave.


## THE WORKING TIME (CORONAVIRUS AMENDMENT) REGULATIONS 2020

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New emergency legislation introduced this year allows workers to carry untaken amounts of the 4 weeks' holiday forward into the following 2 leave years where it has not been reasonably practicable for them to take some or all of their allowance due to the effects of coronavirus.

This might be the case where a business has been busier than normal, due to increased demand, or has lots of people absent from work due to illness/shielding, and needs additional staff to cover for them. It might also be the case where a business cannot afford to top up the furlough pay to the full standard salary.

The guidance is clear that workers should take their holiday in the leave year it is accrued, whenever possible. And so, employers should do everything reasonably practicable to ensure that the worker is able to take as much of their leave as possible in the year to which it relates, and where leave is carried forward, it is best practice to give workers the opportunity to take holiday at the earliest practicable opportunity.



# CONTRACTUAL HOLIDAY ALLOWANCE

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If you offer contractual holiday, where people accrue more than 28 days per year, then you must follow whatever is written in your policy or contract about contractual holiday. It is quite common for employers to allow contractual holiday to be carried forward, but you must stick to whatever you have written down, or gain consent to change those arrangements.

## CAN STAFF TAKE HOLIDAY WHILE ON FURLOUGH?

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Yes. The guidance is explicit that workers on furlough can take holiday without interrupting their furlough. You should agree the holiday dates in advance (including any bank holidays to be taken as leave), and pay full salary for the holiday dates. You can then claim back 80% (or 70% in September and 60% in October) from the Coronavirus Job Retention Scheme.

## WHAT SHOULD STAFF BE PAID WHILE ON HOLIDAY?

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For all holiday days taken, workers should be paid their usual full pay amount. This is calculated as their normal daily/weekly pay for fixed salary workers, or the average of the previous 52 weeks for those without fixed hours.

## CAN I REFUSE A REQUEST FOR HOLIDAY?

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Yes, any holiday request can be refused by giving the normal notice, which is as much notice of a refusal as the amount of leave requested, so two weeks' notice if the leave requested was for two weeks.

You may wish to refuse a request for holiday during furlough, if the cost of topping up to the usual salary is too big a financial burden.

You may also wish to refuse a request for holiday if operational reasons means that worker cannot be released from the business at that time.

# CAN I REQUIRE STAFF TO USE UP HOLIDAY DURING THEIR FURLOUGH LEAVE?

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Yes, you may wish to do this to reduce the amount of outstanding annual leave to be taken once lockdown ends and you need people to return to work.

Standard employment law provisions state that employers can require workers to take holiday as long as they give twice as many days' notice as the period of leave the worker is required to take. For example, if you require a worker to take two week's annual leave at a certain time, you must give the worker at least four weeks' advance notice (or whatever is outlined in the employment contract). If you wish a worker to take or cancel holiday with less notice, you will need the workers' agreement to do so.

You should consider whether it is fair and reasonable to require a worker to take all of their annual leave during furlough, or whether you could allow them to retain some leave to be taken during their return to work.

If you are considering requiring a worker to take holiday while on furlough, you should consider whether any restrictions the worker is under, such as the need to socially distance or self-isolate, would prevent the worker from resting, relaxing and enjoying leisure time, which is the fundamental purpose of holiday.

# DO I HAVE TO AGREE TO CANCEL OR POSTPONE HOLIDAY IF WORKERS TRAVEL PLANS HAVE BEEN DISRUPTED?

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No, once a period of holiday has been booked, you do not have to agree to a request to cancel or postpone the dates (unless they have the right to cancel written into their contract or some other relevant agreement). Workers may wish to cancel or postpone their holiday dates if their travel plans have been cancelled, but you should take into account the needs of the business and the employee's personal circumstances when deciding whether to accept or refuse the request.

You should agree to the cancellation where this would not cause significant inconvenience, but this would not necessarily give the right for the employee to carry over any unused leave into the following leave year, as it would arguably still be reasonably practicable for the employee to take the annual leave within the leave year, even if they cannot use it to go away on holiday.

# SHOULD I ASK STAFF WHETHER THEY INTEND TO TRAVEL ABROAD BEFORE THEIR HOLIDAY?

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It is unlikely that your contract of employment or other policies will allow you to prohibit foreign travel, but you can talk to your staff about their plans before their holiday, and discuss with them the possible implications of quarantine rules.

Employees who are not British nationals and who travel abroad to see close family might argue that an employer policy forbidding foreign travel is indirectly discriminatory on the ground of nationality as it disadvantages them and those who share their protected characteristic.

You may come to an agreement with the employee to authorise the necessary extended leave, either through paid holiday or unpaid leave.

# WHAT ABOUT THE 14 DAY QUARANTINE?

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Employers who are particularly concerned about the impact of quarantine on the organisation might consider putting in place a new policy setting out clear expectations for staff.

# AN EMPLOYEE HAS PRE-BOOKED HOLIDAY IN THE SUMMER, CAN I CLAIM FURLOUGH FUNDS TO PAY FOR IT?

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There doesn't appear to be anything in the guidance that prevents an employer from doing this, if the employee had previously been furloughed and so is eligible for the new scheme. As the new scheme removes the requirement for a 3-week minimum furlough absence, any employee taking a day or more of holiday could, in theory, be placed on furlough leave instead and the employer claim furlough funds. It should be noted that this is not the intention of the scheme so there is a small risk that rules may change to prevent claims being made in this way.