

Travel restrictions along with localised and new UK lockdowns have put paid to many people's holiday plans for the rest of 2020.

It means that your staff may have accrued considerable annual leave since the start of the pandemic in the spring. So what's your legal position if, towards the end of the year, they ask to sell some of it back to you?

Here's a quick guide to your options.

Staff carry over of holiday

In March, the government amended the laws on holiday entitlement (Working Time Regulations 1998) (WTR) to help workers and employers through this very difficult year.

It provides that if it is 'not reasonably practicable' for workers to take some or all of their leave 'as a result of the effects of coronavirus (including on the worker, the employer, or the wider economy or society)' they can carry up to four weeks of unused leave into the following two holiday years. This does not apply to the additional 1.6 weeks but it can still be carried over by agreement.

Sell back of holiday alternative

Maybe you have staff who have been allowed to buy additional annual leave? Or even if they haven't, would like to 'sell back' some of their surplus untaken annual leave to you?

They benefit from the extra funds. You potentially benefit from having them working on more days in the current holiday year and not ending up short-staffed when coming up to a seasonal peak in business. However, this obviously will impact on your total wage bill.

Sell back regulations

If your staff work a five-day week they are entitled to a minimum of 5.6 weeks of paid annual leave. They cannot sell holiday entitlement that would take them below this minimum.

Regulations 13 (9) and 13A (6) WTR are clear that you can't make a payment in lieu of untaken annual leave except on termination of employment. A worker can only surrender their statutory rights through a settlement agreement.

Sell back agreement policy

A sell back arrangement only works where your workers have either enhanced contractual annual leave rights. Or they have already bought additional leave from you before the start of your current holiday year under the terms of a buying and selling policy.

Issues to consider

It's important to consider the following before initiating a sell back arrangement:

- Will you restrict sell back to only workers who have expressly bought extra days beyond their standard annual leave entitlement? Or will you allow others to sell too?
- Will you limit the amount of time you buy back to a few days or as many as exceeds the statutory minimum entitlement?
- What could this cost you in real terms if all qualifying workers apply? (Also factor in days you will allow to be sold back plus employers' NI.)

Retain the right to refuse

- Create a strong policy that sets out your terms
- Retain your right to refuse or part-refuse at your discretion. You don't want it to cost you more than you can afford
- Always act fairly and consistently to avoid any worker disputes
- Limit your agreement to the current holiday year as you're allowing these sell requests to be submitted part-way through given the exceptional times.

The sell back calculation

- Use their daily/hourly salary multiplied by the days/ hours you have agreed they can sell
- For a full-time salaried worker you'd normally calculate each day as 1/260th of salary (52 x 5 days a week = 260 days). This being the number of contracted working days in a year (pro-rata for part-timers)
- The money is subject to normal income tax and NI deductions
- Process as a one-off sum through payroll - e.g. at the end of your holiday year
- Always record the terms of the arrangement, and the worker's gross payment, in writing

Quick summary

If you only provide statutory minimum annual leave rights of 5.6 weeks annual paid leave per holiday year, you can't offer a payment in lieu of untaken holiday - except on termination of employment.

For workers with enhanced annual leave rights you don't have to agree to a sell-back arrangement. However if you do, limit it to the current holiday year and retain the right to refuse requests.

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