**Holiday Policy Addendum – June 2020**

*This addendum should be read in conjunction with the relevant policy, and it supports and works alongside the policy. All employees should make themselves aware of both the policy and the addendum. If there are any questions, employees must refer to their manager.*

*The usual company policy rules will apply.*

**New rules on annual leave and the 2020 coronavirus outbreak**   
The impact of COVID-19 may mean it is difficult for employees to take all their statutory annual leave entitlement because, for example, demand at work means that taking annual leave is not feasible.

The Working Time Regulations have been amended to give employees and workers an entitlement to carry-over up to 4 weeks of their statutory annual leave, only if, they are unable to take it because of business needs relating to coronavirus. For example:

* they’re self-isolating or are too sick to take holiday before the end of their leave year
* they’ve been temporarily sent home as there’s no work (‘laid off’ or ‘put on furlough’)
* where the employer was unable to fund the ‘top up’ from 80% pay to normal pay (100%); annual leave must be paid at normal pay when on furlough
* they’ve had to continue working and could not take paid holiday.

Annual leave can be carried over into the next two leave years after 2020. This will only apply to statutory annual leave and *only for exceptional circumstances*. Bank holidays that cannot be taken because of the above reasons are within the carry-over rules.

An employee may be entitled to carry leave over, where it has not been reasonably practicable for annual leave to be taken in the leave year due to the business effects of coronavirus.

This means that there is no automatic right to carry leave over, and employers will need to consider the ‘reasonably practicable’ element.

**Ability to take leave**  
Employers should take account of various factors when considering whether it was not reasonably practicable for an employee to take leave:

* whether the business has faced a significant increase in demand due to coronavirus, which would require the employee to continue to be at work, and cannot be met through alternative measures
* the extent to which the business’ workforce is disrupted by the coronavirus, and the options available to the business, to provide temporary cover of essential activities relating to coronavirus
* the health of the employee, and how soon they need to take a period of rest and relaxation; all annual leave should be used where possible in the same leave year to address this and help maintain the health of all employees
* the length of time remaining in the employee’s leave year, to enable the employee to take holiday within the leave year
* the extent to which the employee taking leave would impact on the wider society’s response to, and recovery from, the coronavirus situation
* the ability of the remainder of the available workforce to provide cover for the employee going on leave
* the employer was unable to fund the ‘top up’ from 80% pay to normal pay (100%). Annual leave must be paid at normal pay when on furlough.

*Employers should do everything possible to ensure that the employee is able to take as much of their leave in the year to which it relates*, to ensure health and safety, and adequate rest of the employees.

**Enforcing leave**  
Employers can require an employee to take annual leave by giving the appropriate notice i.e. twice the length of the period of leave in question. In the case of 14 days’ leave, notice would need to be at least 28 days. This may be preferable if an employee has a substantial amount of annual leave remaining before the end of the leave year.

**Carried over leave**  
Where leave is carried forward, it is best practice to give employees the opportunity to take holiday at the earliest opportunity.

Where leave is carried over, employers will only be able to reject a request to take carried over leave where they have ‘good reason’ to.

There is no requirement for employers to give employees notice of their right to carry leave over, however, it may be useful to inform employees, where appropriate, how much of their leave can be carried over and how and when it must be used by.

**Agreement**  
It is recommended to provide more flexibility. A written agreement is signed between employer and employee to permit the carry-over of statutory leave, especially where circumstances mean that employees will not be able to take their full annual leave in the current leave year. This will mean that statutory minimum annual leave can be carried over and the employer will not run the risk of failing to provide 5.6 weeks of annual leave.

Where leave is carried over, the employee will be entitled, in that leave year, to take the carried over leave in addition to leave which is accrued during that leave year. Where a substantial amount of leave is to be carried over, employers may consider putting in place arrangements for splitting the leave between the two subsequent leave years.

Carry-over of contractual leave, in excess of the statutory minimum, is down to agreement between employer and employee.

**Furlough leave**

The new guidance states that it is not likely that furloughed employees will need to carry leave over, because of the ability to take annual leave during furlough.

One exception would be, where the employer was unable to fund the ‘top up’ from 80% pay to normal pay (100%). Annual leave must be paid at normal pay when on furlough.

It is recommended to utilise/allocate the annual leave, which has accrued during any furlough period, before the end of the furlough leave, and before the employee returns back to the workplace, wherever possible.

The employer can serve notification to the employee of when the leave will be allocated, if it has not been booked, ensuring they give double the amount of notice, as the leave period.

Where an employee has agreed to a reduction to 80% pay during furlough, annual leave remains payable at normal pay when taken during furlough so employees will receive normal pay for any of the period of annual leave. This will then revert to 80% pay once the period of annual leave is over.

Please rest assured that employees will not lose any annual leave accrued in this leave year because of furlough or other circumstances related to coronavirus. As time passes, we will assess the position with regard to the taking of annual leave and if circumstances mean that we are unable to authorise the taking of all of the remaining annual leave by the end of the leave year, the employee will be permitted to carry it over. The employee’s manager will discuss carry-over with them should it become necessary.

**International travel**  
Some employees may have plans to travel over the summer months. Provided their flights etc. have not been cancelled and no other airport restrictions apply (meaning they can still travel), employers may have concerns over the risk the individual poses to picking up the virus and potentially passing it on in the workplace.

Ultimately, employers cannot restrict what their employees do in their spare time and whether they travel or not is their decision. Employers can cancel annual leave that has already been requested and authorised.

**Duty of care**

It is highly advisable for employers to remind their workforce that, under the Health and Safety at Work Act, they also have a duty of care towards themselves and others whilst at work and, as such, should strongly consider the risks associated with travelling. They should also be reminded of the latest government guidance surrounding self-isolation upon return and eligibility rules for Statutory Sick Pay.

**Avoid non-essential international travel**You should not travel abroad unless it is essential. The government are monitoring the international situation very closely and keeping this advice under continuous review so that it reflects the latest assessment of risks to British people.

## Self-isolate when you travel to the UK

From 8 June 2020, a 14-day quarantine period will apply to people arriving from overseas into the UK. This includes British nationals and those who live in the UK, who will need to self-isolate for the 14-day period before going out or returning to work(known as ‘self-isolating’).

This is because it can take up to 14 days for coronavirus symptoms to appear.

Perhaps the most significant practical effect of this is the fact that employees who have travelled abroad on holiday will need to self-isolate for 14 days on their return.

*This will potentially turn one week of annual leave into a period of three weeks’ absence; two weeks of annual leave into four weeks’ absence etc.*

This will become an increasingly common issue as more relaxation on overseas travel is implemented.

**Before travel**

Before you travel, you should provide your journey, contact details and the address where you will self-isolate to your employer, and you will be able to [*complete the public health passenger locator form*](https://www.gov.uk/provide-journey-contact-details-before-travel-uk) 48 hours before you arrive. You must present these details on your arrival in England.

*You should check the* [*latest public health advice on coronavirus*](https://www.gov.uk/coronavirus) *before you travel.*

*The Foreign and Commonwealth Office advises against all but essential travel and you should not travel if you have the* [*symptoms of coronavirus.*](https://www.nhs.uk/conditions/coronavirus-covid-19/check-if-you-have-coronavirus-symptoms/)

**After travel**  
In England, if you do not self-isolate, you can be fined £1,000. If you do not provide an accurate contact detail declaration – or do not update your contact detail form in the limited circumstances where you need to move to another place to self-isolate – you can be fined up to £3,200.

Please see:

<https://www.gov.uk/government/publications/coronavirus-covid-19-how-to-self-isolate-when-you-travel-to-the-uk/coronavirus-covid-19-how-to-self-isolate-when-you-travel-to-the-uk>

**Exemptions**  
There are some exemptions to the requirement, including:

* travellers from Ireland, Isle of Man and Channel Islands
* people who live in the UK but work in another country and travel between the UK and country of work at least once a week
* people who live outside the UK but work in the UK and travel between their country of residence and the UK at least once a week
* drivers of goods vehicles or public service vehicles and other employees of community licence holders for the international carriage of goods or passengers by coach and bus
* employees engaged in essential or emergency works to the rail network as part of a specialist team with or for Network Rail
* seasonal agricultural employees who have an offer of employment for seasonal work to carry out specific activities in edible horticulture on a named farm
* registered health or care professionals travelling to the UK to provide essential healthcare, including where this is not related to coronavirus.

A full list of exempted employees is available on the government website.

In most cases relating to work, individuals relying on an exemption will need a letter from their employer including information on what work they will be doing and providing the employer’s contact details.

**Annual leave requests and payments**  
When an annual leave request is received, employers should:

* identify whether the employee intends to travel overseas
  + if so, check whether any of the exemptions apply (notably, those returning from Ireland, Isle of Man and any of the Channel Islands do not need to self-isolate on their return)
  + if not, ensure the employee understands that they will need to self-isolate on their return
* consider whether, in light of the self-isolation period, it is possible to accommodate the additional absence
  + if not, employers may choose to refuse the annual leave request
  + when deciding whether the absence can be accommodated, consider whether the employee can work from home for the self-isolation period
  + if the absence can be accommodated, consider how it will be covered.

Employers may attempt to agree an additional period of annual leave that will be used to cover either all of the period, or some of it.

Employers can require an employee to take annual leave by giving the appropriate notice i.e. twice the length of the period of leave in question. In the case of a full 14-day self-isolation period, notice would need to be at least 28 days. This may be preferable if an employee has a substantial amount of annual leave remaining before the end of the leave year.

If no alternative arrangements are made, it is likely that the employee *will not* be entitled to statutory sick pay (SSP) in line with payment rules for all other periods of self-isolation, therefore the 14-day period maybe unpaid.

**Calculating holiday pay**  
Regularly paid, voluntary overtime to be included in holiday pay  
Legislation has been confirmed regarding including voluntary overtime payments in holiday pay – it was confirmed that voluntary overtime, which is ‘sufficiently regular and settled and paid’ will be classed as normal remuneration, so should be taken into account for holiday pay calculations.

Whether voluntary overtime is sufficiently regular and settled will be a question that is determined on the facts of each case.

Changes to holiday pay calculations from April 2020  
Legislation was introduced to increase the holiday pay calculation reference period. On 6 April 2020, the reference period was extended from 12 weeks to 52 weeks, to allow a fairer approach to holiday pay when employees carry out flexible working hours or regular variable pay.