

Annual Leave Considerations and Travel Abroad

While there has been much debate on the production of a 'Green List' of countries and territories where individuals can travel from and enter Ireland without having to restrict their movements, the Government has this week published the 'green list'. Fifteen countries and territories feature on the list, which is intended to be updated every two weeks.

Notwithstanding the publication of this list the government advice remains that all non-essential overseas travel to and from Ireland is not advised, but with the green list now effective employers in the Community and Voluntary Sector are in the precarious position of deciding how to deal with the aftermath of potential international travel and an employee's statutory right to annual leave.

Under the Organisation of Working Time Act, 1997 all employees, whether they are full-time, part-time, temporary or casual, earn annual leave entitlements from the time they start work. However, under section 20 of the Act the employer can determine the timing of an employee's annual leave, taking into consideration work and personal requirements and consulting with the employee or the relevant union one month in advance of the leave commencing.

In the current environment dealing with annual leave requests and anticipating the impact on organisations in the Community and Voluntary Sector, should travel outside green list territories become a reality, means that employers must approach this once simple HR matter in a pragmatic and compliant way. Below are a number of frequently asked questions that will assist employers with this now complex area.

1. Can an employer stop an employee taking annual leave at the moment?

Under the Organisation of Working Time Act, 1997 all employees accrue rights to annual leave from commencement of employment. However, an employer may determine when annual leave is taken, ensuring consideration is given to the employees need for rest and recreation, and to reconcile their work and family responsibilities. Employers should check any policies referencing the taking of annual leave that may be contained within their employee handbook or a contractual arrangement that may be contained with the employee's statement of terms and conditions, indicating a period of time when leave can be taken.

Notwithstanding the above, an employer must have a genuine objective justification to refuse annual leave which may include the impact of the timing of the annual leave on the continuity of business in that situation, and it would be best practice to suggest another more appropriate time if this situation arose.

2. Can an Employer stop an employee going abroad during a period of authorised annual leave?

It is not possible to restrict an employee's movement through travel abroad, but all employers should communicate clearly the necessity to comply with government guidelines relating to non-essential travel and visiting countries that are not on the 'green list'.

3. Can an Employer refuse an employee's return to work following a period of time spent abroad in a "green list" country?

Where an Employee is travelling from a green list country/ territory and completes a self-declaration form to that effect, as well declaring they do not have symptoms of the virus, have not been diagnosed with the virus, have not been in contact with anyone with the virus and is not required to restrict their movements, (all within the previous 14 days), then an employer is not in a position to refuse to allow their return to work as a result of their annual leave.

4. Can an employer refuse a request of annual leave if an employee has advised they intend going abroad to a country that is not on the "green list"?

In this situation an employer can advise an employee that they must restrict their movements for 14 days upon their return to Ireland and that the period of restricted movement is unpaid or must be treated as unpaid leave, certified sick leave (if certified by a medical Doctor) or that annual leave can be taken.

Under the legislation an employer can determine when annual leave is taken but this should coincide with a true business need for the time requested, rather than a refusal to grant annual leave as the employee is intending to travel to a non-green list country.

5. Are there steps an employer should take upon an employee's return to work following a period of annual leave?

From a practical approach as well as ensuring health and safety of all employees, an employer should aim to provide an Annual Leave Self-Declaration form to complete. This should cover all questions put in the Return to Work form (under the Return to Work Protocols) as well as confirmation on whether or not travel to a green list/ non green list country has taken place.

6. Can an employee go abroad during annual leave and fly back into Northern Ireland to avoid a period of restricted movement?

While an employee could technically seek to enter Ireland through Northern Ireland, to avoid the requirement to restrict their movements, it would be prudent for employers to ensure that all employees are aware of the government guidelines regarding travelling to countries not on the green list.

It is also important that employers ensure the health and safety of all employees (and customers) on site and confirm (through a self-declaration form or otherwise) that the returning employee is compliant with government guidelines and is not symptomatic of the virus, has not been diagnosed/ tested for the virus and is not considered a close contact within the previous 14 days.

7. Must an employer allow an employee to work from home during a period of 'restricted movement' following a period of annual leave (abroad)?

There is no requirement to permit an employee to work remotely while on a period of restricted movement. However, an Organisational approach should be taken to ensure that each employee is treated in a uniform manner, to mitigate against any employment or equality issues arising.

8. Do I have to pay an employee if they have to restrict their movements following a period of annual leave (abroad)?

There is no obligation on an employer to pay for a period of restricted movement following travel abroad unless arrangements have been put in place to permit the employee to work remotely for the period of time where an employee has to restrict their movements in line with government advices. Outside any form of leave permitted, an employee must be available for work.

It is important for employers to communicate the approach that will be taken in these circumstances, such as treating the period of restricted movement as a period of unpaid leave, annual leave or certified sick leave.

9. Will an employee be considered to be on sick leave during a period of restricted movement following a period of annual leave (abroad)? If so, are they entitled to sick pay (where applicable)?

Only where an employee is certified by a medical practitioner to be on a period of certified absence or any other medical reasoning following travel abroad, would the period of absence be considered certified sick leave. In terms of pay, the provisions of an Organisations sick leave policy will dictate whether or not the period is treated as paid sick leave. Where no payment is made by the Organisation, but the absence is considered a period of certified sick leave then the Employee should apply for the Covid-19 illness benefit from the State.

10. Do I need to amend my sick leave/pay policy to capture the above?

Reference to the requirement to restricted movement being considered as certified absence could be included in the sick leave pay policy but only where certified absence applies in those circumstance.

Disclaimer – The information in this section is provided for reference purposes only to assist Employers with the government protocols, and guidance and must be read in that context and should not be used for or interpreted as a legal definition of any of the information provided. Professional advice should always be sought before making any such decisions.

**For further information or advice, please contact the designated HR & Employment Helpdesk at thewheelhrhelpdesk@adarehrm.ie or via telephone on (01) 5394661
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