

Annual Leave Considerations

It is not uncommon, in particular because of the current health crisis, for a number of employees to still have a considerable amount of untaken annual leave. However, it is incumbent on the employer to ensure that this leave is taken insofar as possible. This has become even more important where employees are working remotely and have expressed concern over their right to disconnect. As we know there are currently two member Bills before an Dáil which are seeking to protect the right to disconnect. Even in terms of health and wellbeing employers should consider their duty of care to maintain the health, safety and welfare of all employees and a means of doing this is to encourage availing of annual leave.

As we approach year end employers should consider the outstanding annual leave balance employees might have to date, as well as the Organisations policy on the carry-over of annual leave into the following year.

Under the provisions of the Organisation of Working Time Act, 1997 an employee is entitled to one of the following, whichever is greater:

- Four working weeks in a leave year in which he or she works at least 1,365 hours.
- One third of a working week for each month in a leave year in which he or she works at least 117 hours, or
- 8% of the hours he or she works in a leave year (but subject to a maximum of four working weeks).

Where it becomes apparent that Employees have not taken their leave or have a considerable amount of leave yet to be booked and/or taken, it is recommended that the Employer writes to the Employee(s) to confirm that they should avail of their leave and even offer dates when it will be possible to take time off.

Some Organisations may have a Policy in place which stipulates that a specific number of annual leave days can be carried into the following leave year, however if not, the Organisation of Working Time Act, 1997 does still include a provision where an Employee is unable to avail of their statutory annual leave during the leave year, the Employer is obliged to allow the Employee to carry over their leave and take it during the first six months of the following leave year.

As an Employer, if you have reminded Employees of their annual leave and that they should book / avail of this leave before year end, but still fail to do so, section 20(1)(b) of the Organisation of Working Time Act, 1997 permits an Employer to assign annual leave to Employee(s) with at least 1 months' notice of same. However, Employees and/or trade union representatives should be fully consulted at first.

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