

Effectively managing annual leave requests during lockdown

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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. It is recommended that employers communicate with employees about taking annual leave. It is also worth reminding employees of the terms of the annual leave policy, particularly if there are restrictions in carrying over any unused leave.

In the current environment dealing with annual leave requests and anticipating the impact on organisations in the Community and Voluntary Sector, means that employers must approach this once simple HR matter in a pragmatic and compliant way. And the announcement earlier this week relating to the reopening of indoor service, as well as indoor activities such as training and exercise being delayed, has caused some controversy particularly given we are in peak holiday season, and we are being actively encouraged to staycation this summer.

On the back of the announcement, many in the service industry have announced numerous cancellations. But what's not clear is if individuals are cancelling their annual leave until later in the year or if they are simply deciding to stay at home. If they are cancelling or postponing their leave, how does this impact employers? And, what other issues are there impacting on annual leave for those in the non-profit and charity sectors? To help provide some clarity, we have answered a number of questions below.

Are all my employees entitled to annual leave? Yes, all employees, regardless of the sector in which they work if they are full-time, part-time, temporary or casual, are entitled to annual leave under the Organisation of Working Time Act, 1997.

Can I tell my employees when they can take their annual leave? Under the Act, an employer can determine the timing of an employee's annual leave under certain conditions. They must provide one month's notice to the employee, take into consideration the requirements of the organisation as well as the health and wellbeing of the employee in terms of rest and recreation.

One of my employees has decided to travel abroad on their annual leave. Can I stop them or retract their leave? No – however, employers can encourage their employees to comply with public health advice in terms of travelling outside the country, but employers cannot retract the request based on where the employee is going on their annual leave.

I want to reopen my business (e.g. charity shop) but my employee wants to take annual leave, can I refuse? While employees are entitled to take annual leave, employers have the discretion to refuse the request or cancel annual leave. While every employer wants to be as accommodating

as possible to employees' annual leave requests, if you want them to be available for work you can request that they take annual leave at a later date.

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.

Can I impose restrictions on my employees if they return from a holiday abroad? The government advice is that any individual should only travel outside Ireland (including to Northern Ireland) if they have an essential reason for doing so. If an employee advises they are travelling abroad and it involves travel to a region which may translate to certain restriction upon their return, then agreement should be reached on how this additional restricted time is to be treated in advance of travel.

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.

What if an employee gets Covid-19 while on annual leave, what should I do? If an employee shows any of the symptoms of Covid-19, they should in the first instance contact their GP. They should also contact their employer to explain the situation and not return to work for 14 days after they first experienced symptoms and in accordance with medical advice.

Employees are entitled to sick pay if it is in their terms and conditions of employment. If the employer does not provide sick pay, employees should apply for the Covid-19 Enhanced Illness Benefit.

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.

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.

Can I ask my employees to take annual leave as they may have accrued additional leave from last year? Yes, an employer can request that annual leave is taken but this should be done in consultation with the employees and in consideration of the organisation's needs as well as providing at least one month's notice of this request.

One of my employees was out of work due to Covid-19 earlier this year. Did they accrue holidays during this time? Employees continue to accrue holidays while out of work on certified sick leave or any other statutory leave, such as maternity or parental leave.

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