

## **Considerations for managing employees' annual leave**

As we enter the closing months of 2021, many employers will find that some employees still have not taken their full annual leave entitlement. In fact, some may still be carrying leave from 2020 given the ongoing health crisis. But how can those in the non-profit sector best manage a situation where employees have not taken their annual leave.

It's worth noting that taking annual leave is important for the health and wellbeing of the employee. It gives them an opportunity to relax and recharge, helping their overall focus and productivity.

Given the restrictions that have been in place for the past 18 months, it isn't surprising to find that employees have not taken their full annual leave and now find themselves in a situation where they are carrying leave. Not all organisations in the non-profit sector allow the carrying of annual leave given it can be difficult and disruptive if not correctly managed.

### **Annual leave entitlements in Ireland**

All Irish employees, regardless of being full-time, part-time, temporary or casual or the sector in which they work, are entitled to annual leave under the Organisation of Working Time Act, 1997. Under the Act, the employer can determine the timing of an employee's annual leave, providing the required one month's notice, taking into consideration the requirements of the organisation and the health and wellbeing of the employee in terms of rest and recreation.

There are a number of ways in which to calculate annual leave: if an employee has worked at least 1,365 hours in a leave year, they are entitled to the maximum of 4 working weeks' paid annual leave. Alternatively, calculate third of a working week for each calendar month in which the employee has worked at least 117 hours. Or, calculate 8% of the hours the employee has worked in the leave year, subject to a maximum of 4 working weeks.

The above is the minimum annual leave entitlement. In many instances, an employer will grant additional annual leave and this should be stated in the Terms and Conditions of Employment.

### **Lay off or short-time**

Employees who have been laid off during Covid-19 continue to accrue public holidays during the first 13 weeks on lay off. Employees do not accrue annual leave while laid off. For short time, employees must have worked a minimum of 40 hours in the five weeks prior to the public holiday for an entitlement and accrue annual leave pro-rata.

### **Remote working**

Employees still accrue annual leave in the same way once they are working their normal hours, regardless of where they are working from. It's worth noting that if your Organisation received any employment support from Government, employees were/ are still working and therefore accrue public holidays as normal and are entitled to their statutory annual leave based on the hours worked.

### **Forcing or refusing holiday requests**

If it becomes apparent that an employee has not taken their leave or have a considerable amount of leave yet to be booked and/or taken, we recommend the employer communicates with the employee to confirm that they should avail of their leave and even offer dates when it will be possible to take time off.

If the employer has communicated with the employees of their annual leave and that they should 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 the employer to assign annual leave to employee with at least one month's notice of same. However, we always advise that employers show some flexibility and work with the employee to find suitable dates to take leave.

Employers can also refuse annual leave requests, and in some instances cancel annual leave, but we recommend that this is a last resort. Again, being flexible is the best approach and employers should take family responsibilities, the employee's health and wellbeing in terms of rest and recuperation before refusing or cancelling leave.

If employers find that a number of employees have not yet taken their annual leave, it's important to remind employees of the terms of the annual leave policy, particularly if there are restrictions in carrying over unused leave. Under the current circumstances, employers may well be advised to show some flexibility in helping employees take leave before year end.