

Blake Laphorn Tarlo Lyons' nursery and childcare news

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oh, it's a jolly holiday!

New rights for workers to "additional annual leave" take effect on 1 October. These are in addition to the current basic four-week minimum entitlement.

There are two phases of implementation for these amended Working Time Regulations (1998). Phase I gives an extra 0.8 week's holiday, resulting in 24 days' paid holiday for a full-time worker. Phase II (April 2009) provides for 1.6 week's additional holiday, resulting in 28 days' statutory paid leave. Part time staff are entitled to the pro-rata equivalent even if they do not normally work on days where bank holidays fall. For new starters, fractional leave days will not need to be rounded up for the first year of employment.

If you already provide 20 days' paid holiday plus eight days' paid public and bank holidays to all workers, including the pro-rata equivalent for part-time staff, you are unlikely to be affected. There is a technicality which may apply if the holiday year runs from April to March and Easter happens to fall late one year and early another. However, in most cases this is unlikely to apply.

You cannot make payments in lieu of the current minimum entitlement of four weeks' paid leave and it cannot be carried over into the next holiday year. It must be taken as holiday. However, until 1 April 2009 (as a transitional measure), you may make payment in lieu of the additional four days entitlement. Therefore, employers who "buy out" leave above four weeks (eg someone is required to work on a bank holiday) may still do so until that date as long as both worker and employer agree. In addition, if both worker and employer agree, the additional amount of leave may be carried over once into the next holiday year.

Leave which goes beyond the new additional entitlement is not subject to these restrictions. A holiday entitlement ready-reckoner appears on the DBERR website (formerly the DTI) visit www.dti.gov.uk/employment/holidays/page40455.html

Employers who have complied with certain conditions by 1 October can avoid the legislation applying to them. However, these conditions are stringent and complying with them seems to give harsher results than simply complying with the legislation.

action points

- Ensure all part-timers are given the new entitlement pro-rata, regardless of whether they normally work on the days bank holidays fall
- Inform workers in writing of any changes
- Review contracts and handbooks to ensure that provisions relating to holiday are brought into line with the new statutory entitlement
- Check the wording of contracts and handbooks to ensure that they are still appropriate. For example, a clause which states "You are entitled to paid public and bank holidays in addition to your statutory annual leave entitlement" would have the effect of giving the worker the new statutory entitlement of up to 28 days, plus eight days' public and bank holidays



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