



PAID ANNUAL LEAVE

- The Government has confirmed that it will press ahead with plans to increase the statutory paid leave entitlement from 4 weeks to 5.6 weeks from **October 2007**. The changes are designed to take account of the bank holidays. Under current rules, employers are able to include bank holidays within a workers statutory leave entitlement, regardless of whether these are taken as leave or not. The trade unions have successfully argued that this effectively reduces a workers' entitlement.
- The Government has already consulted on these proposed changes and has now agreed the change in principle. It is now in the process of refining the detailed rules governing the entitlement to leave and how it will work in practice, but employers are advised to start planning now to budget for the increase in employment costs later this year.

The Law

- Currently, under the Working Time Regulations, all workers are entitled to statutory minimum annual paid leave of 4 weeks. This is calculated on a pro-rata basis according to the number of days worked in an average week. The leave year runs from January to December and employees are not permitted to carry over unused statutory leave, nor are employers able to offer payment in lieu of the statutory minimum.
- Different rules can apply to leave offered over and above the statutory minimum. Those workers who already offer 5.6 (28 days) leave – typically by offering 4 weeks leave plus bank holidays - from 1 October 2007 will be removed from the scope of the legislation and will be able to continue with any existing arrangements eg carrying over.
- The Government will amend the regulations to increase the statutory entitlement to 4.8 weeks from 1 October 2007, and to 5.6 weeks from April 2009. The new entitlement would be extended to all workers, regardless of length of service. The calculation of the holiday will be on a pro-rata basis for part-time workers (4.8 then 5.6 times their usual working week), regardless of whether or not they usually work on bank holidays.
- As the increases will be introduced mid way through a leave year, they will be awarded proportionally for the remainder of that year ie an extra day will be awarded to full time workers to take account of additional leave entitlement from October-December 2007 depending on when your leave year starts.
- Although the changes are being introduced to take account of bank holiday entitlements, there is no requirement to allow paid holiday to be taken on a bank or public holiday or to offer additional pay for working bank holidays. These will remain contractual matters to be negotiated individually between employers and their staff. As at present, staff will be required to give notice of their wish to take holiday and an employer has the right to refuse, postpone or require leave to be taken at a specific time.
- Workers would be able to carry forward any unused portion of this additional leave to the next leave year. However, this right would only apply to the new additional leave being granted ie you could only carry forward a maximum of 0.8 and then 1.6 weeks a year and then only if the employer agrees to allow this to happen.
- At present, employers are not able to offer payment in lieu of unused leave, except on termination of employment. To ease the cost of transition, employers will be able to 'buy



out' the additional 0.8 days leave until April 2009.

Implications for Licensed Retailers

- The changes will have greatest impact on those who currently include bank holidays within the calculation of 20 days annual leave. The proposals will result in increased cost of recruiting extra staff to cover holiday periods as well as the loss of key staff on holiday periods. A survey conducted by the *ALMR* suggested that increasing leave entitlement in this way would add between 4-6 percentage points to the wages bill. The changes will also be introduced at the same time as NMW increases.
- Companies who currently offer 20 days plus bank holidays will not be directly affected by the new provisions – unless they require staff to take bank holidays as leave - since they will already be providing a minimum of 28 days leave. In addition, staff who are currently entitled to 28 days leave will not be affected. These companies and staff will be taken outside the scope of the new regulations and will not be subject to the restrictions.
- However, it would be advisable to carefully check the wording of contracts of employment. Many contracts will refer to a specific number of days entitlement and this may need to be amended. In addition, some contracts will not make clear whether this leave is inclusive or exclusive of bank holidays.
- It is recommended that contracts be revised to make them future proof – ie to avoid having to redraft every time the statutory minimum is increased - and that entitlement to leave is referred to in terms of the statutory minimum plus any additional entitlement offered by the company. In addition, it would be advisable to clarify that this includes bank holidays to avoid opening the company up to a situation where an individual assumes they are entitled to bank holidays on top of their statutory entitlement.
- For example, a current contract may state an entitlement to 20 days plus bank holidays. A redrafted contract which refers to the statutory leave provision, inclusive of bank holidays, would mean that the company need not do anything to comply with the changes. If left unamended, the contract would see the individual entitled to 36 days' leave.
- Companies must bear in mind that contracts cannot be changed unilaterally, but must be done in negotiation and with the agreement of staff. Discuss amendments with your advisers.

**KN
Ealing
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