

Can I limit employees' holidays following lockdown?

It will be difficult for the company to allow employees to take all of their holiday entitlement this year as we are so busy following lockdown. What are my options for managing holiday?

In relation to contractual holiday entitlement, holiday should be taken at a time ultimately determined by the employer, as the employee is obliged to obey reasonable and lawful orders from their employer. However, the employer will also be subject to an implied term not to act in a manner which is calculated to destroy or seriously damage the relationship of trust and confidence between employer and employee. This may mean e.g. that the employer must not unreasonably refuse an employee's request to take holiday, or unreasonably direct an employee to take holiday when they do not want to do so. An employer should also bear in mind its legal duties in relation to the health, safety and welfare at work of their employees. The right to take time off from work for holidays benefits both employers and workers by allowing workers a period of relaxation and recuperation. This may be an important consideration for employers seeking to direct an employee to take their accrued holiday entitlement.

The notice requirements for taking holiday are as follows:-

- An employee may elect to take holiday, by giving at least twice as many days' notice in advance of the intended holiday period as the length of the intended holiday, e.g. an employee who wishes to take one week's holiday must give at least two weeks' notice of their intention to take that holiday.
- Similarly, an employer may require the employee to take holiday on particular days, again by giving at least twice as many days' notice in advance of the intended holiday period as the length of the intended holiday.
- An employer may require the employee not to take holiday on particular days by giving at least as many days' notice in advance of the intended holiday period as the length of the intended holiday.

The government and ACAS have set out guidance for taking holiday during Covid-19. Please see the links below:-

<https://www.gov.uk/guidance/holiday-entitlement-and-pay-during-coronavirus-covid-19#taking-holiday>

<https://www.acas.org.uk/coronavirus/using-holiday>

Employees can book and take holiday during furlough although an employer is required to top up furlough pay to 100% during any period taken as holiday.

Changes to the rules governing the carrying forward, or carrying over, of holiday entitlement have been introduced to give employers more flexibility to manage statutory holiday obligations and staffing requirements during the coronavirus pandemic and allow employees to carry forward up to four weeks' basic holiday entitlement (excluding the 1.6 weeks additional holiday entitlement) into the next two leave years if they have been prevented from taking their holiday because of coronavirus.

Reasons for a worker not taking holiday because of coronavirus might include:

- where the worker is self-isolating or too sick to take holiday before the end of their leave year, or
- where the worker has had to continue working and could not take paid holiday

Don't forget, this advice is general in nature and will need to be tailored to any one particular situation. As an RMI member you have access to the RMI Legal advice line, as well as a number of industry experts for your assistance. Should you find yourself in the situation above, contact us at any stage for advice and assistance as appropriate.