

Coronavirus and annual leave

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Regulations have now been published allowing employees to carry forward 4 weeks of their statutory annual leave entitlement. The circumstances in which such leave can be carried forward are limited – it can only be carried forward where it is “not reasonably practicable” for the employee to take that leave as a result of the effects of coronavirus (including on the worker, the employer or the wider economy or society). Any carried forward leave must be used in the next two leave years. Payment in lieu cannot be made for this holiday, except where employment terminates.

An additional restriction has also been introduced on employers who wish to use their existing ability under the Working Time Regulations 1998 to “block” leave being taken at particular times (assuming there is no contrary “relevant agreement” in force). This can now only be exercised where the employer has “a good reason” for doing so. What will or will not amount to a good reason is unclear as the term is undefined. However, in circumstances where exercising this right would prevent an employee from taking their statutory leave in the relevant leave year, this “good reason” is likely to be examined more closely.

These limits are an attempt to balance the importance of employees being able to take regular leave, and the extraordinary circumstances we are now in which may require uninterrupted continuity for certain key industries such as healthcare and food. It is an acknowledgement that the employees involved in such efforts should not be penalised by losing a large part of their statutory holiday as a result. However, the wording wouldn’t cover employees who simply don’t wish to take leave now because they can’t travel to their holiday destination of choice or carry out the activities that they wish to – it would still be reasonably practicable for them to take this leave - and nor would it allow the carry forward of this statutory leave for reasons unrelated to the effects of coronavirus.

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