

Holidays during COVID-19

Q&A for Employers

On 13 May 2020 the Government published new [guidance](#) around holiday entitlement and pay during coronavirus. It confirms what we had suspected all along (collective sigh of relief), bringing welcome news for employers and employees.

<p>Q: Does an employee accrue holiday during furlough?</p>	<p>A: Yes. Employees continue to accrue the statutory minimum holiday of 5.6 weeks per year. If an employer provides contractual holiday over and above the statutory minimum, this also continues to accrue.</p>								
<p>Q: Can employees take holiday during furlough?</p>	<p>A: Yes, and it won't affect their period of furlough. You can continue to claim for their wage cost in accordance with the scheme.</p>								
<p>Q: What must employees be paid if they take holiday during furlough?</p>	<p>A: Employees must not be financially disadvantaged by taking holiday, so whether they are on furlough or not, they must receive their normal pay in respect of holiday. Employees (including workers) are entitled to be paid during statutory holiday at a rate of a week's pay for each week of leave. A week's pay is calculated depending on the employee's working pattern:</p> <table border="1" data-bbox="539 954 1325 1450"> <thead> <tr> <th data-bbox="539 954 932 1006">Working Pattern</th> <th data-bbox="932 954 1325 1006">Calculating a week's pay</th> </tr> </thead> <tbody> <tr> <td data-bbox="539 1006 932 1103">Fixed hours and fixed pay (full- or part-time)</td> <td data-bbox="932 1006 1325 1103">A worker's pay for a week</td> </tr> <tr> <td data-bbox="539 1103 932 1296">Shift work with fixed hours (full- or part-time)</td> <td data-bbox="932 1103 1325 1296">The average number of weekly fixed hours a worker has worked in the previous 52 weeks, at their average hourly rate</td> </tr> <tr> <td data-bbox="539 1296 932 1450">No fixed hours (casual work, including zero-hours contracts)</td> <td data-bbox="932 1296 1325 1450">A worker's average pay from the previous 52 weeks (only counting weeks in which they were paid)</td> </tr> </tbody> </table> <p>Although not entirely clear, even with the new guidance, it would be safest when carrying out the above calculations to ignore any weeks where the employee was on furlough earning lower pay.</p> <p>Holiday taken during furlough should therefore be topped up by the employer to the employee's full, normal earnings.</p>	Working Pattern	Calculating a week's pay	Fixed hours and fixed pay (full- or part-time)	A worker's pay for a week	Shift work with fixed hours (full- or part-time)	The average number of weekly fixed hours a worker has worked in the previous 52 weeks, at their average hourly rate	No fixed hours (casual work, including zero-hours contracts)	A worker's average pay from the previous 52 weeks (only counting weeks in which they were paid)
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<p>Q: Can I require employees to take holiday during furlough?</p>	<p>A: Yes. Employers can require employees to take their holiday during furlough by giving them twice the amount of notice as the holiday they are required to take, e.g. 4 days’ notice to take 2 days’ holiday, and specifying the days they are required to take that holiday.</p> <p>However, the new government holiday guidance also states that employers should consider whether any restrictions as a result of COVID-19 might stop the individual from resting, relaxing and enjoying leisure time, which is the fundamental purpose of holiday. This nugget pushes the overall guidance nearer the fence. Can you require employees to take their holiday or not?</p> <p>This wording is likely there to prevent abuse – in the majority of cases it is going to be acceptable to require employees to take at least some of their holiday during furlough. If they are severely restricted during this time however, for example if the Covid Alert Level is increased and lockdown restrictions tightened, there may be pushback from employees and if so you should consider this on a case by case basis.</p>
<p>Q: Can I stop employees from taking holiday at a particular time?</p>	<p>A: Many employers will be facing what feels like a contradiction – on one hand having to furlough some of its workforce given huge financial pressures, but on the other hand still having a significant amount of work to manage on a reduced headcount.</p> <p>You may not want those still working to take holiday at the moment. It is possible to cancel booked holiday by giving appropriate notice (or with the employee’s agreement). The notice to cancel is equal to the length of the holiday booked, and it must be given in advance of the first day of the holiday.</p> <p>For example, to cancel 2 days’ holiday, 2 days advance notice must be given.</p>
<p>Q: Is there a maximum amount of holiday that I can require an employee to take during furlough?</p>	<p>A: No. Subject to issuing the correct amount of notice (twice the amount of holiday to be taken) you can require employees to take as much holiday as you would like them to up to their full allowance. This could be necessary where, for example, you may need to make redundancies and don’t want to be faced with large costs for paying holiday in lieu. Conversely, when your business operations start getting back to normal you will not want all of your employees taking holiday or carrying that over to the next holiday year.</p>

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<p>Q: I want to assign holiday to my employees' period of furlough leave, but I cannot afford to top up to 100% of their normal earnings. What could happen if I only pay them at the furlough rate?</p>	<p>A: Employees will be able to bring an employment tribunal claim for the shortfall in pay. Although it seems unlikely in the current climate, in theory such a practice could also potentially lead to resignations and claims for constructive unfair dismissal where an employee has the required 2 years' service.</p> <p>The new government guidance on holidays during coronavirus states that if employers cannot fund the difference, they should be carrying forward that holiday for the employee to take at a later date. This will clearly not help a business who may end up having to make redundancies, and will then have to fund 100% of the cost of holiday pay in lieu.</p>
<p>Q: An employee wants me to assign holiday during furlough because they know their pay should be topped up to their normal earnings and this may help them financially. I cannot afford to pay the top up. Can I decline their request?</p>	<p>A: Yes. You can decline the employee's request. Any accrued, untaken holiday can be used elsewhere in the holiday year or forwarded.</p>
<p>Q: I'm worried that our employees won't be able to take holiday before the end of the holiday year. What can I do?</p>	<p>A: Employers are required to ensure that employees can take at least their first 4 weeks of holiday each year where practicable. It has always been the case that the additional 1.6 weeks of statutory holiday can be carried forward into the next leave year if agreed in writing with the employee.</p> <p>For employees where it has not been "reasonably practicable" for them to take some or all of their first 4 weeks of statutory holiday entitlement by the end of 2020, due to the impact of Coronavirus, are now permitted to carry it over into the next 2 leave years.</p> <p>Whether it has been "reasonably practicable" for employees to take all of their holiday will depend on various factors, with the government guidance giving the following examples:</p> <ul style="list-style-type: none">• whether the business has faced a significant increase in demand due to coronavirus that would reasonably require the worker to continue to be at work and cannot be met through alternative practical measures <p><i>Continued on next page</i></p>

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<p>Q: I'm worried that our employees won't be able to take holiday before the end of the holiday year. What can I do? (Continued)</p>	<p>A: Continued</p> <ul style="list-style-type: none">• the extent to which the business' workforce is disrupted by the coronavirus and the practical options available to the business to provide temporary cover of essential activities• the health of the worker and how soon they need to take a period of rest and relaxation• the length of time remaining in the worker's leave year, to enable the worker to take holiday at a later date within the leave year• the extent to which the worker taking leave would impact on wider society's response to, and recovery from, the coronavirus situation• the ability of the remainder of the available workforce to provide cover for the worker going on leave
<p>Q: Can I pay holiday in lieu of the employee taking holiday?</p>	<p>A: No, not in respect of the statutory minimum holiday of 5.6 weeks, this can only be paid in lieu on termination of employment. You can however make arrangements to pay employees in lieu of contractual holiday entitlement above the 5.6 weeks</p>

Free resources to help your business

In light of the current crisis, we have made our Primed online knowledge system available free of charge. As well as providing you with all the policies, guidance and risk assessments you'll need to get back to the workplace, you'll have access to the latest furlough information and templates as well as hundreds of documents, policies and guidance covering employment law & HR, health & safety and information security.

Access your free support by [clicking here](#).
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