

More holidays may be good news for employees, but it will require some closer inspection from employers to ensure they are aware of the detail.

The Working Time Regulations 1998 currently entitle workers to 4 weeks' paid annual leave in each leave year. A worker who normally works 5 days per week will therefore be entitled to $5 \times 4 = 20$ days' paid annual leave.

An initial consultation was conducted by the Government in June-September 2006, with a view to increasing the statutory minimum annual holiday entitlement for a full-time worker from 20 to 28 days, to reflect the number of permanent public holidays. On the basis of the responses to the initial consultation, the Government launched a further consultation this year and sought views on the draft regulations. As a result of the last round of consultation, further changes have been proposed and in early July 2007, Parliament is expected to approve legislation increasing annual leave entitlement from 4 weeks to 5.6 weeks.

1. When does the increase come into force?

The Government's preferred approach in the January 2007 consultation had been to introduce half of the additional holiday entitlement from October 2007, and the remaining half from October 2008. On further consideration of the cost pressures, in particular for the health and social care sector, the Government intends to delay the second increase to April 2009.

From 1 October 2007, the minimum entitlement will go up to 4.8 weeks or 24 days for an employee doing 5 days a week. From 1 April 2009, the second increase will bring the entitlement to 5.6 weeks (28 days if the employee works 5 days a week).

2. Can we pay in lieu of annual leave, as the increase may prove problematic in the workplace?

Under the Working Time Regulations 1998, annual leave may not be replaced by a payment in lieu, except on termination of employment.

However, as a temporary measure, between 1 October 2007 and 1 April 2009, an employer can pay in lieu of the extra 0.8 week. This is a temporary measure to help employers manage transitional arrangements such as recruiting extra staff or providing additional training. After 1 April 2009, payment in lieu of accrued untaken holiday can only be made on termination.

3. What are part-time workers' entitlements?

Part-time workers' entitlements to paid time off for public holidays has always been a little uncertain. Under the Part Time Workers (Prevention Of Less Favourable Treatment) Regulations 2000, part time workers are entitled to the same benefits as comparable full time workers, unless the difference in treatment is justified. Some part time workers have argued that they are entitled to paid time off on public holidays.

In *McMenemy v Capita Business Services Limited* (2007), the Court of Session decided that a part time worker who was not contracted to work on Mondays, and so did not receive paid time off on public holidays, was not entitled to paid time off on public holidays. The difference in treatment was not on the ground of part time status but on the ground of the days he was contracted to work (although in that case Capita operated a 7 day a week business where it was possible for a full time comparator to have a shift that did not involve working Mondays).

Under the new measures, part time workers will in effect be entitled to the additional 8 days on a pro-rata basis.

4. What if we already give employees 28 days' holiday – do we need to do anything?

The Government has proposed that employers that already (as at 1 October 2007) provide 28 days holiday or more would be excluded from the new regulations on the basis of certain conditions.

If you already give your employees 28 days' holiday, then this entitlement will be unaffected by the new legislation, as you will already be complying with the new entitlements.

5. How does the new entitlement work with respect to leave years and the period between October 2007 and April 2009?

The increase between October 2007 and April 2009 will be calculated proportionally, depending on when a leave year starts. If a leave year starts in April and an employee works 5 days a week then his entitlement will increase by 2 days from October 2007 to March 2008.

6. Do we need to change our contracts?

All employers will need to review contractual documentation and handbooks to take account of the recent developments. The DTI is due to set up an online calculator and

ready reckoner to assist with calculating holiday entitlement under the new provisions, but it remains important for employers to revisit their contracts and handbooks to establish what changes they will need to make to clarify holiday entitlement going forward.

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