**11.02.21 Carry Forward of Additional Annual Leave**

It is apparent, due to the fast approaching end of the annual leave year, there are increasing requests for guidance in relation to the carry forward of additional annual leave. The PGA have also raised the issue, therefore  the guidance below will be uploaded on the Ops Guidance Platform at the end of the week. However due to the volume of queries, this is being shared ahead of the weekly bulletin.

**Carry forward of additional annual leave**

**Amendment to Working Time Regulations March 2020**

In March 2020 the Government introduced a new law (extract below) allowing employees to carry over up to 4 weeks' annual leave into their next 2 annual leave years. This law applies for any annual leave the employee does not take because of the effects of coronavirus, for example if:

* they're self-isolating or too sick to take annual leave before the end of their leave year
* they've had to continue working and could not take paid annual leave
* they’ve chosen to cancel leave to support the regime

During the coronavirus pandemic, it may not have been possible for staff to take all their annual leave entitlement during the current annual leave year.

Some employers will already have an agreement to carry over annual leave. This law does not affect any agreements already in place, however in the case of HMPPS it extends the amount of annual leave eligible to be carried over from 9 to up to 20 days.

If an employee leaves their job or is dismissed and has carried over paid holiday because of coronavirus, any untaken paid holiday must be added to their final pay ('paid in lieu').

The law does not provide any definition or detail regarding what the effects of coronavirus might include, and generally people are likely to take a very broad interpretation and present any number of coronavirus effects that prevented them from taking their annual leave.

Employees should make application to their manager to carry forward any untaken annual leave up to a maximum of 20 days, explaining why they were unable to take their annual leave due to the effects of coronavirus.

Managers should consider applications, taking a broad and compassionate interpretation of the legislation.  We are aware that there are implications for managers on how additional levels of annual leave will be managed in the next 2 years and further guidance on this will be issued in due course. Any queries should be referred to HR colleagues for advice.

Annex A Extract from the legislation:

**Amendment to the Working Time Regulations 1998**

**2.**    The Working Time Regulations 1998([**3**](https://www.legislation.gov.uk/uksi/2020/365/made#f00003)) are amended as follows.

**3.**    In regulation 13—

(a)at the beginning of paragraph (9)(a) insert “subject to the exception in paragraphs (10) and (11),”;

(b)after paragraph (9) insert—

“(10) Where in any leave year it was not reasonably practicable for a worker to take some or all of the leave to which the worker was entitled under this regulation as a result of the effects of coronavirus (including on the worker, the employer or the wider economy or society), the worker shall be entitled to carry forward such untaken leave as provided for in paragraph (11).

(11) Leave to which paragraph (10) applies may be carried forward and taken in the two leave years immediately following the leave year in respect of which it was due.

(12) An employer may only require a worker not to take leave to which paragraph (10) applies on particular days as provided for in regulation 15(2) where the employer has good reason to do so.

(13) For the purpose of this regulation “coronavirus” means severe acute respiratory syndrome corona-virus 2 (SARS-CoV-2).”.

**4.**  In regulation 14—

(a)in paragraph (1) for the introductory text substitute “Paragraphs (1) to (4) of this regulation apply where—”;

(b)after paragraph (4) insert—

“(5) Where a worker’s employment is terminated and on the termination date the worker remains entitled to leave in respect of any previous leave year which carried forward under regulation 13(10) and (11), the employer shall make the worker a payment in lieu of leave equal to the sum due under regulation 16 for the period of untaken leave.”.

**5.**  In regulation 15(2)(b) after “leave” insert “(subject, where it applies, to the requirement in regulation 13(12))”.

These Regulations provide an exception relating to the effects of coronavirus to the bar on carrying forward untaken leave under Regulation 13 of the Working Time Regulations 1998 (“WTR”). They come into force on 26th March 2020.

Regulation 13 WTR entitles workers to 4 weeks of annual leave in each leave year. Where any of this leave remains untaken at the end of a leave year, regulation 13(9)(a) prevents that leave being carried forward into the next year. This is amended by regulation 3 of these Regulations, which inserts an exception to this bar on carrying forward untaken leave. The exception applies where at the end of a leave year it was not reasonably practicable for a worker to take some or all of the leave to which the worker was entitled under regulation 13 as a result of the effects of coronavirus (including on the worker, the employer or the wider economy or society). In this case the untaken leave may be carried forward and taken in the following two leave years.

Regulation 14 WTR provides for a payment in lieu of any untaken annual leave where a worker’s employment terminates. This regulation is amended by regulation 4 of these Regulations to provide for a payment in lieu of any leave that carried forward under the exception inserted by regulation 3 and remains untaken on the date of termination.