
1. Queries about holiday entitlement make up a large proportion of calls to our helpline, and the question of whether bank or public holidays are included within the four weeks holiday entitlement causes particular confusion. In our response to this consultation, therefore, we would like to highlight some of the particular difficulties that callers have with the existing legislation, and potential pitfalls to be avoided in drafting the new regulations.

2. Crucial to any changes to the legislation is the way in which they are introduced and sources of help available. Our experience of existing legislation is that there is a need for a high profile publicity campaign to raise awareness of changes and signpost employers and employees to sources of information and advice prior to and following the introduction of changes.

**Nature of calls on holiday pay**

3. In 05/06 Acas dealt with over 100,000 calls on holiday and working time, a little over 10% of our total call volume. The most common enquiries include both employers and employees asking what the statutory entitlements are, whether bank holidays are included or excluded and how to calculate holiday for part-time workers or workers without regular hours, and eligibility in relation to casual, part-time and term-time workers.

4. Current enquiries also raise questions around application of the accrual calculation in the first 12 months of service, children’s entitlement (for those still in compulsory education), whether commission or overtime payments are included in the calculation for paid holiday, and entitlement during sickness and maternity absence, non payment of holidays, refusal of entitlement, ‘rolled up’ holiday pay, stipulation of holiday taking, recovery of overpaid holiday and unused leave, and how to calculate holiday where pay varies or employees work occasional extra hours.

**Misconceptions**

5. There is currently a significant misconception to our helpline amongst callers about bank holidays being mandatory holiday days, and that they are an entitlement on top of the statutory four weeks. There is also the belief amongst some callers that working bank holidays necessitates the payment of double time, or time off in lieu, and that there is statutory provision for holiday to be carried over to the following year. Holiday entitlement creates particular confusion in relation to part timers, with many thinking they are entitled to twenty days leave rather than four weeks based on their own working pattern.

**Extension of holiday entitlement**
6. This will clearly be of benefit to employees in the lower paid sectors where the tendency is for bank holidays to be included in the current four weeks leave entitlement. Although some smaller firms may find it difficult to fund extra leave, it could have a beneficial effect on workforce morale, and in the short term it may also help to reduce workplace conflict in this area.

7. However, there are various proposals that we view as potentially problematic in the long term.

**Increase from 4 weeks to 5.6 weeks**

8. Callers find it difficult to grasp what four weeks means even where a worker is contracted to work a regular five day week (ie 20 days not 4x7=28 days). Calculating entitlement for anyone not on a full-time, five day week already causes problems. Calculating entitlement for a part-time worker on, for example, a two or three day week will now be considerably more difficult. Some one working two days a week, for instance, will now be entitled to 40% of 5.6 weeks, ie 2 weeks 1.3 days. Any guidance on the new regulations should provide clear and simple information on the changes. A chart to aid calculation of entitlement for employees with non standard hours would, for example, be useful. It would be useful if the regulations were to address how to deal with entitlement to part days, where this is more or less than half a day.

9. Some employers only allow leave to be taken in full weeks so their business can run effectively. The fact that the leave will be 5.6 weeks may cause problems, and may need to be addressed within the regulations.

**28 day cap**

10. The 28 day cap may cause conflict where staff are working six days a week. It would be useful if the regulations were to address this issue.

**Buy out and carrying over holiday**

11. A limited right to buy out and carrying over of holiday would provide potential benefits to employers and employees alike in terms of flexibility. However, there would need to be a mechanism for setting the parameters of this right in order to avoid legitimisation of rolled up pay for the additional 8 days, which would have the potential to impact most heavily on vulnerable workers and those employed by agencies.

**Staged introduction**

12. It is possible that a staged introduction will give rise to increased confusion. Any difficulties with calculations would be drawn out over two to three years creating additional work for employers. Moreover, leave years vary between companies and calculation for part years can be complicated.
13. Our experience of dealing with the increase from 3 to 4 weeks statutory leave in 1999 was that employers struggled with calculations where, for example, the change from the three week entitlement to four fell in the middle of an organisation’s leave year. Where this happened the employer was having to calculate the proportion of the leave year already taken under the three week entitlement and how much was due under the new entitlement.

14. Under new proposals for a staged introduction to 4.8 weeks employers will have to calculate the percentage of part weeks, which in some cases will result in entitlement to fractions of a day eg 2.4 days, or 1 week 2.1 days. This will be even more complicated in relation to part-time workers.

15. If the initial increase is to be 4.8 weeks, it would be useful if the regulations were to address how to deal with entitlement to part days, where this is more or less than half a day.

Communicating the changes

16. Clear communication of the final changes is essential. Particular pitfalls that we envisage based on our experience of dealing with existing legislation include:

- Employees and employers alike may assume there is an automatic right to time off on a bank holiday with pay.
- Depending on the exact wording of the changes there is also a danger that people may assume they have a right to 5.6 weeks plus bank holidays, particularly where they previously had enhanced entitlement.

17. Given our current experience of the level of caller confusion about existing regulations there also needs to be a significant publicity campaign to raise awareness generally, and to signpost employers and employees to sources of help and clear information, prior to and following the introduction of the changes.

Acas Council, September 25th 2006