

UK COVID-19 Update: Government Guidance on Holiday Entitlement and Pay Released

The UK Government has released guidance on the operation of annual leave and furlough (available in full [here](#)). The guidance is not legally binding, but does provide some clarity on a number of matters.

The guidance confirms that employers can require employees on furlough to take annual leave, and this will not break a period of furlough leave. Employers need to give appropriate notice (usually, double the length of the holiday the employee is asked to take). It states, however, that employers should consider whether any restrictions in place (such as the need to socially distance or self-isolate) would prevent the employee from “resting, relaxing and enjoying leisure time” when requiring holiday to be taken. In practice, this is most likely to be relevant where an employee is self-isolating.

The guidance confirms that employees continue to accrue statutory holiday (5.6 weeks per annum) while on furlough leave. Whilst employers and employees are in theory free to agree to alter the terms of any contractual holiday entitlement that goes beyond the statutory minimum, for example, agreeing that such holiday will not accrue during furlough leave, the guidance does not explore this and it would likely be very unpopular in practice.

The guidance on how much employees should be paid for holiday that they do take during furlough leave is deceptively simple – holiday pay should be calculated “in accordance with current legislation”. It appears that this means that holiday pay should be paid at the “normal”, that is pre-furlough, rate although it is not 100% clear that this is what the legislation (which does not contemplate furlough as it did not exist as a concept until earlier this year) actually provides.

Things are more complicated for employees who do not have normal working hours and/or whose pay varies with the amount of work done as a complex averaging calculation needs to be done.

In all cases, it is clear that employers cannot claim the amount by which holiday pay

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exceeds the amount which can be claimed through the grant paid under the Coronavirus Job Retention Scheme - 80% of salary (capped at £2,500 a month). This means that the employer will need to “top-up” payments to employees taking holiday while on furlough.

The guidance focuses on statutory holiday pay and whilst it is open to employers and employees to agree that additional contractual holiday pay may be dealt with differently, it is likely that employers will wish to avoid the significant complications involved in treating different elements of holiday differently.