



From 1 October 2007 workers and employees will enjoy rights to increased minimum statutory holiday entitlement when Regulations amending the Working Time Regulations 1998 come into force.

This briefing looks at the implications of these new rights.

In a nutshell...

- All workers entitled to 4.8 weeks paid annual holiday from 1 October 2007.
- This rises to 5.6 weeks paid annual holiday from 1 April 2009.
- No statutory right to take actual bank holidays as leave.
- Limited scope for carrying over some holiday each year.
- Payment in lieu of additional holiday temporarily permitted.



The increased entitlement

Can you summarise the new entitlement in a nutshell?

Workers are currently entitled to 4 weeks' paid leave per year under the Working Time Regulations 1998. On 1 October 2007, this entitlement will increase from 4 weeks to 4.8 weeks. On 1 April 2009, this entitlement increases again to 5.6 weeks. A maximum cap of 28 days' entitlement is imposed.

My business is open on bank holidays. Does this new right mean I have to give my workers the day off instead?

No. Although the intention behind the giving of the additional days was to take into account bank holidays, the right is to 4.8 / 5.6 weeks' annual paid leave. The right is not to 4 weeks plus bank holidays. You can, therefore, continue to require people to work on bank holidays provided their overall annual holiday entitlement is not less than 4.8/5.6 weeks.

My business always closes on bank holidays. Does this mean I have to give my workers up to 5.6 weeks plus bank holidays?

No. You can continue to include bank holidays as part of your workers' annual entitlement. However, you

should specify this in your contracts of employment or the agreements that you have in place with your workers.

What about part-timers, do they benefit from this increase?

Yes. Part-time workers will be entitled to the increased entitlement of 4.8 / 5.6 weeks.

I employ some fixed-term employees – what happens with their holiday?

Fixed-term workers will also benefit from the increase. This means a fixed-term worker will be entitled to the pro rata equivalent of 4.8 / 5.6 weeks.

My contracts of employment provide that my employees are entitled to "statutory holiday entitlement plus bank/public holidays". Does this mean I have to give them 4.8 / 5.6 weeks plus bank holidays?

This is a potential issue. As this phraseology is not uncommon particularly in the public sector the Government did take this into account when drafting the Regulations and there is the potential in the Regulations for getting round the problem. An



The increased entitlement *continued*

employer will be exempted from the requirement to give his workers this additional entitlement under the Regulations provided the following conditions are satisfied as of 1 October 2007:

(i) a relevant agreement (see below) is in place through which the employer already provides *each* worker employed by him with a paid annual leave entitlement of 1.6 weeks or 8 days (whichever is the lesser and which can include bank holidays) in addition to each worker's current 4 weeks' statutory entitlement; and

(ii) there is no provision for payment in lieu of that additional leave except on termination of the employment; and

(iii) the additional entitlement of 1.6 weeks or 8 days cannot be carried forward beyond the next leave year.

If you would like further advice on whether this exemption applies to you, please contact a member of our employment team.



Carrying over additional leave

Will workers be allowed to carry over their leave into the next leave year?

The existing Working Time Regulations do not permit workers to carry over any of their 4 weeks' leave. However, the new provisions will allow the *additional* entitlement (ie 0.8 / 1.6 weeks) to be carried over to the following leave year provided there is a relevant agreement in place (see below). It may not be carried over beyond that leave year.

Can you just remind me of what a relevant agreement is?

A relevant agreement is either:

(i) a workforce agreement which applies as between the worker and his employer;

(ii) any provision of a collective agreement which forms part of a contract between the worker and his employer; or

(iii) any other agreement in writing which is legally enforceable as between the worker and his employer eg a contract of employment or contract for services.

The agreement should set out the circumstances in which leave may be carried over, for example, where the employer agrees.



Payment in lieu of annual leave

If my workers can carry over some of their holiday entitlement, does this mean I can also now pay them in lieu?

Although this was discussed as part of the Government's consultation process, the final Regulations do not allow employers to make a payment in lieu in respect of the

additional entitlement (other than on termination). However, the Regulations do contain transitional provisions which allow employers to make payment in lieu of the additional entitlement (ie the additional 0.8 weeks) until 1 April 2009.



Calculating leave entitlement

The new Regulations come into effect on 1 October 2007. The Department for Business Enterprise and Regulatory Reform has published a ready reckoner so that employers

whose leave years do not start on 1 October can calculate the pro rata entitlement. Please see the final page of this briefing.



Rounding up

Currently the Working Time Regulations require employers to round up fractions of days during a worker's first year of employment for the purposes of calculating the amount of holiday due to them during that first year. This requirement to round up is removed from 1 October 2007.

However, during a worker's first year of employment, employers can require workers to accrue their leave on a monthly basis. In this scenario, rounding up is retained.



Written statement of particulars

Do I need to change my employees' contracts of employment? I currently give them the minimum four weeks' leave.

Employers who are required to increase leave entitlement will need to provide employees with a written statement containing details of this change to their employment particulars.

Employers should also consider whether any other contractual changes are needed. For example, you may wish to include provision to allow limited holiday to be carried over. However, remember that any detrimental changes to an employee's contract of employment can result in potential constructive dismissals. We can advise on how such changes can be implemented successfully.



Maximum weekly working time

The current statutory entitlement to 4 weeks' leave is treated as "excluded days" under the Working Time Regulations ie time off in respect of such leave cannot be included in the relevant reference period used to determine a worker's average weekly hours. The new

Regulations provide that the additional entitlement will not be considered as "excluded days" and may, therefore, be included in the same way that additional contractual leave may be treated at present.



Holiday entitlement for the long term sick

I am aware that there is an issue as to whether those on long-term sick are entitled to take annual leave. Do these new Regulations change that uncertainty?

The new Regulations do not affect the position as to whether those on long-term sick leave are entitled to statutory holiday. Currently case law provides that where an employee is absent for an entire leave year on sick leave, they cannot take holiday under the Working Time Regulations whilst on sick leave and are not entitled to

statutory holiday for that year. However, this case (*HMRC v Stringer & Others*) has been referred to the European Court of Justice.

From 1 October 2007, it may be possible for an employee on long-term sick leave to argue that he be allowed to carry over the additional entitlement, as the Regulations do permit limited carrying over (see above). However, a careful wording of the relevant agreement in place may remove this potential argument.



Holiday entitlement ready reckoner

Leave year start:	2006-07	2007-08	2008-09	2009-10
1 November	4.07 weeks	4.8 weeks	5.27 weeks	5.6 weeks
1 December	4.13 weeks	4.8 weeks	5.33 weeks	5.6 weeks
	2007	2008	2009	2010
1 January	4.2 weeks	4.8 weeks	5.4 weeks	5.6 weeks
	2007-08	2008-09	2009-10	2010
1 February	4.27 weeks	4.8 weeks	5.47 weeks	5.6 weeks
1 March	4.33 weeks	4.8 weeks	5.53 weeks	5.6 weeks
1 April	4.4 weeks	4.8 weeks	5.6 weeks	5.6 weeks
1 May	4.47 weeks	4.87 weeks	5.6 weeks	5.6 weeks
1 June	4.53 weeks	4.93 weeks	5.6 weeks	5.6 weeks
1 July	4.6 weeks	5 weeks	5.6 weeks	5.6 weeks
1 August	4.67 weeks	5.07 weeks	5.6 weeks	5.6 weeks
1 September	4.73 weeks	5.13 weeks	5.6 weeks	5.6 weeks
1 October	4.8 weeks	5.2 weeks	5.6 weeks	5.6 weeks

Source: Dept. for Enterprise, Business and Regulatory Reform © Crown copyright 2007

Want to know more? For further advice on these new rights or on any other area of employment law, please contact Chris Seaton, Partner and Head of the Employment, Pensions and Incentives Unit on 0117 939 2213 or e-mail chris.seaton@burges-salmon.com or contact any other member of the Burges Salmon Employment Team.

Tailored training

Did you know we can provide in-house tailored training for your organisation on a wide range of employment topics? Our training is practical and focused to your particular needs. For further information, please contact Kate Redshaw on 0117 902 6610 or e-mail kate.redshaw@burges-salmon.com.

Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

© Burges Salmon LLP 2007. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.