

Managing Annual Leave – what Employers need to consider

As we enter the final months of 2023, many Employers will find that some Employees still have not taken their full annual leave entitlement. But how can Employers best manage a situation where Employees have not taken their annual leave? It is important for Employers to consider the outstanding annual leave balance Employees might have to date, as well as the Organisations policy on the carry-over of annual leave into the following year.

Annual Leave Entitlements

All Employees, regardless of being full-time, part-time, temporary or casual or the sector in which they work, are entitled to annual leave under the Organisation of Working Time Act, 1997. Under the Act, the Employer can determine the timing of an Employee's annual leave, providing the required one month's notice, taking into consideration the requirements of the Organisation and the health and wellbeing of the Employee in terms of rest and recreation.

There are a number of ways in which to calculate annual leave: if an Employee has worked at least 1,365 hours in a leave year, they are entitled to the maximum of 4 working weeks' paid annual leave. Alternatively, calculate third of a working week for each calendar month in which the Employee has worked at least 117 hours. Or, calculate 8% of the hours the Employee has worked in the leave year, subject to a maximum of 4 working weeks.

The above is the minimum annual leave entitlement. In many instances, an Employer will grant additional annual leave and this should be stated in the Terms and Conditions of Employment.

An Employer has a responsibility to ensure that annual leave is being taken by Employees insofar as possible. There also exists a duty of care to maintain the health, safety and welfare of all Employees, and a means of doing this is to encourage availing of annual leave and overseeing that leave is being taken appropriately.

Ensuring Employees take their annual leave has become even more important where Employees are working remotely or in a hybrid manner, especially if they have expressed concern over their ability or right to disconnect.

Managing Annual Leave

If it becomes apparent that an Employee has not taken their leave or have a considerable amount of leave yet to be booked and/or taken, we recommend the Employer communicates with the Employee to confirm that they should avail of their leave and even offer dates when it will be possible to take time off.

Employers should refer to their Organisational policy on the taking and carry-over of annual leave. It is important to note here that the Organisation of Working Time Act provides that where an Employee is unable to avail of their statutory annual leave during the leave year, the Employer is obliged to allow them to carry over their leave and take it during the first six months of the following leave year.

If the Employer has communicated with the Employees of their annual leave and that they should avail of this leave before year end, but still fail to do so, section 20(1)(b) of the Organisation of Working Time Act, 1997 permits the Employer to assign annual leave to Employee with at least one month's

notice of same. However, it is always advisable that Employers show some flexibility and work with the Employee to find suitable dates to take leave ensuring consultation with Employees and trade union representatives first.

Managers should seek to arrange meetings with Employees to discuss and review their outstanding annual leave balance and discuss any carry-over parameters. Where excess annual leave remains, it is the Employer's responsibility to understand the reasons for annual leave not being taken and whether there is something preventing an Employee from availing of their leave. This is particularly important where an Organisational barrier to availing of the leave exists so that steps can be put in place to remedy this. Employers should agree a plan for bringing the leave back into balance for next year providing options of dates when it would be possible to take this time off.

After the meeting, confirm what has been agreed in writing, and ask the Employee to follow the Organisation's usual annual leave request process in respect of the period(s) of leave agreed at the meeting so that the normal approvals and records are in place.

If Employers find that a number of Employees have not yet taken their annual leave, it's important to remind Employees of the terms of the annual leave policy, particularly if there are restrictions in carrying over unused leave.

If you have any questions on annual leave and Employer compliance requirements, then please contact the team at Adare Human Resource Management – info@adarehrm.ie / 01 561 3594 to discuss how we can assist you.

If your Organisation needs advice, support, or guidance in relation to compliance with employment legislation or indeed any HR issues, please contact Adare Human Resource Management for details of supports under our Partnership Programme.

Contact Details: Phone (01) 561 3594 or email info@adarehrm.ie

Adare Human Resource Management is a team of expert-led Employment Law, Industrial Relations and best practice Human Resource Management consultants.