

# Borneo Linnells Solicitors

## EMPLOYMENT LAW BRIEFING - Autumn 2007

### NEW INCREASED STATUTORY HOLIDAY ENTITLEMENT YOUR QUESTIONS ANSWERED

- On 1 October 2007 new statutory regulations regarding entitlement to annual leave came into force, increasing workers' entitlement from 4 to 4.8 weeks per year (20 to 24 days) for people who work 5 days a week.
- There will be a further increase in April 2009 to 5.6 weeks per year (28 days). 28 days per year is the statutory maximum, and will therefore not increase if the employee works 6 days per week.
- There is a pro rata increase for employees who work part-time.
- The new entitlement is inclusive of public holidays. If therefore your workers have a holiday entitlement of 20 days plus public holidays you will be compliant with the new regulations, but check that your contracts do not state that there is an entitlement to public holidays in addition to the statutory entitlement.
- The main confusion that has arisen from the new Regulations is in relation to how public holidays fit in. Below I have answered some of the main questions in relation to the new provisions and annual leave in general.

#### **Q. The holiday year for our staff runs from January to December. How do I calculate the extra leave due to our staff?**

**A.** The proportion of the holiday entitlement for 1 October to 31 December 2007 should be multiplied by 0.8 weeks. Or follow the table below:

<b>Leave year starts</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
1 January	4.2 weeks	4.8 weeks	5.4 weeks
1 April	4.4 weeks	4.8 weeks	5.6 weeks
1 July	4.6 weeks	5.0 weeks	5.6 weeks
1 October	4.8 weeks	5.2 weeks	5.6 weeks

#### **Q. I can't allow all of my staff to take time off on a public holiday, does the new law mean that I have to allow this?**

**A.** No. The law is intended to ensure that workers have a minimum number of days holiday per year, there is no legal entitlement for them to actually take those days on a public holiday. You do not have to provide a reason for refusing to allow a worker to take holiday on a certain date; however you should take care when doing so and try to

limit this to when there is a business reason for the refusal. Failure to allow holiday at a certain time could for example be indirect sex discrimination if it means that an employee is unable to take time off to care for her children in the school holidays or there may be circumstances when a failure to allow holiday to be taken could give rise to a claim for constructive unfair dismissal if the failure results in a breach of the implied term of mutual trust and confidence due to the employer acting unreasonably.

**Q. The contract for my staff says that they are entitled to statutory entitlement + public holidays. Does this mean that they will get the new entitlement and the public holidays on top?**

**A.** It depends! If there was a collective agreement in place by 1 October 2007 which provides all of your workforce with an entitlement to 28 days holiday per year (or the pro rata equivalent for part-time workers) AND you do not pay in lieu of that holiday except when the employment ends AND the statutory holiday can not be carried over into the next holiday year then you do not need to increase the holiday entitlement further.

However, if any of the above conditions do not apply then your employees will be entitled to an increase so that they have the statutory entitlement plus public holidays.

**Q. I want to make sure that my staff take holiday at a certain time, can I do this?**

**A.** Yes. You must give the employees notice instructing them to take their holiday on a certain date. This notice must be given twice as many days in advance of the period of holiday you require them to take. So if you require them to take 3 days holiday during a Christmas shutdown starting on 27 December, you must give notice of this, 6 days in advance on 21 December. However, while the Regulations suggest these minimum notice periods, for best practice we would advise that you give as much notice as possible of any imposed holiday.

**Q. I have a part-time employee whose normal working week does not include a Monday. Do I have to give him a day off in lieu if there has been a Monday bank holiday?**

**A.** No. In a case on this point it was held that this was not less favourable treatment on the grounds that the worker is part-time. The reason for the employer's failure to grant a day off lieu was not because he worked part-time but because he did not work on Mondays. If he had worked on a Monday he would have received that day as holiday as the other full-time workers.

**IF YOU REQUIRE ANY CLARIFICATION OR ADVICE OR IF YOU NEED ANY ASSISTANCE WITH UPDATING YOUR CONTRACTS OR POLICIES PLEASE CONTACT ROSINE DAWSON OR ONE OF OUR TEAM OF CORPORATE EMPLOYMENT LAW SOLICITORS ON [01908 300710](tel:01908300710) or [email: rosine.dawson@borneolinnells.co.uk](mailto:rosine.dawson@borneolinnells.co.uk).**

Whilst we have attempted to make this Briefing as accurate as possible, detailed advice should be obtained before taking or refraining from action as a summary of this nature can never be a substitute for a considered professional opinion.