

# Managing annual leave during COVID-19

A free guide from Marsh Commercial



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Annual leave can be a messy and complex part of employment law at the best of times, with plenty of maths involved.

However, with the furlough scheme being extended to the end of September 2021, holidays have become even more complicated for business owners, who are keen to make sure they're complying with the scheme's rules, but also with the separate employment law obligations they generally have around holidays.

In this guide, we answer some of the most pressing questions business owners and employers have about how annual leave interacts with furlough.

## Do holidays continue to accrue during furlough?

Yes, employees placed on furlough continue to accrue statutory holiday entitlements, as well as any additional holiday provided under their employment contract, together known as "contractual holidays".



### A general note on holidays

HMRC has stressed in its guidance that nothing about the furlough scheme changes your employment law obligations.

## How do I treat holidays when making a furlough claim?

Holidays do not break furlough periods. Where an employee is already on furlough, you can claim furlough pay for any holiday weeks.



### Example

If an employee was furloughed for the first three weeks in March, but has a holiday booked for the second week in March, the employer's claim would cover the entire three week period. They can be claimed as normal working days.

You **can't** put people on furlough just to cover holiday when they weren't genuinely on furlough.

Where the employee is flexibly furloughed, holidays are treated as usual working hours.



### Example

An employee works Monday and Tuesday, is furloughed on Wednesday and has a holiday booked on Thursday and Friday. The flexible furlough claim will be based on three days (their usual hours of days, minus the two days they worked).

## How do I calculate holiday pay for furloughed staff?

When your people are on holiday, the pay they receive must reflect what they would have received if they had worked – otherwise it would be a deterrent to people taking time off!

So, when someone is on furlough, you need to pay holiday at the usual rate. That means, if they're only receiving 80% furlough pay, you are responsible for topping up the additional 20% so they're getting 100% pay for their holidays.

## Can I tell employees when to take holidays?

Yes, if you give them sufficient notice. This is usually double the length of the holiday, so if you need someone to take two weeks off, you need to give them four weeks' notice beforehand.

You can give them less notice ahead of a required holiday period, but your employee has to agree to it, and you should outline this in your employment contracts.

## Can I ask employees on furlough to take holidays?

The Government guidance says this is possible, but you must make sure that you engage your people and explain why you need them to take a certain amount of holiday.



### Remember

If you're asking an employee who is unwell and self-isolating to take annual leave, they might not be getting the full benefit of the holiday – which is to rest, relax, and enjoy leisure time! There might even be this argument if you require them to take holiday during a lockdown period.



## Can I cancel employees' holiday?

Yes, subject to giving the required notice of cancellation – which must be the same length as their planned holiday.

This right also allows employers to stipulate employees can't take holiday at particular periods, if you have a period of increased demand, for example.

Remember, if an employee's annual leave was previously authorised and they have booked a holiday, there may be financial repercussions to cancelling their authorised annual leave.

## How do I deal with bank holidays during furlough?

If your furloughed employee would normally have been working on the bank holiday, it's treated as a normal working day for furlough purposes and doesn't come off their holiday entitlement.

If your furloughed employee would normally have time off for a bank holiday, you can either:

- Continue to treat it as a holiday and top up to 100% holiday pay
- Agree with the employee to defer this holiday so only furlough pay is due, and they take the holiday another time.



### Carrying over holidays – new rules

The Working Time (Coronavirus) (Amendment) Regulations 2020 allow workers to carry over **some** holiday where it has not been “reasonably practicable” to take it in the holiday year because of the effects of COVID-19.

The untaken holiday can be carried over into the **following two leave years**.

When calculating how much holiday a worker can carry forward, employers must give workers the opportunity to take any leave that they cannot carry forward before the end of the leave year.

For more information, or to discuss a bespoke package, please contact:

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