How should employers deal with next week’s bank holiday?

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The Queen's State Funeral on Monday, 19 September 2022 has been declared a bank holiday across the UK. The Government has said that this bank holiday will operate in the same way as other bank holidays. Do workers have the right to have the day off work? If so, does this leave need to be paid? The short answer is: it depends on what the employer's contracts and policies say.

What does the law say?

- The Working Time Regulations 1998 entitle workers to a minimum of 5.6 weeks' paid annual leave.
- There is no statutory entitlement to time off for bank holidays, but employers may include bank holidays as part of a worker's leave entitlement.
- When drafting employment contracts employers have freedom in how that minimum entitlement is distributed – this can be done in various ways with different consequences.

What do the contracts and policies say?

As a starting point, employers should check the drafting of relevant policies and contracts. This will determine whether employees are entitled to leave, and pay, for this additional bank holiday.

Some possibilities of how the contract might set out holiday entitlement include:

- **4 weeks plus 8 standard bank holidays (and in some cases, the bank holidays are specified):** In this scenario, there is no automatic entitlement to an extra day off but if the worker has some of their annual leave

entitlement remaining then they may request to take it as a day's leave in the usual way.

- **4 weeks plus all bank holidays:** This wider wording would suggest that workers are entitled to an extra day off. This effectively means workers working five days per week would get 30 days' leave this year as there was an additional bank holiday earlier in the year for the Queen's Platinum Jubilee.
- **6 weeks inclusive of the 8 standard bank holidays:** This wording would suggest that there is no automatic entitlement to an extra day off as the leave entitlement is ultimately capped at 28 days for a worker working 5 days per week. However, as above, if the worker has some of their annual leave entitlement remaining then they may request to take it as a day's leave in the usual way.
- **6 weeks inclusive of all bank holidays:** There would be no entitlement to an extra day off as the leave entitlement is ultimately capped at 28 days, but the day may have to be taken as a day off (whether the worker wants to or not) and would need to be taken out of the worker's usual entitlement.

What practical issues should employers consider?

In addition to checking what contracts and policies say, employers will want to think about the optics of their decision – both internally, in terms of impact on staff morale, as well as externally to customers and clients.

Schools will be closed on the bank holiday and so this has direct impact on workers with children. Employment Tribunals recognise that decisions impacting childcare have a disproportionate impact on women. Employers will want to be mindful of indirectly discriminating against mothers with childcare responsibilities and may wish to permit working from

home on the day or offering workers the opportunity of taking unpaid parental leave, should staff not be entitled to paid leave. The law also provides a specific right to (unpaid) time off to provide emergency care for dependants, which may be engaged, depending on the circumstances.

Employers will also want to consider what to do if a worker makes a request to have the day off but has exhausted their leave, including whether they would permit them to take unpaid leave.

At present, it is not clear what impact there will be on transport on the day, but it will nevertheless be a key consideration for those who are required to attend their workplace.

Some employees may prefer to work on the bank holiday. Can employers require employees to take the day off, and take the leave out of their annual entitlement? Can employees ask to take a different day off at some other time? Again, the answer will be found in the employment contract and relevant policies.

The Government has stated that "The bank holiday will be a unique national moment, and we would encourage employers to respond sensitively to requests from workers who wish to take time off." Given the historic nature of the event, it is advisable for employers to take a holistic view, beyond simply their contractual obligations.

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk), Senior Associate Theo Nicou or your usual BDBF contact.

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