

APSCo Update on Legal & Compliance Issues

UPDATED January 2023

Additional Bank Holidays

The Government has [announced](#) that on Monday 8 May 2023 there will be a bank holiday across the United Kingdom to mark the coronation of His Majesty King Charles III, which will take place on Saturday 6 May 2023. The bank holiday is intended to give everyone the opportunity to celebrate and welcome His Majesty to the throne.

Please review your employment contracts to see if there is a contractual entitlement to the day off as there is no automatic legal right for most staff to take bank or public holidays off work. Please refer to the last paragraph of this update below titled '*What you should do now*' for guidance on how to treat this additional bank holiday.

The Working Time Regulations

[The Working Time Regulations 1998 \(WTR\)](#) provide all workers with a statutory entitlement to 5.6 weeks annual paid leave. Whether workers are entitled to the additional holiday will depend on the contractual arrangements that are in place, how the entitlement is expressed in the contract, or where the contract is silent – what has happened in practice.

How should additional bank holidays be treated by Employers?

Entitlement to the additional bank holiday will be dependent on the contractual wording of the employment contract.

Scenario 1

The employment contract states the employee is entitled to 20 days holiday per annum plus the usual bank holidays.

Under this scenario the additional bank holiday is not a usual bank holiday. Therefore, the employee would not be entitled to it. It will be at the employer's discretion as to whether they wish to give this to the employee as an additional benefit.

Scenario 2

The employment contract states 20 days holiday per annum plus bank holidays.

Under this scenario the employees would be entitled to the additional bank holiday.

Scenario 3

The employment contract states 20 days holiday per annum plus 8 bank holidays, or 33 days including the bank holidays.

Under this scenario the additional bank holiday would not be included in the employee's entitlement.

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Part-time Workers

Part-time workers/employees should not be discriminated against due to their part-time status.

If they are entitled to the additional bank holiday in accordance with their contract, but they do not work for example on a Friday, their holiday entitlement should be adjusted on a pro-rata basis to avoid claims for less favourable treatment of part-time workers.

Employees on Maternity Leave

Employees on maternity leave continue to accrue annual leave in accordance with their contract. Therefore, they should be treated the same way as your permanent employees with regards to the additional holiday entitlement.

Agency Workers

Consideration should be given as to how this additional leave should be treated in respect of any PAYE and umbrella workers.

Businesses need to be aware of potential rights under [The Agency Workers Regulations 2010 \(AWR\)](#). After completing the 12-week qualifying period, an agency worker is entitled to the same basic terms and conditions as if they have been employed directly by the client, which includes annual leave.

Where the AWR may apply, businesses should clarify with their end clients the position regarding any additional leave entitlement of a comparable permanent role and may also need to notify umbrella providers of the position. Whether businesses can increase their charges to their end clients to take account of this will depend on the contractual wording.

What you should do now

- Members will recall the extra bank holiday that took place in June 2022 for the celebration of the Queen's 70-year reign. The additional bank holiday to mark the coronation of His Majesty King Charles III will operate in the same way and therefore organisations should review the processes that they put in place previously.
- Check your employment contracts to be clear on the contractual entitlements.
- If your employees do not have a contractual right to the additional bank holiday and you are exercising your discretion to provide it as an additional benefit, be mindful that your employees may expect the same approach should there be additional bank holidays in the future. Consider how you treated the 2011 Royal wedding additional bank holiday.
- Where the AWR may apply, businesses should have conversations with clients regarding the position of any additional leave entitlement. Where applicable, you may need to notify the relevant umbrella providers of the position. Businesses will need to check the wording in their contracts with clients to understand as to whether they can increase the charge rate in order to absorb the additional cost.

If you have any queries, please contact the legal helpdesk at legalhelpdesk@apsco.org.