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Employment Law Update May 2012

Additional Bank Holiday to mark the Queen's Diamond Jubilee

We are sure you are all aware by now that there will be an additional bank holiday on Tuesday 5 June 2012 to mark the Queen's Diamond Jubilee. The late May bank holiday will be moved to Monday 4 June 2012 to create a long weekend.

Statutory Entitlement

While many employees may assume that they will have the right to take the additional bank holiday off work for the Queen's Diamond Jubilee, there is no statutory right to leave for any of the bank or public holidays (other than for those employees covered by the Banking and Financial Dealings Act 1971).

Contractual Rights

When determining whether or not an employee is entitled to a day off work on a bank or public holiday, such as the bank holiday for the Diamond Jubilee, you as their employer should first consider the employee's contractual terms.

Some contracts make clear that the employee is entitled to take all bank holidays as leave, in which case he or she will have the right to take a day's leave in respect of the additional bank holiday for the Diamond Jubilee. However, some contracts are less clear. A contract may state that the employee is entitled to take all "usual" bank holiday as leave. This would not confer a right to the additional bank holiday for the Diamond Jubilee, which applies only in 2012 and does not constitute a "usual" bank holiday.

Some contracts expressly state that the employee is entitled to eight bank holidays, which would mean that he or she is not contractually entitled to the additional bank holiday. In this situation, you will need to consider whether or not you wish to grant staff an additional day's leave in respect of the Diamond Jubilee.

For employees who are entitled to take the additional bank holiday off work, the contract may provide that the day is taken from their annual leave entitlement. For example, if a contract states that the employee has 28 days' leave, including all bank holidays, he or she could be required to use a day from this 28-day entitlement, in respect of the bank holiday for the Diamond Jubilee.

On the other hand, a contract that states that an employee is entitled to 20 days' leave plus all bank holidays

will entitle that employee to benefit from an additional day off work on 5 June 2012 without losing a day from the core 20 days' holiday.

Part-time Employees

As employers you will need to consider the rights of part-time employees in relation to the Diamond Jubilee bank holiday. If bank holidays are pro-rated for part-time employees (which avoids less favourable treatment), you should take into account the extra day's bank holiday in the 2012 pro rata calculations.

Payment

Employees have no statutory right to be paid an enhanced rate of pay for working on a bank or public holiday. An employee's contract will determine the pay rate for working on a bank holiday, although you and your employee may agree other pay arrangements in advance of the Diamond Jubilee. If the contract makes clear that only the standard rate of pay applies to bank holiday working, this will extend to the additional day.

Conversely, where an employee's contract entitles him or her to a higher rate of pay if a bank holiday is worked, this entitlement will extend to the additional day unless the contract makes clear that the higher rate applies only to the usual eight bank holiday days per year.

Potential Un-Authorised Absence

As employers, if you do not allow staff to take the additional bank holiday, you may find that you experience higher than usual levels of unauthorised absence and reported sickness absence. You should make clear to staff how you will deal with absenteeism over the Diamond Jubilee period (for example that it will be monitored and that employees will be expected to account for their absences). This should act as a deterrent to some employees who may consider taking unauthorised absence or reporting absence as sick leave when this is not genuine.

Finally, as employers it would be beneficial to clearly communicate to employees their entitlements in respect of the Diamond Jubilee bank holiday, and the arrangements that you will be putting in place concerning cover. Careful planning and good communication is likely to reduce the risk of absenteeism and other issues arising around the time of the celebrations.

Our New Smart Web App

We are delighted with our new smart web app - if you are viewing this newsletter from a smart mobile phone then click on the website link above. Or alternatively take a look at www.hasslefreehr.co.uk from your smart phone.

If you would like any advice about dealing with granting leave around this time and managing potential absence please contact ehedley@hasslefreehr.co.uk for further information.

For clarification of any of the above updates or for advice and guidance on any HR and/or Health and Safety Concerns contact us by emailing ehedley@hasslefreehr.co.uk or by calling 02476 664092.

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