

# Holidays

As the number of COVID-19 cases continue to increase globally, the UK Government has implemented a number of strict measures in an attempt to tackle the spread. These measures include guidance to avoid unnecessary international travel, and globally we're seeing borders and air routes being closed. As a result, many of those working for SGBs are seeing their holiday plans cancelled as we approach the busy Easter break.

In light of this, SGBs may find themselves facing requests from their employees to cancel periods of annual leave which had previously been booked, if they are forced to stay at home. SGBs are currently facing difficulties which are unprecedented, and many are concerned about the collective efforts to ensure that the sporting calendar which is currently paused can be completed with issues such as fixture congestion likely to be an issue once the restrictions are lifted. As such, and particularly when the duration of these restrictions are unclear, SGBs may wish for employees to insist that annual leave is taken as planned during this time, to avoid all employees having a substantial amount of annual leave to take in the second part of the year when the sporting calendar resumes.

## Working Time Regulations

The Working Time Regulations 1998, which primarily governs workers' rights in relation to their holiday entitlement, states that employers can refuse a request for annual leave. SGBs therefore have the ability to tell their employees when to take holidays provided they comply with various notice provisions. The Regulations state that in order to insist that an employee takes annual leave at a specific time, the required notice is at least twice as many days, as the amount of holiday due to be taken. So for example, if an SGB wishes to insist that an employee takes 2 days of annual leave, 4 days' notice is required.

In refusing an annual leave request, SGBs must look at the future needs of the SGB and ensure that the employee will be able to take annual leave at a later point in the holiday year, taking into account issues with potential fixture congestion. A refusal will not be legitimate, if this has the effect of preventing the employee for using their full statutory holiday entitlement and as such, SGBs should refrain from refusing requests if they will be unable to accommodate that employee's full entitlement within the that annual leave year.

When approving or refusing an annual leave request, SGBs should ensure that they are acting reasonably and try to be as accommodating as possible in the circumstances. It is good practice to be open and honest with the employee and explain why the decision has been taken. Where the employee suffers a financial loss as a result of the SGB's cancellation, there may be a claim for constructive dismissal. Specific arrangements are often detailed in staff handbooks, and if such a policy is in place, it should be followed.

## Holiday Cancellations

What if an employee wants to cancel holidays which has already been booked and authorised? This is unlikely to be covered in an annual leave policy, because in reality the Working Time Regulations do not permit cancellation. An employee cannot insist on being permitted to cancel holidays. An SGB is fully entitled to refuse the request. SGBs should of course ensure that they do not exercise their ability to refuse requests capriciously, inconsistently or based on protected characteristics where the same could give rise to a claim.

We anticipate that people on furlough leave should not be entitled to receive a payment in lieu of leave or be entitled to take leave during furlough.

### Self-Employed Coaches

If coaches are self-employed, then SGBs should be mindful of any holidays that the coach has planned later in the year. As coaches are self-employed SGBs do not have the ability to control when they go on holiday in the same way as employees, but often the SGB has significant influence on this.

If a coach is unavailable to attend any re-scheduled events or training sessions then it would be up for the coach to source a suitably qualified substitute to attend in their place. SGBs should be mindful of refusing to allow a coach to provide a substitute as this may be indicative of an employment relationship as opposed to one of self-employment.

Coaches are only paid for services delivered so if due to holidays they are unable to provide their services and they are unable to source a suitably qualified substitute then an SGB is under no obligation to pay them for services not provided.

This is a difficult time for both SGBs and employees and in order to protect health and safety, the needs of the organisation and the professional relationship, open and honest, early discussions are recommended.

### Get in touch

If you have any particular concerns regarding events during this time, please contact us through the **sportscotland** expert resource legal helpline (0141 227 9333 or [sportscotlandinfo@harpermacleod.co.uk](mailto:sportscotlandinfo@harpermacleod.co.uk)).

## Get in touch

If you have any particular concerns regarding events during this time, please contact us through the **sportscotland** expert resource legal helpline (0141 227 9333 or [sportscotlandinfo@harpermacleod.co.uk](mailto:sportscotlandinfo@harpermacleod.co.uk)).