

Q & A on amendments to the annual leave provisions
of the Organisation of Working Time Act 1997

This document is intended as guidance only, and does not purport to be a legal interpretation.

What is the effect of the amendments being made to the Organisation of Working Time Act by the commencement of Section 86(1) of the Workplace Relations Act 2015?

Section 86(1) amends Sections 19, 20 and 23 of the Organisation of Working Time Act 1997.

The effect of the amendments is as follows:

- Employees will accrue statutory annual leave entitlement while on certified sick leave.
- There will be an increase in the annual leave carryover period from 6 months to 15 months for those employees who could not, due to illness, take annual leave during the relevant leave year or during the normal carryover period of 6 months after the end of the leave year.
- On termination of employment, payment in lieu of untaken annual leave will apply to leave which was untaken as a result of illness in circumstances where the employee leaves the employment within a period of 15 months following the end of the leave year during which the leave entitlement accrued.

Why were these amendments made?

The amendments are being made to bring the annual leave provisions of the Organisation of Working Time Act 1997 into line with the annual leave provisions of the EU Working Time Directive as interpreted by the Court of Justice of the European Union (CJEU) in the Schultz-Hoff line of cases.

When are the changes effective from?

Section 86(1) of the Workplace Relations Act 2015 comes into operation on 1 August 2015.

Will the increase in the carry over period for untaken annual leave from 6 months to 15 months apply to all employees?

No. The increase in the carryover period from 6 months to 15 months will only apply to those employees who could not, due to illness, take annual leave during the relevant leave year or during the normal carryover period of 6 months after the end of the leave year.

Does the extended carryover period of 15 months apply to statutory annual leave accrued on the basis of both time worked and on the basis of annual leave accrued during certified sick leave?

Yes. Any employee who could not take their annual leave due to certified sick leave during the annual leave year or the general 6 month carryover period provided for in the Organisation of Working Time Act is entitled to the benefit of the extended carryover period of 15 months, regardless of whether the leave was accrued while on sick leave, or was accrued on the basis of time worked.

Can an employee be paid in lieu of the untaken statutory annual leave?

Payment in lieu of statutory annual leave may only be made in circumstances where the employee is leaving the employment. If the employee is not leaving the employment, the statutory annual leave must be taken within the relevant time limits.

What is the position if an employee has been on certified sick leave for a full leave year?

If an employee normally works a minimum of 1,365 hours in a leave year (i.e. the minimum threshold set out in the Organisation of Working Time Act 1997 for entitlement to the maximum 4 weeks' statutory annual leave) and, if that employee has been on certified sick leave for a full leave year, then the employee will accrue 4 weeks' statutory annual leave in respect of that leave year. If the employee is, due to illness, unable to take the 4 weeks' annual leave during the normal 6-month carryover period after that leave year then the employee will have up to 15 months after the leave year to take the annual leave.

The statutory annual leave entitlement of part time workers in this situation will also be calculated by reference to the hours they normally work.

Does an employee have to have been on certified sick leave for the whole of the annual leave year and/or for the whole of the normal 6-month carryover period in order for the extended carryover period of 15 months to apply?

No. The amendment simply provides for an extended carryover period of 15 months in circumstances where the employee was, due to certified illness, unable to take their annual leave during the relevant leave year or during the normal carryover period of 6 months after the end of the leave year.

What is the position if an employee has been on certified sick leave for part of a leave year?

The amendments provide that time spent on certified sick leave is to be treated as time worked for the purposes of accrual of annual leave. Therefore, where an employee is on certified sick leave for part of an annual leave year, the employee will accrue annual leave entitlement in respect of that part of the annual leave year in addition to accruing annual leave entitlement for the days the employee was at the workplace.

What was the position before these changes?

Prior to these changes, the Organisation of Working Time Act 1997 provided that annual leave was calculated on the basis of time worked and was silent on the issue of how time spent on sick leave should be regarded for the purposes of calculating annual leave.

Can an employer provide for more favourable arrangements than the statutory provisions contained in the Organisation of Working Time Act 1997?

It is open to individual employers to provide for more favourable arrangements than the statutory provisions in the Organisation of Working Time Act 1997 in relation both the accrual of annual leave during sick leave and the carryover period for annual leave. Employees with queries pertaining to their position in relation to these issues should direct these to their employer, in the first instance.

What right of redress is available?

In line with Section 27 of the Organisation of Working Time Act, complaints can be taken to a Rights Commissioner.