



## **Employment Law Brief**

*with*

### **Darren Newman**

We may not have had much of a Spring, but there is still hope for a summer. However, for those not willing to trust in a dramatic improvement in the weather there is now the option of a foreign holiday. The downside is that a trip to most holiday destinations (with the exception of Portugal) involves entering into some form of quarantine on your return. That means staying at home for a period of 10 days while submitting to at least two covid tests. For those taking time off work the question is whether those 10 days need to be added on to their annual leave request or whether they should be treated in some other way.

I am often struck by the number of people who do not seem to appreciate that the entitlement to 5.6 weeks' annual leave is an entitlement to take paid time off from work – it is not a right to enjoy a nice holiday. Whether or not a period counts as annual leave does not depend on whether you are able to enjoy drinks with umbrellas in them while sitting by the pool. I was working with an employer recently who was facing the challenge of a large number of employees trying to defer their annual leave entitlement beyond the end of their holiday year in April. They were seeking to rely on the amendment to the Working Time Regulations made in 2020 which allowed leave to be deferred for up to two years where it was not reasonably practicable to take it as a result of Coronavirus. But those Regulations were aimed at key workers who could not be spared from their duties as they fought the pandemic or sought to keep the economy functioning. They do not allow employees to defer their annual leave because their favourite holiday

destinations are not available to them.

So, an employee who seeks a two week holiday in Florida (something the Government currently advises against, even though travel to the USA is legal) will need to have enough leave entitlement available to cover both the trip abroad and the period of quarantine that is required on their return.

What if they do not arrange that with their employer in advance? Employees are not obliged to disclose their holiday destination to their employer and so what if an employee takes a foreign trip and then simply informs the employer on their return that they are required to remain in quarantine and cannot return to work as scheduled?

To my mind, that would be a straightforward case of unauthorised absence. The period of quarantine is not something that an employee can claim as equivalent to a period of ill-health – or for that matter being required to self-isolate after coming



into contact with someone who has tested positive for covid. The Government clearly draws a distinction between the two as someone who is self-isolating qualifies for SSP even if they are not themselves ill - whereas someone in quarantine after travelling abroad does not. Someone who travels abroad to countries that are not on the green list does so in the knowledge that they will have to quarantine on their return. So, in general they must make sure when booking their holiday to allow enough to time to cover the whole period of their absence.

The situation may be different if the employee can easily work from home – or has been doing so in any event prior to their trip. In that case the period of quarantine need not interrupt their work at all. There will be no need to apply for leave in relation to a period when they will be able to work as normal. Employees who cannot reasonably work from home, however, will have to treat their period of quarantine as part of their holiday entitlement and apply for leave accordingly.

It has been suggested that this is unfair because it tends to create a two-tier workforce and I know that some local authority employers have been reluctant to draw such a clear distinction in the treatment of employees. I have to admit that I simply do not see the problem. There are all sorts of differences in the way in which an employer treats different groups of employees. Some get paid more than others, some have to work additional hours with no extra pay,

some sit in a comfortable office and others have to work outside in the rain and snow – even in Springtime. Similarly, some can work at home and others cannot. For those who cannot, their period of quarantine will be a period of leisure away from the workplace. For those who can, they will be carrying out their normal duties. Of course, if working at home restricts what employees can do so that they cannot be regarded as performing their full role, then they will need the agreement of their employer. Since quarantine is a self-inflicted situation, the employer will not be obliged to compromise on the quantity or quality of an employee's work over the course of that period and may insist that the employee takes a longer period of leave instead.

This all strikes me as perfectly reasonable. Everybody is being offered the same amount of paid annual leave. Not everybody is having the same holiday experience, but I don't think that is the employer's problem. Employees who feel hard done by at the prospect of spending some of their holiday in quarantine should perhaps take comfort from the fact that at this time of year Florida is far too hot - and Portugal is lovely.

**Don't forget to check more about Darren Newman on his blog at [A Range of Reasonable Responses](#) or on twitter at [@DazNewman](#)**