

## Sick leave allocations - going up

As from 24 July 2021 the minimum sick leave entitlements has increased from five days per year to ten days per year.

That change won't affect everyone straight away. Employees receive the increased 10-day entitlement from the date (on or after 24 July) that they next become entitled to sick leave.

Therefore an employee who received their latest 5-day sick leave allocation in early July won't receive the increased entitlement until mid-July 2022.

Remember sick leave is not pro-rated for part time staff, so an employee who works one day per week could now conceivably take ten weeks of paid sick leave per year.

### Employers who provide sick leave from day one might have an issue

For the most part implementing this change should be straight forward. However employers who provide staff with sick leave from their first day of employment may need to provide the increased entitlement to some of their employees a little earlier than they otherwise would have.

To explain, employers aren't required to provide sick leave until employees have worked continuously for six months. Most employees therefore receive sick leave allocations after six months' service, and then yearly from there (so after 18 months' service, then 30 months' etc etc).

However some (generous) employers allow their employees to take sick leave immediately when they start their employment. Those employees therefore receive further allocations after 12 months and then 24 months etc etc.

Employers who provide sick leave from commencement may need to think about whether this enhancement is going to unwittingly disadvantage some of their employees by delaying the date on which they receive their increased entitlement.

For example, Jenny started with Smith and Co on 1 June 2021. She received a five-day sick leave entitlement immediately. If Smith and Co do nothing she will receive her (increased) ten-day entitlement on 1 June 2022.

However, if Smith and Co had simply applied the Holidays Act then Jenny would have been entitled to no sick leave on her commencement, but she would have received the ten days on 1 December 2021.

The Holidays Act allows employers to give employees enhanced entitlements but says that any deviation from its provisions won't have effect to the extent that it excludes, restricts or reduces employee minimum entitlements under the Act. In this situation (and while it's arguable) Jenny is probably going to have a fairly good claim that she has been disadvantaged, even though that clearly wasn't the intention.

Employers in this situation should take specific advice, and they will want to think carefully about whether they address this issue and (if so) how. Dealing with the problem on a case by case basis may be the most pragmatic approach, particularly for small to medium employers. The terms of the specific employment agreement may also be key.

However from a legal perspective the safest solution will probably be for Smith and Co to provide Jenny with a further five days on 1 December 2021 (six months after her commencement date), with the ten-day entitlement then commencing on 1 June 2022, and annually from that point.

That "catchup" arrangement would need to apply to anyone whose commencement anniversary occurs in the six months period prior to 24 July, and who received sick leave immediately when they started work. Employees whose anniversary falls in the six months following 24 July would be treated normally, because they haven't been disadvantaged.

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