

Personal Assistant annual leave during COVID-19 pandemic - guidance for staff and customers who have a Direct Payment

This guidance answers some frequently asked questions raised by Direct Payment employers. This is regarding the Government's guidance to allow over 2 years of annual leave entitlement to be carried over during the Covid-19 pandemic. See link to Government guidance about 'Holiday entitlement and pay during coronavirus (COVID-19)' below.

<https://www.gov.uk/guidance/holiday-entitlement-and-pay-during-coronavirus-covid-19>

- It is always the employer's responsibility to ensure that their employees take their annual leave in the appropriate way.
- The law has not changed to enable employers to legally pay their staff for untaken leave, other than when employment ends.
- Warwickshire County Council are not the employers of Personal Assistants (PA): the final decision lies with the Direct Payment customer, in line with their employer role and responsibilities and the Government's guidance.
- Warwickshire County Council strongly advises all employers to encourage their Personal Assistants to protect their health and wellbeing by taking annual leave and to avoid accruing leave wherever possible.

Q: The Government has said that holidays can be carried over for 2 years. Is this correct?

A: Yes, this is correct, and the link to the Government guidance is above. The council recommends that employers follow the Government's guidance where it is not possible for annual leave to be taken.

Q: Do I need to save the annual leave budget set aside in my Direct Payment account?

A: Yes, you must continue to leave the percentage set aside in your Direct Payment account for untaken annual leave. You must keep a record of this and let the council's Direct Payment monitoring team know during any monitoring periods what the surplus money is for.

Q: Will the council's Direct Payment monitoring team ask for this money back as I will be above the 8 weeks allowed in my account?

A: You will need to tell them why the money is in the account to avoid this happening. If they see above 8 weeks, they will contact you and have a conversation about this if you have not made contact about this already.

Q: Can I pay my PA in lieu of their annual leave?

A: No. Please read the Government advice. The only time someone can get paid in place of taking statutory leave (known as 'payment in lieu') is when they leave their job. Employers must pay for untaken statutory leave, even if the worker is dismissed for gross misconduct. If an employer offers more than 5.6 weeks' annual leave, they can agree separate arrangements for the extra leave. See link to Government guidance on 'Taking holiday before leaving a job' below.

<https://www.gov.uk/holiday-entitlement-rights/taking-holiday-before-leaving-a-job>

Q: If my PA worked the whole 52 weeks of the year, they could potentially end up being paid for 57 weeks of the year if they receive payment for untaken annual leave. Is this correct?

A: Yes, this is correct but you should not be choosing to pay them for untaken leave. You must seek employment guidance.

Q: If PAs choose not to come to work, as they want to shield at their own choice, can I advise that they take the time as annual leave? Shielding ended on 31.3.21 but some people have continued to do this and may request to take annual leave.

A: Yes, you can request they do this

Q: Will it be the council who will need to decide on how leave is taken or if we pay the PA annual leave in exceptional circumstances?

A No, this is the employer's choice.

Q It used to be that if a PA did not take their annual leave in the year then they lost it. We would never pay it in lieu, or roll it over. Why has this changed?

A: The employer must act in line with Government advice

Q: Whose responsibility is it to ensure that my Personal Assistants take their annual leave?

A: It is your responsibility. As the employer, you should always encourage your employees to book and take their annual leave and not let it build up.

Q. Who can I contact to discuss the annual leave that my PA is entitled to?

A. All employment related enquiries can be answered by our Employer Support Service run by Penderels Trust, you can contact them on 02475 095227 during normal office hours.