

Annual leave: Does the government's 'Green List' mean go?



Focus on
COVID-19
Coronavirus

Many employers have recently been reviewing their annual leave policies and addressing employees' annual leave requests, in circumstances where travel restrictions (based on government guidance) have been in place during the current pandemic.

Government guidance up until 22 July 2020 was that all persons returning from foreign travel (excluding Northern Ireland) must complete a passenger locator form and restrict their movements for 14 days following their return. Employers in turn have been implementing this advice in requiring employees not to return to the workplace for 14 days immediately following such travel. In this regard, the Department of Public Expenditure and Reform issued guidance in mid July that all civil and public service employees who travel abroad for a non-essential trip would have to use additional annual leave or pre-approved unpaid leave for the 14-day period of restricted movement.

On the 22 July 2020 the government announced a 'Green List' of countries deemed to have similar or lower COVID-19 risks to Ireland (see the list [here](#)). The government's advice for travel to these countries is to implement 'normal precautions'. Accordingly, anyone who arrives into Ireland from a location on the Green List does not need to restrict their movements for 14 days following their return. The Green List will be reviewed on a fortnightly basis.

Employers need to take into account current government advice in addressing employee requests to travel abroad during annual leave. An employer's approach to employees travelling abroad during annual leave will very much depend on the nature of its business.

Factors which will influence the employer's approach include:

Can an annual leave request be refused because the employee is travelling to a foreign country (not on the Green List) on holiday against government advice?

While employers can, and should, encourage compliance with government guidance to avoid non-essential travel abroad, employers do not have a blanket right to refuse an annual leave request because the employee is going abroad on holiday.

However, if the employee's foreign travel is to a non-Green List country and they are not able to work remotely on their return during the required 14 days of restricted movement, the employer may have scope to refuse the annual leave request on the basis of objective business needs, i.e. because the employee will be away from work for three or four weeks (their week or two on holiday plus the 14 day period of restricted movement), which the business cannot accommodate.

Can employees work remotely?

Where this is the case, the requirement for the employee to restrict their movements for 14 days may not cause a difficulty as the employee may work from home. However, employers should bear in mind, prior to approving such a request, that the employee may not be fully available to their employer as they will not be able to attend the office or meetings in person during the 14 days of restricted movement.

What if remote working is not a viable option?

Where remote working is not viable, many employers are implementing options such as employees taking annual, unpaid or other forms of leave to cover a 14-day period of restricted movement. Changes to your annual leave policy are recommended. Where changes to policy are to be made, prior communication to employees in advance of annual leave approval is vital.

Is the employee proposing to travel to a country on the Green List?

Where an employee is proposing to travel to a country on the Green List, employers may take the government's advice that only 'normal precautions' apply and therefore allow an employee return to the workplace straight away.

Even where an employee travels to a country on the Green List, some employers may still opt for a cautious approach whereby the employee is required to work remotely on return for 14 days. This is particularly the case where, on the basis of a health and safety risk assessment, this is deemed a necessary requirement.

However, where employees cannot work from home, an employer could encounter difficulty in terms of any forced annual leave/unpaid leave in respect of the 14-day period on an employee's return from a Green List country. Where such a restriction is not in accordance with government advice or deemed necessary by a particular workplace's health and safety requirements, forced annual leave/unpaid leave could expose the employer to claims under the Organisation of Working Time Act and/or Payment of Wages Act.

What if the Green List changes while an employee is away on annual leave?

Employers and employees must bear in mind that the Green List is subject to regular change (currently reviewed every two weeks). If a country is removed from the Green List while an employee is there, they will have to restrict their movements on their return to Ireland for 14 days and will not be able to attend the workplace (and depending on the viability of working remotely, they may have to take additional annual leave or unpaid leave for this period). This eventuality should ideally be addressed in the annual leave policy prior to annual leave approval. The key consideration is what countries are on the Green List when the employee returns from leave.

Is the employee's travel based on an essential need or exceptional circumstances?

Employers should retain discretion to deal with employee requests which are based on an essential need or exceptional circumstances, such as pressing personal needs.

Conclusion

Employers should decide the "ground rules" based on the nature of their workforce and amend their annual leave policy accordingly. The amended policy should be communicated to all staff, so that, when seeking leave approval, employees are aware of the parameters if they wish to travel abroad during their leave. Employees should be required to disclose whether they plan to go on foreign travel when seeking approval for forthcoming annual leave. Employers and employees need to be prepared to adapt in line with the changing nature of the government's advice.

For further information on this topic please contact [Triona Sugrue](#), Knowledge Lawyer, [Ciarán Lyng](#), Solicitor or any member of the A&L Goodbody [Employment](#) team.

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