

NEWSLETTER DENMARK

EMPLOYMENT LAW NEWS

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The new Danish holiday act



Read in this edition:

→ News

- Sickness benefits for the particularly exposed by infection with covid-19
 - Payment of frozen holiday money in connection with corona
-

→ The new Danish Holiday act

- From September 1, the new holiday act applies - what is changing?
 - Salary - check that the salary system is ready for the new rules!
 - Check that the september payroll shows the balance correctly
 - Contracts - what should be changed?
 - Advance holiday
 - What should the employer do when an employee resigns after 1 September 2020?
 - Information for your employees in connection with holiday wishes after 1.9.2020
 - Can i transfer not used holidays from the holiday, ending 31.8.2020, to the new holiday year?
 - Can i ask for holiday if i have not earned any yet?
 - Can the employer deduct me in salary if i take holidays that i have not saved up for yet?
-

→ Concepts in the new Holiday Act

- Holiday year
 - Holiday periods
 - Holiday allowance
 - Holiday bonus
 - Advance holiday
 - Fund holidays (holiday advance 2020)
 - Replacement holiday
 - Main holiday periods
 - Main holiday
 - Rest holiday
 - Holiday notices
-

→ Checklist

→ News

SICKNESS BENEFITS FOR THE PARTICULARLY EXPOSED BY INFECTION WITH COVID-19

On 26 August 2020, the Danish parliament agreed to extend the scheme for employees at increased risk in the event of infection with COVID-19 and relatives of persons at increased risk until 31 December 2020.

The agreement secures persons who, in connection with the reopening of Denmark, have difficulty meeting physically at work, because they are in a special risk group in the event of infection with COVID-19.

The agreement gives private and public employers a temporary right to sickness benefit reimbursement from the first day of absence for employees at increased risk of a serious illness in the event of infection with COVID-19.

Similarly, employees who do not receive pay during the absence are entitled to sickness benefits from the home municipality. The scheme also covers relatives of people at increased risk of infection with COVID-19.

The right to sickness benefit for persons covered by the scheme is extended until the end date of the scheme on 31 December.

PAYMENT OF FROZEN HOLIDAY MONEY IN CONNECTION WITH CORONA

In connection with the transition to the new Holiday Act, holiday pay earned in the period 1.9.2019 to 31.8.2020 must be "taken out of the holiday system" and paid into a special fund, Lønmodtagernes Feriemidler (Fonden).

This was been necessary to avoid that the employee in the transition year to the new holiday law is entitled to double holiday pay.

In connection with the Corona crisis, it has been decided that part of the frozen holiday pay can be paid to the citizens already in 2020. It had otherwise been the plan that the holiday pay should only be paid from the Foundation when the employee permanently leaves the Danish labor market, e.g. due to old-age pension or emigration from Denmark.

However, the recently adopted rules mean that the employee can apply for up to 3 weeks' holiday pay already in October 2020. The specific amount the employee can apply for is the amount the employee has earned in the period 1 September 2019 to 31 March 2020. It is not possible to apply for a partial payment of holiday allowance earned during this period. The rest of the holiday pay earned in the transition year will only be paid out as originally planned when the employee reaches retirement age or leaves the Danish labor market.

The payment is made from the Fund's own fund, and it is thus not required that the employer has paid the amount to the Fund first. For the employer, it still applies that receivable holiday pay must be reported no later than 31. December 2020, and that the employer is free to choose whether the amount is paid into the Employees' Holiday Funds or the holiday pay is retained in the company.

The application is made digitally on the portal borger.dk in the period 1 October to 1 December 2020. Payment is made to the employee's NemKonto and is taxed as ordinary income.



→ The new Danish Holiday act

FROM SEPTEMBER 1, THE NEW HOLIDAY ACT APPLIES - WHAT IS CHANGING?

From 1 September 2020, the new holiday law applies. We have gathered a number of low-practice questions and tips that can help ensure that you get off to a good start with the new rules:

- Changes in the salary system?
- Is your employment contracts up to date?
- Have you agreed on how to handle advanced holidays?
- Changes in resigning employees?

SALARY - CHECK THAT THE SALARY SYSTEM IS READY FOR THE NEW RULES!

Cloud-based payroll systems such as E-economic and Lessor have run automatic updates. If your payroll system is on a local server, make sure you have run the necessary updates. If you have outsourced payroll administration to an external payroll agency, it may be a good idea to check if there are changes in your processes.

CHECK THAT THE SEPTEMBER PAYROLL SHOWS THE BALANCE CORRECTLY

The payslip for September should show the following:

- Remaining holiday for the holiday year, which ended 31.8.2020, is automatically transferred to the new holiday year and must thus appear as earned holiday.
- Every month, the employee earns 2.08 days of holiday, which must be visible on a holiday balance on an ongoing basis.
- If the employee has the opportunity to take holiday in advance, this must appear as a negative balance according to the new holiday law.
- If additional holidays have been agreed, the balance must also appear on the payslip.

The holidays earned during the transitional holiday year do not have to appear on the payslip. The employer must however, report the employee's holiday balance from the transitional year to the Employees' Holiday Funds no later than 31.12.2020. At the beginning of 2021, the employee will receive a notification from the fund of his frozen holidays.

CONTRACTS - WHAT SHOULD BE CHANGED?

If you have not checked whether your employment contracts comply with the rules of the new Holiday Act, you must do so now. If the employment contract contains provisions that become invalid under the new Holiday Act, this is an error in the employment contract, which may entitle the employee to a compensation under the Act on Employment Certificates. The compensation is typically between DKK 5,000 and DKK 20,000, depending on the significance of the error for the employee.

A provision which, for example, is in conflict with the new holiday law:

- *" The parties have agreed to deviate from section 15, subsection 2, and § 16, para. 1 of the current Holiday Act so that the Company may give notice of the holding of a main holiday with 30 days' notice and the holding of another holiday with 14 days' notice."*

Under the new Holiday Act, notice periods can no longer be agreed in advance, but only individually. It is therefore no longer possible to agree on such deviations in the employment contract in advance. If your employment contracts contain provisions on holidays, the following should be clarified:

- Are additional holidays regularly saved, just like regular holidays or are they allocated?
- If additional holidays are granted: does this happen at the beginning of the calendar year or of the holiday year?
- How does the balance on additional holidays appear on the payslip?
- Should additional holidays possibly become extra holidays to ease payroll administration?



If your employment contracts contain provisions that become invalid per. 1 September 2020, we recommend that you make an addendum to the contract stating that

the provision lapses. The change does not require the employee's consent, but you must be able to document that the employee has received the addendum.

This is typically easiest to do with a addendum signed by both parties, but can also be done by an information letter from the employer, where receipt here is documented.

Also check if your company's personnel handbook needs to be updated in relation to new procedures. It is generally a good idea to maintain the company's policies and procedures in connection with holidays in a staff handbook, e.g.:

- Allocation and settlement of additional holidays.
- Danish Holidays and what apply to 1 June, 24 December and 31 December.
- Notice deadlines for holidays.
- Possibility of and settlement of advance holiday.
- Settlement of holiday upon resignation.

If you do not already have a staff handbook, the transition to the new Holiday Act can be a good opportunity to review and streamline payroll processes and write them down in a staff handbook to ensure transparency, consistency and efficient business procedures.

ADVANCE HOLIDAY

As an employer, you can give your employees the opportunity to take a holiday before it is saved, i.e. in advance. This is not something the employee is entitled to, and advance holiday must be agreed between the employer and the employee.

If you as an employer want to use this option, we recommend that you lay down some rules in this regard in the staff handbook, e.g. it requires a certain seniority to use advance holiday, how many days the employee can get in advance, approval of an advance holiday and rules in connection with settlement of the holiday balance.

If your employee resigns before the advance holiday has been earned again, you are entitled to deduct the holidays that have already been taken from the employee's outstanding salary and holiday supplement.

WHAT SHOULD THE EMPLOYER DO WHEN AN EMPLOYEE RESIGNS AFTER 1 SEPTEMBER 2020?

1) Statement of holiday for freezing

Holidays saved in the period 1.9.2019 to 31.8.2020 must be reported to the Holiday Account (Feriekonto) and paid into the Employees' Holiday Funds. This applies to

employees who resign in the period 01.09.20 to 31.12.2020. For employees who retire in 2021, holiday pay to be frozen has already been reported.

Example: Employee resigns on 31 March 2021. The reporting deadline is 31 March 2021. The payment deadline for Feriekonto is 31 March 2021.

2) Notification of residual holiday to the greatest possible extent

The employer can give notice of the remaining holiday if the applicable notice of termination can be complied with. The notice of termination must therefore be more than 1 month, if the remaining holiday to be notified, is to be held during the notice period.

During the notice period, the employee continues to earn 2.08 holidays per. month. If a salaried employee is dismissed by the employer, the notice of termination is in most cases more than 3 months (for more than 5 months' seniority). The employer can notify the employee to take unused holidays to minimize payment of unpaid holiday.

3) Holiday pay settlement / settlement of negative holiday balance

Remaining holidays that cannot be taken during the notice period must be included in the holiday pay settlement in the last payslip. Reporting and payment to the Holiday Account must be made upon the employee's resignation.

If the employee's holiday balance is negative upon resignation, the employer can set off against the employee's salary.

Note: Changes in connection with the Holiday Account

There are new deadlines for reporting holidays to the Holiday Account (Feriekonto) and Holidaypayinfo (Feriepengeinfo) from 1 September 2020, because employees can in the future take holidays as the holiday is earned. The holiday pay must therefore be available to the employees faster than before. The employer must report holidays to FerieKonto or Feriepengeinfo for resigned salaried employees on the last banking day in the month in which the employee resigns.

INFORMATION FOR YOUR EMPLOYEES IN CONNECTION WITH HOLIDAY WISHES AFTER 1.9.2020

From 1 September 2020, the employee earns 2.08 holidays each month, corresponding to 25 holidays per year. If you have 30 holidays a year, you thus save 2.5 days a month. Holidays can be taken as early as the month after it is earned, and until 31.12. in the following year.

For the autumn holiday 2020 in week 42, the employee will thus only have 2 holidays to use, unless the employee has excess holiday from the previous holiday year, or the employer gives holiday in advance.

CAN I TRANSFER NOT USED HOLIDAYS FROM THE HOLIDAY, ENDING 31.8.2020, TO THE NEW HOLIDAY YEAR?

Yes.

Transfer of remaining holidays to the new holiday year takes place automatically.

CAN I ASK FOR HOLIDAY IF I HAVE NOT EARNED ANY YET?

Yes.

You can use any transferred remaining holidays from the mini-holiday year or ask the employer for an advance holiday. Your holiday balance will thus be negative and will be offset again as you earn holidays every month.

CAN THE EMPLOYER DEDUCT ME IN SALARY IF I TAKE HOLIDAYS THAT I HAVE NOT SAVED UP FOR YET?

Yes.

If you have not yet earned any holidays and the employer does not want to give holidays in advance, the employer can give you time off without pay and deduct you with 4.8% in salary per. taken days off.



→ Concepts in the new Holiday Act

HOLIDAY YEAR

The holiday year under the new Holiday Act runs from 1 September to 31 August of the following year.

HOLIDAY PERIODS

The holiday settlement period refers to the period in which the holiday can be taken. It runs from 1 September to 31 December in the following year and is thus 4 months longer than the holiday year.

HOLIDAY ALLOWANCE

Employees who are not entitled to paid holiday receive holiday allowance. Holiday allowance amounts to 12.5% of the salary and is paid into the Holiday Account on an ongoing basis. The employee can withdraw holiday allowance from the holiday account when he / she is on holiday. The employee does not receive salary while he / she is on holiday.

HOLIDAY BONUS

Salaried employees are entitled to holiday pay of 1% of last year's salary. The holiday supplement can be paid in two different ways:

- 1) Ongoing when the individual employee requests to take holiday
- 2) At two fixed times a year for all employees: with the May salary for the period 1 September to 31 May and with the August salary for the period 1 June to 31 August.

ADVANCE HOLIDAY

If the employee has not yet earned the right to holiday for the holiday the employee wishes to take, the employer can give the employee holiday in advance. The holiday taken is thus set off against the holidays that the employee earns later on.

FUND HOLIDAYS (HOLIDAY ADVANCE 2020)

Fund holidays are holidays from the freezing period that newly started employees could be allowed to use in special circumstances in the summer of 2020. Fund holidays are thus only relevant for holidays in the period up to 31 August 2020.

REPLACEMENT HOLIDAY

If the employee becomes ill during his commenced holiday, and he can document this to the employer, the employee is entitled to compensatory holiday. Note, however, that you are not entitled to compensatory holidays for the first 5 days of illness.

MAIN HOLIDAY PERIODS

The main holiday period runs from 1 May to 30 September each year. During this holiday, the employee can take 3 consecutive weeks of holiday.

MAIN HOLIDAY

Main holiday means holiday during the main holiday period.

REST HOLIDAY

Remaining holiday refers to the holiday weeks that go beyond the three-week main holiday and which can be placed outside the main holiday period.

HOLIDAY NOTICES

Main holiday must be notified at least 3 months prior to the start of the holiday.

Remaining holiday must be notified at least 1 month before the start of the holiday.

These notification rules can only be disregarded if agreed between the employer and employee.

→ Checklist

You can check if you are well prepared for the new rules with our checklist. If you have any questions, we will be happy to advise you.

✓ ARE YOUR EMPLOYMENT CONTRACTS UPDATED IN ACCORDANCE WITH THE NEW HOLIDAY ACT?

Adjustments that e.g. may be necessary:

- If additional holidays are granted,
- Mention of the holiday year in the contract,
- Holidays during the notice period, and
- Payment date for holiday allowance.

✓ IS THERE A STAFF HANDBOOK, AND IF YES, DOES IT CONTAIN ANY INFORMATION ON HOLIDAYS?

Adjustments that e.g. may be necessary:

- If additional holidays are granted,
- Transfer of holidays to the next holiday year and
- Taking holidays in connection with the resignation of employment.

✓ IS IT ENSURED THAT THE OBLIGATIONS AND DEADLINES OF THE NEW HOLIDAY ACT CAN BE FULFILLED?

Employers must report to the Funds no later than 31.12.2020 the holidays each individual employee has earned in the period 1.9.2019 to 31.8.2020. From 1.1.2021, additional periods follow.

✓ HAVE YOU DECIDED HOW YOUR BUSINESS WILL ADMINSTRATE HOLIDAYS EARNED DURING THE "FREEZING PERIOD"?

Employers can choose between two options: set aside holiday pay and make an annual index adjustment or pay the holiday pay to the Funds.

✓ DO YOU KNOW WHAT YOU SHOULD BE AWARE OF IF THE EMPLOYEE RESIGNS IN 2020?

✓ HAVE YOU DECIDED IF YOU WANT TO ACCEPT THAT YOUR EMPLOYEES TAKE "ADVANCE HOLIDAY" AND HOW TO ADMINSTRATE THIS?

✓ DO YOU KNOW HOW THE NEW HOLIDAY ACT MUST BE HANDLED IN THE FINANCIAL STATEMENTS?

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