



Q And A

Trying to force me onto a part-time contract: ask the expert

I am currently on maternity leave, due to go back after 12 months in June. When I go back I will have accrued a total of 35 days holiday. I have requested to take my holiday on every Thursday and Friday until it runs out and, with my new year's holiday allowance that I continue to accrue, continue to take those Thursdays and Fridays off. So I will be full time, but working part time hours through use of holiday. First of all, they said they don't think my role works on 3 days a week, then they said they would let me try 3 days a week to see if I could make it work. Then they said they want to change my contract to 3 days a week as soon as I go back. And shockingly, the only reason they want me to do this is so I accrue 10 days less holiday in the next holiday year as I will only accrue holiday on a pro rata basis! Please can you tell me if they are allowed to do this?! Surely if I am due to return back to my normal full time five days a week job in just over a month they can't force me to change my contract to part time?! They have said they will pay me the 35 days I have already accrued, but still... Can they do that?



Answer by Sandra Beale

Statutory holidays cannot be taken while an employee is on maternity leave, so it is important to agree the arrangements for the taking of statutory holidays ideally in advance of the maternity leave commencing. Employees should be allowed to take their accrued statutory holidays on their return from maternity leave, even if this falls in a new holiday year. Where the employer offers a holiday entitlement over and above the statutory minimum, the employer's own policy will determine the rules for taking this additional holiday, which must have been incorporated into the employee's contract of employment. Employers are able to make a payment in lieu of any additional, contractual holidays, as long as this provision is contained in the employee's contract.

When taking any holiday this must be agreed with your employer. Usually women returning from maternity leave take any accrued holiday at the end of their maternity leave so that they can spend more time with their baby before returning to work. If it is taken in one block then there is less disruption for the employer. Potentially what you are suggesting to your employer in how you take your accrued holiday may cause them disruption and they are within their rights to refuse.

However, their suggestion to you that they make your role part time without your agreement could be unfair dismissal and maternity-related discrimination which is pursuable in an employment tribunal.

**Sandra Beale is an HR expert and can respond to questions on employment law from both employers and employees. If you need advice with a maternity or pregnancy issue call her on 07762 771290 or contact her via www.sibealehrconsult.co.uk.*