

A young man with dark hair and a beard, wearing a white button-down shirt, is smiling warmly at the camera. He is standing in a modern office environment with large windows and industrial-style lighting fixtures in the background. A blue diagonal banner is overlaid on the bottom left of the image.

Get ready for the new Holiday Act

Your guide to why,
how and when

Preface

The changes made to the Holiday Act require due care to manage

Denmark's new Holiday Act and the related changes to other laws come into full effect from 1 September 2020, and the transition period has already commenced. This means that Danish wage earners will from 1 January until 31 August 2019 accrue their last holiday days under the old set of rules. From 1 September 2019 onwards, your company must be prepared to process employees' entitlement of holiday funds to be frozen.

Generally, the law does not change the length of the holiday or the amount of the holiday allowance. Most people will be able to spend their holidays exactly as they usually would. But there are significant administrative tasks and changes that your company must be ready to handle. And financially, the change offers both challenges and opportunities that you will need to make some decisions on. If you are not prepared to handle these changes, it may end up costing you a lot of money and it could cause unnecessary problems.

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The transition period

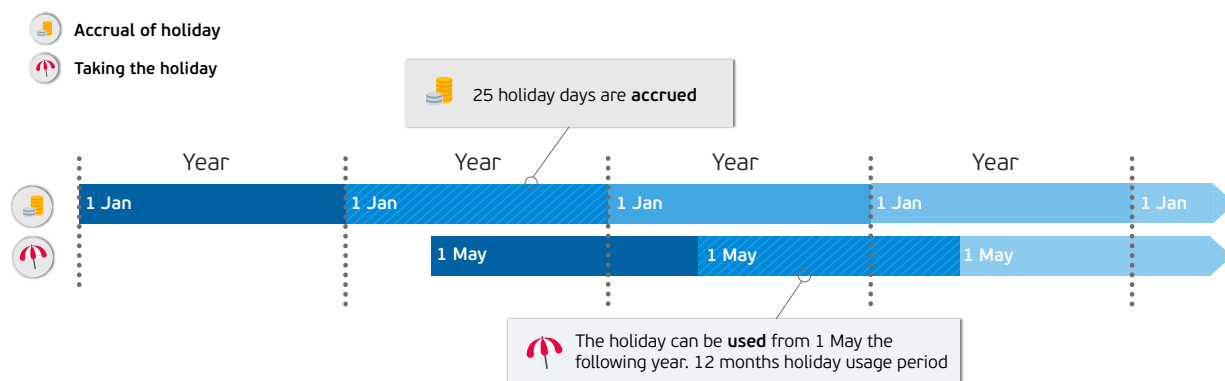
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The changes to the legislation

This is why the Holiday Act is changing

Under the old Holiday Act, holidays were accrued during the course of a calendar year and subsequently used within a 12-month period. The 12-month period commenced 4 months after the accrual period, i.e. 1 May the following year.

The old Holiday Act



Currently, the offset time between the accrual year and the year the holiday is used means that new employee entering the workforce must wait up to 16 months before they can use their first paid leave. However, a regulation in the EU's Working Time Directive affords wage earners the right to four weeks of paid holiday every year, including their first year in the workforce. The new Holiday Act with concurrent holiday is introduced to comply with this rule. The fifth holiday week is a special Danish rule.

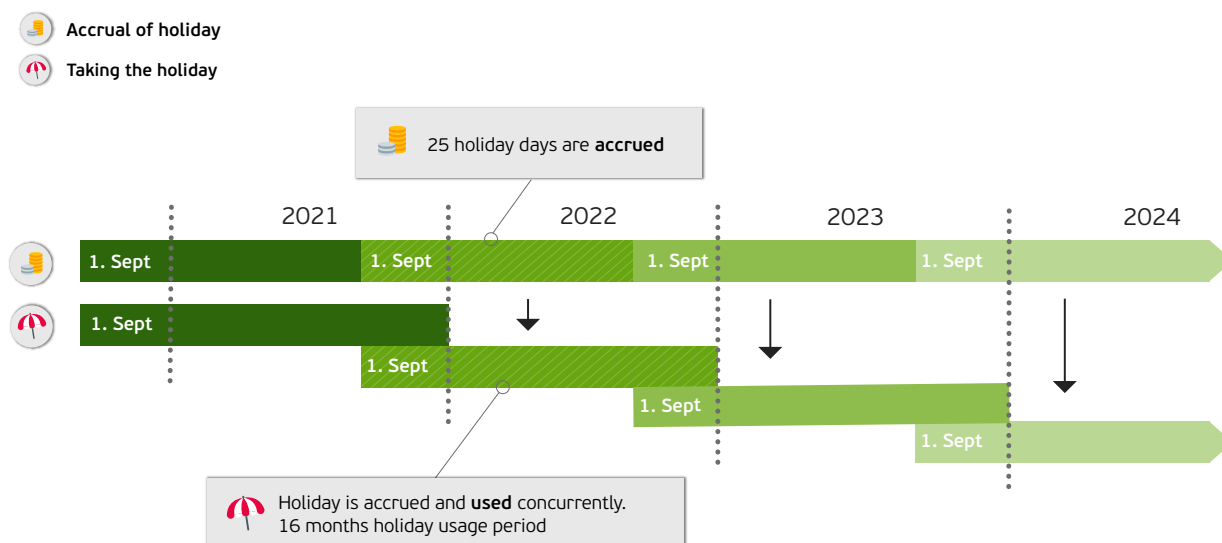


The changes to the legislation

The new Holiday Act with concurrent holiday

Concurrent holiday means that the holiday should, as a rule, be used within the same year that it is accrued. Holiday and corresponding payment should therefore be at the disposal of the employee as soon as it is accrued.

The new Holiday Act



To ensure that everyone has the option of taking 3 weeks of consecutive holiday in the main holiday period (1 May - 30 September) the holiday year has also been moved. In future, the holiday year will run from 1 September until 31 August. An employee hired at the beginning of the holiday year on 1 September will at the start of the main holiday period (1 May) have accrued 16.64 holiday days.

In order to make the holiday planning more flexible, the period to use the holiday days has been extended by 4 months after the accrual period. This makes it possible to use the accrued holidays within 16 months.

The changes to the legislation

The intent of the EU regulation and the new legislation is to ensure that everyone uses 4 weeks of paid holiday each year. This is also reflected in the stricter rules regarding transference or pay-out of unused holidays. The options under the old rules have to the largest possible extent been carried forward, but under the new legislation the rules are outlined as follows:

- 4 weeks of holiday must as a rule be used within the usage period of the same holiday year.
- If one is prevented from taking holiday, in events such as maternity/paternity leave or sickness, and it is therefore impossible to use the 4 week holiday, then these can be transferred and used during the following usage period. It is only in the event that the employee's usage of those holiday is again impeded during the following period that it is possible to pay out the holiday allowance instead of using the holiday.
- It is still possible to make an agreement about transference or pay-out of accrued holiday in excess of the 4 weeks.
- If the fifth holiday week is not used, and no agreement has been reached about transferring it, the company is under obligation to pay out the fifth holiday week at the end of the usage period on 31 December.



Financial consequences

Financial burden and statutory compensation

Any changes to the rules will always be burdensome for the company needing to change routines. The rules in the new Holiday Act furthermore includes an increase in administrative tasks. Moreover, the concurrent holiday will potentially have a significant impact on the company's liquidity. That the implementation of this new Holiday Act is a burden to the company has been taken into consideration in the legislation. In the text of the political agreement published prior to the adoption of the legislation, it was stated: "A new holiday agreement will burden employers financially and the parties to the agreement therefore agree to compensate employers in accordance with the model set forth in the report."

The nature of the compensation

The report (on which the legislation is based) was drafted in concordance with the labour market's parties and according to the report, the agreed model of compensation ensures that "private employers are fully compensated for their additional costs up to 2040."

Amongst other measures, this includes a reduction of the companies' financial contribution towards ATP (Labour market pension) and the state will cover the additional expenses in Lønmodtagernes Garantifond (LG), which are expected as a consequence of LG stepping in as guarantor for the wage earners' claims in the new fund, Lønmodtagernes Feriemidler (hereinafter 'the Fund').

Additionally, the rules about freezing holiday funds can also have a special significance in regard to the company's liquidity. The freeze and the company's options in that regard therefore deserve particular attention.



85 billion DKK

is frozen to smooth out the effect of the law

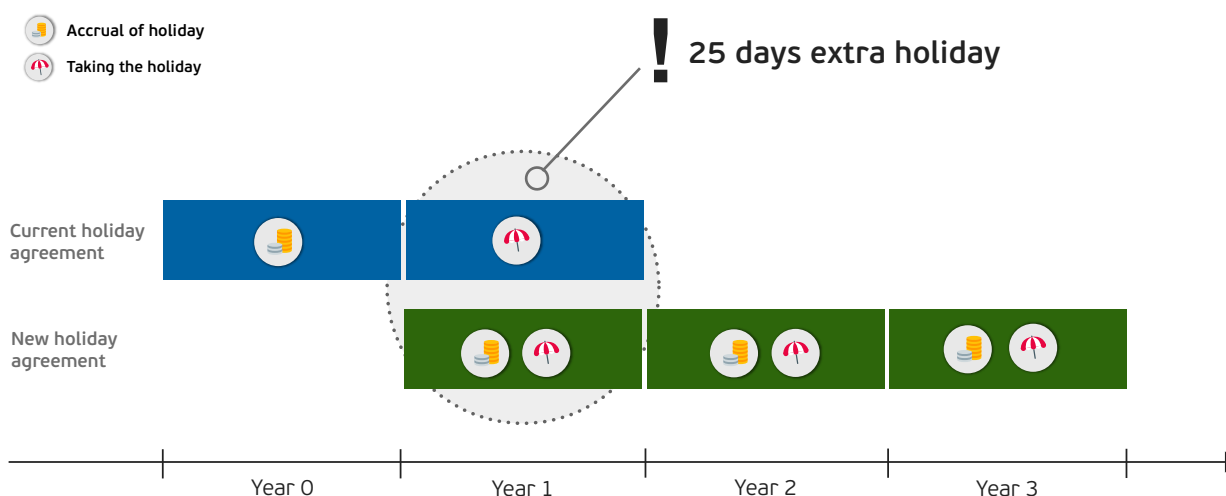
Financial consequences

One year of holiday allowance, 25 holiday days frozen

It is estimated that a total of approximately 85 billion DKK will be set aside for disbursement as the employees concerned retire or leave the Danish labour market. This is the statutory holiday allowance, which is earned during the last 12 months prior to the commencement of concurrent holiday - i.e. during the period 1 September 2019 - 31 August 2020. Agreed or individually agreed holiday benefits, such as a sixth holiday week / additional holidays or holiday allowance higher than 12.5%, are not affected by the old or the new law and need therefore not be frozen.

By 31 December 2020 the company must report to the Fund how much each employee has accrued to be frozen and from that date, the employee can claim from the Fund.

The 25 holiday days are frozen to avoid this scenario



This provision smooths out the societal effect of the transition to concurrent holiday. If the money were instead paid out in the holiday year after they were accrued, as was the case under the old rules, then the Danish wage earner would receive double holiday allowance at their disposal the first year of concurrent holiday.

If the company were to pay out the employees' accrued holiday funds to the Fund the same year that concurrent holiday comes into effect, this would similarly correspond to paying out double holiday allowance the same year. This would constitute a significant liquidity burden for some companies. For the majority of Danish employees, the employers can therefore choose to "retain" the employee's frozen funds in the company.

Financial consequences

The option to have the frozen funds at the disposal of the company

This option applies to employees receiving wages during holidays and to employees paid by the hour who are covered by a collective agreement with a guarantee scheme. The company can opt to retain the frozen holiday funds for these employee groups until the employees in question leave the labour market. Note that if the company contributes a payment in lieu of unused days of holiday to the holiday account (FerieKonto) or contributes to a private holiday fund on behalf of the employee, then this option does not apply.

In the course of the summer of 2021, you will receive a letter from Lønmodtagernes Feriefond wherein you will be asked to decide whether the company will transfer the frozen holiday funds to Lønmodtagernes Feriefond or whether you wish to retain the funds in the company.

If you decide to retain the frozen holiday funds in the company, this will be the equivalent of a loan from the Fund with associated financial and administrative obligations:

- The company must yield interest on the loan with the same percentage as the annual wage development pursuant to the Danish Employers' Association's structural statistics. You will be notified annually about the applicable indexing percentage.
- You must annually notify the Fund whether the company still wishes to administer the person's receivables.
- The Fund's receivables from the company are included as a liability in the company's accounts on an ongoing basis.
- The company can, at any point, choose to pay the individual employee's receivables to the Fund.
- The Fund's receivables for the individual employee are due for payment at the end of September in the year in which the employee exits the labour market.
- All holiday funds are due for immediate payment if a company fails to pay overdue holiday funds or fails to disclose that they will continue to administer non-due funds. The same applies if the company is dissolved before the entire debt to the Fund is paid in full.
- If a company is not able to pay the amount due, then Lønmodtagernes Garantifond (LG) steps in as guarantor for the Fund. The Fund's receivables are then passed to LG, which will recover the debt as per applicable rules, which is to say, in extreme cases resulting in a bankruptcy petition.

Regardless of whether the company transfers the amount due to the Fund or chooses to administer the money themselves, the amount that the individual employee is paid out upon exiting the labour market is identical.

Financial consequences

The tax rules in regard to the frozen holiday funds

Frozen holiday funds are gross assets, which are taxed upon the Fund's payment to the employee.

If you choose to keep frozen holiday funds in the company, it may be worth considering the timing of the tax deduction for the liability. In general, holiday pay is deducted the same year as it is paid, but the rules allow for using the tax deduction already in the year in which the obligation is earned. A decision on this must be reached by latest 31 August 2020.

The value of the potential liquidity improvements

The value of the liquidity improvements that the legislation offers must, of course, be weighted in relation to what they will cost. Both actual and projected figures are included in the calculation.

- Liquidity
- Investment needs
- Expenditure on conversion and transition period
- Ongoing expense of administering the retained frozen funds
- Deposit and lending rates, including overdraft rates in relation to the indexing percentage for the frozen funds
- Tax percentages
- Concurrent holiday's burden on the budget during the first year when hiring new employees
- The age of the employee - the older the employee, the faster the frozen funds will become due.

Allocate ample time to discuss which choices are most advantageous for the company's financial situation and future plans in terms of payment and taxation dates. We recommend that you ensure that you are fully apprised of the various deadlines in connection with the transition to the new Holiday Act. The accounting processing of holiday payables must be also be clarified.

Administrative challenges

Training key employees

The company's HR and payroll manager must become knowledgeable about the rules and during the transition period they must keep themselves informed about the specific implementations of the rules - if relevant, through attending courses.

For payroll it is imperative to be thoroughly familiar with the rules, because:

- errors in calculations, payments or reports of holiday allowance will result in extra work.
- errors can result in expenses, for example in the form of improperly or prematurely disbursed money which cannot always be recovered. Or, in the worst-case scenario, in the form of fines - for example in the event of late reporting.

The HR manager must know the rules in order to ensure that:

- employees receive correct and relevant training on the new rules.
- employment contracts and other contract documents comply with the new rules.

Informing the employees

Changing the framework always has the potential to cause uncertainty and holiday planning is a sensitive issue for many, in part because holiday planning preferably needs to coincide with the holiday planning of family and friends. Even though the changes may not directly impact the vast majority, the changes can still cause uncertainty, particularly in the transition period. Moreover, there are some special rules that will affect some groups of employees. Therefore one of the most important practical tasks will be to thoroughly inform the employees about the new Holiday Act.

Due to the complexities of the new Holiday Act, we recommend dividing the information into two main parts:

- 1. General information for everyone.** Information about the key elements of the legislation and the transition period phases, as well as how the company intends to handle the transition and the challenges associated with the legislation.
- 2. Detailed information for each individual.** Most of the new details have repercussions for all employees. For example, salaried employees, those paid by the hour, newly graduated, trainees, employees who change working hours or employees affected by maternity/paternity leave or long-term illness. It would provide a sense of comfort for each individual to be told exactly what applies to their specific circumstance.

If relevant, follow up with reminders of some of the transitional details as they become relevant - for example, a reminder to transfer holiday days if you need more than 16 holidays during the period 1 May to 31 August 2020.

Administrative challenges

System support and change of routines

The new rules entail a change to the requirements of the routines and processes when calculating pay and payroll.

Henceforth, more and more frequent calculations, reports and payments must be made, because the holiday allowance must be made available to the employees immediately. For those employees who are paid by the hour and receive their salary every fortnight, calculations and reports must be made every 14 days. There will also be more complicated calculations, for example the ongoing calculations of how much holiday allowance is due to employees with changed working hours.

Your salary and holiday management processes must of course be suited to meet these new requirements. Automated / digital processes must be updated and routines must be adapted. If your payroll currently has several manual workflows, it would be advisable to investigate how these can be minimised. Under the new rules, manual entries may become disproportionately time consuming and the increased complexity will increase the risk of error. A comprehensive review of your existing solutions would therefore be a good idea.

When the employees' accrual of holiday funds to be frozen commences on 1 September 2019, your programs and processes should be ready for compliance and handling of the new requirements.



Administrative challenges

Certain details require special knowledge and handling

There are numerous details that the payroll bookkeeper must keep track of. To mention just two examples, which are both exceptions to the general rule that everyone gets the same holiday allowance under the new rules as they did under the old rules.

Calculation of the new balance in the event of changed working hours.

Under the new law, holiday allowance for employees receiving salary during holidays must always be calculated on the basis of the working hours (regular hours) at the time of accrual. The old rule, that the working hours must be altered by at least 20% before the calculation of the new balance is done, no longer applies. The effect of this may surprise some employees, especially if they receive a lower holiday allowance than they would have previously received in the identical situation.

Special calculation of holiday accrued during periods of partial pay when taking maternity/paternity leave:

For employees with partial pay during periods of maternity/paternity leave (for example, periods with a pension contribution), the holiday allowance must be calculated on the basis of the entire regular salary.

In about 60 years from now,

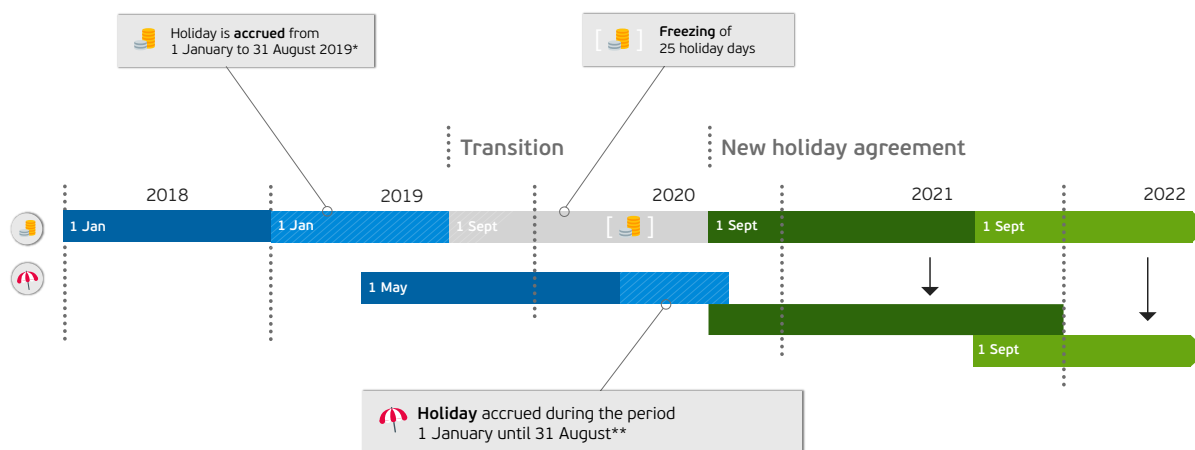
it is expected that the final wage earner will have received their frozen funds paid out by Lønmodtagernes Feriemidler.



The transition period

The transition period

- Accrual of holiday
- Taking the holiday



1 January - 31 August 2019

Danish wage earners accrue holiday to be used in the last offset usage period. 16.64 holiday days are accrued to be used in the period 1 May - 30 September 2020.

1 May 2019 - 30 April 2020

- The last whole holiday year under the old Holiday Act.
- Employees who anticipate needing more than 16 days of holiday during the main holiday period in 2020 must remember to transfer the days from this current holiday year.

1 September 2019

- Accrual of holiday funds for freezing commences.
- Any holiday allowances obtained through collective agreement or individual agreement are not included in the amount to be set aside.
- The payroll system must be ready and all employees registered correctly.
- Holiday funds accrued after this date constitute a liability owed to Lønmodtagernes Feriemiddelfond. The company itself may under no circumstances issue payment of the funds to the employees.
- Employment contracts, employee handbooks and other local or individual contracts should be revised to comply with the new law. For example, the new rules limit the option to agree on holidays at short notice.

The transition period

1 May - 31 August 2020

- The last period for using accrued offset holiday. The 16.64 holiday days accrued between 1 January - 31 August 2019 are used at this time, if applicable in conjunction with any transferred holiday days from the holiday year 1 May 2019 - 30 April 2020.
- Any holiday days left over are transferred to the next holiday period. Employees can, however, request a pay-out of any holidays in excess of 20 days.
- Newcomers to the labour market will in this period have the option of using up to 8.3 days of holiday with payment from the individual's frozen holiday funds - the so-called "fondsferiedage" (holiday days accrued in the Fund) "Fondsferiedage" are only an option for new (or returning) individual to the labour market who:
 - ...have joined the labour market in 2019
 - and accrued 8.3 holiday days to be frozen in the period 1 September - 31 December 2019
 - and have accrued less than 8.3 holiday days in the period 1 January - 31 August 2019.

31 August 2020

- Accrual of holiday funds for freezing ends.
- Final deadline for choosing the tax deduction of the accrual period for the frozen holiday funds that the company has chosen to retain.

1 September 2020

- Concurrent holiday comes into effect. Accrued holiday hereafter is at the disposal of the employee immediately after it has been accrued - this is also the case for new hires.
- All rules in the new Holiday Act are now in force, as are all changes to other legislation affected by this new law.
- The new holiday year commences - the accrual period up to and including 31 August 2021, the usage period up to and including 31 December 2021.

31 December 2020

- Final deadline for reporting the employees' frozen holiday funds to the Fund.

The transition period

When are the final details in place?

As mentioned, some of the guidelines that the company must comply with have yet to be defined. A portion of the adopted legislative amendments await further ministerial determination about rules and procedures and during February 2019 proposals are put forward for amendments to the new Holiday Act and the legislation on management and administration of receivable holiday funds (the funds that are frozen). The notified bills concern "technical changes and clarifications", but the content is as yet unknown.

If the company is a member of an employer organisation, you can expect information from your organisation on the legislation's impact on the collective agreements that the company is covered by.

In addition, you can read more and keep yourself up to date with developments on www.visma.dk/ferielov.



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