

Advice Leaflet - Holidays and Holiday Pay

Arrangements for holidays and holiday pay should be agreed between employers and workers or their representatives. Disagreements over holidays and holiday pay are common if entitlements are not clearly set out in writing. Such disagreements may lead to a deterioration in employment relations and possible complaints to employment tribunals.

This leaflet gives general information on:

- what the law says about holiday entitlement
- where entitlement to holidays and holiday pay is written down
- paid leave and public holidays
- how a part-time worker's holiday is calculated
- rights of agency/casual workers
- when a leave year starts
- leave accrual
- how a week's pay is calculated
- how must a worker apply for leave
- restrictions that may be placed on taking holidays
- entitlement to holiday pay on termination of employment
- what a worker can do if holiday entitlement is denied
- dealing with requests for extended leave
- sources of further information

Information on the law is provided for guidance only. An authoritative statement of the law can only be given by the courts.

Legal considerations must be looked at in the light of particular circumstances and it may be prudent to seek legal advice.

The Acas Helpline - 08457 474747 can provide information on employment matters but cannot provide legal advice on particular cases. Other sources of advice include employers' associations, lawyers, trade unions and Citizens' Advice Bureaux.

What does the law say about holiday entitlement?

The Working Time Regulations 1998 set down the minimum annual leave provisions for workers although some employers may provide more generous contractual holidays.

Under the Working Time Regulations, workers(1) (including part timers and most agency and freelance workers) have the right to:

- four weeks paid leave each year (since 23.11.99)
- payment for untaken statutory leave entitlement on termination of employment

The provisions in the Regulations on holidays and holiday pay do not, at present, apply to:

- doctors in training
- services such as the armed forces or police or parts of the civil protection services where their activities conflict with the statutory entitlement to paid annual leave.

From 1 August 2004 junior doctors will be entitled to the minimum statutory entitlement of four weeks paid holiday.

Schedule 2 to the Regs. makes special provisions for annual leave in relation to agricultural workers. More information is available from the Agricultural Wages Helpline - details at the end of the booklet.

Where can I find out my entitlement to holidays and holiday pay?

Details of holidays and holiday pay entitlement can be found in;

- the employee's written contract, where there is one
- a written statement of employment particulars given to employees by their employer.

The written statement is required by law and must be given to employees by the employer no later than two months after the start of employment.

The document should contain sufficient detail to enable the employee's entitlement to be precisely calculated, including any entitlement to accrued holiday pay on the termination of employment.

What are public holidays?

Generally, public holidays include bank holidays, holidays by Royal Proclamation and 'common law holidays'. Banks are not allowed to operate on bank holidays. When public holidays in the Christmas and New Year period fall on Saturdays and Sundays, alternative week days are declared public holidays.

Do employees have the right to paid leave on public holidays?

There is no statutory entitlement to paid leave for public holidays. Any right to paid time off for such holidays depends on the terms of the worker's contract. If the contract is silent, the right to paid leave may have built up through custom and practice.

Paid public holidays can be counted as part of the statutory four weeks holiday entitlement under the Working Time Regulations 1998.

How is a part-time worker's holiday entitlement calculated?

Part-time workers are entitled to the same holidays as full time workers, calculated on a pro-rata basis. For example, an employee who works three days a week is entitled to twelve days paid holiday - their normal working week multiplied by four.

Can a part-time worker who works Wednesday to Friday claim the right to paid bank holidays which fall on a Monday?

Only if full-time workers at the same workplace are given paid leave for bank holidays in addition to the statutory leave entitlements under the Working Time Regulations.

The Part-time Workers (Prevention of less Favourable Treatment) Regulations 2000 provide that part-time workers should not be treated less favourably than full-timers in regard to their contractual terms. As most bank and public holidays fall on a Monday, those staff who do not normally work that day could be disadvantaged. Best practice suggests that such workers should be given a pro-rata entitlement of days off in lieu according to the number of hours they work.

What is the position of agency or casual workers regarding entitlement to paid leave?

Agency and casual workers are entitled to holidays under the Working Time Regulations 1998 in the same way as other workers. However, entitlement will depend on their employment relationship, pattern of work and length of service and therefore may be calculated on a pro rata basis. Where this is the case, wages on each termination will normally contain an element of holiday pay where the appropriate leave entitlement has not been taken.

When does a leave year start?

The Working Time Regulations 1998 stipulate that the leave year will begin:

- on the date the worker began work for the current employer, or
- 1 October (the anniversary of the Regulations becoming law), or
- on a date set by the employer which should be set out in the written statement of main terms and conditions – perhaps, for example, from April to March.

If a worker starts work part way through the company's leave year, the initial holiday entitlement is ordinarily based on the period from that date until the leave year ends. In most cases, employers will calculate entitlement for a part year pro rata to the full year. So, if a worker begins

work in July and the company's leave year runs from April to March, the entitlement will be three-quarters of the full entitlement for that year.

Can untaken leave be carried over to another leave year?

The Working Time Regulations 1998 do not entitle a worker to carry leave over into the following leave year. Neither may unused leave be replaced with a payment in lieu except where employment is terminated. However, the contract may allow contractual leave over and above the minimum entitlement to be carried over or attract payment in lieu, if agreed.

What is an accrual system?

The Working Time Regulations 1998 were amended in 2001 to take account of a European Court decision. The amendment allows employers the option of introducing an accrual system for the taking of leave for workers starting employment on or after 25 October 2001 but only during the first year of employment. Under such an accrual system, leave is built up monthly in advance at the rate of one twelfth of the annual entitlement.

For example, a full-time worker in the eighth month of employment would have built up 13.5 day's leave. This calculation is based on annual entitlement of 20 days $\times 8/12$ ths = 13.33 which is then rounded up to 13.5 days.

An employer who chooses not to introduce the accrual system can still control the timing and taking of leave - see What restrictions may an employer place on the taking of holidays?

Does leave accrue during periods of absence?

As long as a contract exists between the employer and the worker, the statutory minimum entitlement to paid holiday will continue to accrue during periods of absence, such as illness, ordinary and additional maternity leave.

However, if a worker does not exercise their right to take annual leave within a leave year, then their statutory entitlement to paid holiday will be lost as they are not allowed to carry this over to the next leave year. For example if a person is on sick leave for the whole of a leave year there is no statutory entitlement to annual leave for that year.

How is a week's pay calculated?

For each week of their statutory leave entitlement workers are entitled to be paid a week's pay calculated in accordance with sections 221-224 of the Employment Rights Act 1996 as follows:

Workers with normal working hours

- If a worker's pay does not vary with the amount of work done then a week's pay is the amount due for a week's work under the worker's contract. Pay for non contractual overtime is excluded.

- If a worker's pay varies with the amount of work done then the amount of a week's pay is the pay for the normal weekly working hours multiplied by the workers average hourly rate over the preceding 12 weeks. This may occur under a piece work, bonus or commission system. To calculate the average hourly rate only hours where the worker was working, and the pay related to them, should be taken into account. Overtime hours can be included although pay for these hours should be adjusted to the normal rate. Any week in which no pay was due, for hours worked, should be replaced by the last previous week in which pay was received for hours worked.

- Shift and rota workers, whose pay varies because they work their normal hours at varying times and in varying amounts in different weeks, have their week's pay calculated differently. Their average weekly hours of work, in the preceding twelve weeks, are multiplied by their average hourly rate. The hourly rate is calculated as above and includes any shift allowance which is payable.

Workers with no normal working hours

- If a worker has no normal working hours then a week's pay is the average pay received over the preceding 12 weeks. Any week for which no pay was due should be replaced by the last previous week for which pay was due.

How must a worker apply for leave?

Workers are required to give notice to their employers if they wish to take a holiday. The notice must be twice as long as the period of leave requested. For example, a worker wanting one week's holiday needs to give two week's notice. The employer can refuse permission by giving notice at least as long as the leave requested, i.e. one week.

What restrictions may an employer place on the taking of holidays?

Restrictions on taking holidays may be expressly stated in the contract of employment, implied from custom and practice or incorporated into individual contracts from a collective agreement between the employer and trade union(s).

Employers may choose to:

- shut down for certain periods during which all or some groups of workers have to use their annual holiday entitlement

- nominate particular dates as days of closure, when workers are expected to take annual leave (for example, over the Christmas and New Year period)
- determine the maximum amounts of leave that can be taken on any one occasion and also the periods when leave may be taken.

Any clash of requested holiday dates may be resolved by management - for example, by considering the particular circumstances of the individuals concerned as well as the needs of the business or by other means such as drawing lots or agreeing 'first come, first served'.

In the absence of an agreement on the taking of leave, the provisions of the Working Time Regulations 1998 apply:

- an employer can require a worker to take all or any of the leave to which a worker is entitled at specific times, provided that the worker is given prior notice. The notice period should be at least twice the period of leave to be taken. For example, employers wishing to have a Christmas shut down spanning one week would have to give at least two weeks' notice to their workers.

What can a worker do if holiday entitlement is denied?

Workers denied statutory entitlements to paid annual leave under the Working Time Regulations 1998 should seek to settle disputes with their employer by setting out the problem and perhaps going through the grievance or appeals procedures, where they exist. If it is not possible to reach an agreement in this way, workers may submit a complaint to an Employment Tribunal within three months of the refusal. If the complaint is upheld, the tribunal will make a declaration to that effect and may award compensation to be paid to the worker by the employer.

Is there an entitlement to accrued holiday pay for leave untaken on termination of employment?

Yes. No matter how short the period of employment, the worker has the right to be paid for leave accrued during that time. Under section 1 of the Employment Rights Act 1996 employers should include in a written statement of employment particulars, sufficient detail to enable the precise calculation of a worker's entitlement to accrued holiday pay on termination of employment.

Accrued holiday on termination need not to be rounded to the nearest half day - payment can be made for the exact amount of leave accrued.

Unless a contract of employment improves the position, the provisions of the Working Time Regulations 1998 apply and payment for untaken leave should be calculated using this formula:

$$(A \times B) - C$$

where:

A is the period of leave to which the worker is entitled

B is the proportion of the worker's leave year which expired before employment ended

C is the period of leave taken by the worker between the start of the leave year and the termination date

For example, a worker who works five days a week, qualifies for four weeks' annual leave and finished employment after six months, having taken five days' leave, will be entitled to:

$4 \text{ weeks} \times 0.5 - 1 \text{ week} = 1 \text{ week's pay}$ or $20 \text{ days} \times 0.5 - 5 \text{ days} = 5 \text{ day's pay}$

How can holiday pay be calculated for a worker who left after only three days in employment?

An employer should define in the written statement of employment particulars what is a working week.

For example, based on a 5 day working week, 20 statutory days paid holiday are due in a year.

$3/5 \text{ of a week} = 0.6$
 $0.6/52 \times 20 = 0.2307692$

This sum represents approximately a quarter of a day. Therefore, payment on termination for holiday accrued on the basis of three days work, would be around two hours pay.

Employers may use different methods to calculate holiday pay. If such methods are clearly set out in writing, the potential for claims to be made at an employment tribunal will be reduced.

What is meant by 'rounding up'?

'Rounding up' to the nearest half-day can happen when a worker requests leave and has, for example, only built up 0.3 of a day.

If employment is continuing, the employer may round up the fraction to a more convenient half a day's leave. This 'rounding up' will be taken into consideration when calculating the next period of leave.

However, if a worker has accrued 0.3 of a day's leave and his employment terminates, he receives payment for 0.3 of a day's leave only.

What happens when a worker has taken more leave than their entitlement on termination of employment?

Regulation 14 (4) of the Working Time Regulations 1998 states that an employer and worker can draw up a 'relevant agreement' (for example, in the contract of employment) to provide that a worker will compensate the employer, whether by payment, undertaking additional work or otherwise if leave already taken is in excess of entitlement when employment ends.

There should be a 'relevant agreement' in place; if not, and a deduction of overpayment is made by the employer from the worker's final wage payment, the worker may have the right to submit a claim to an employment tribunal under section 13 of the Employment Rights Act 1996 - the right not to suffer unauthorised deductions.

What needs to be considered when workers request extended leave?

There is no general statutory right to extended leave without pay and whether it is granted is a matter for agreement between employers, their workers or, if appropriate, their trade unions. It may be helpful to have a policy on extended leave which applies to all workers.

An agreement that a worker should return to work on a particular date will not prevent a complaint of unfair dismissal to an Employment Tribunal if a worker is dismissed for failing to return as agreed. In such cases all the factors should be considered and the need to act reasonably should be borne in mind before dismissal is carried out.

The Acas Advisory Handbook: Discipline and Grievances at Work gives advice on drawing up policy on extended leave and how to handle disciplinary matters.

Further information

Acas Advisory Handbook: Discipline and Grievances at Work - you can order online or telephone Acas publications - 08702 42 90 90

Agricultural Wages Helpline - 0845 000 0134

The following Department of Trade and Industry booklets are available at www.dti.gov.uk/publications:

Written statement of employment particulars (PL700)
A guide to the Working Time Regulations 1998
Part-time work: the law and best practice

Notes

1 many employment rights are granted only to those termed "employees" or "workers" in the legislation and not to the genuinely self-employed. The definition of "worker" is somewhat wider than the definition of "employee".

Last printed version: August 2005

Last updated web version: March 2006