

GUIDE TO HOLIDAY PAY

Holiday pay: the basics

- Most workers are legally entitled to 5.6 weeks paid holiday per year (UK statutory entitlement)
 - The European Working Time Directive (EWTD) stipulates that all workers must have a minimum of 20 days per year (pro-rated for part timers)
- Part time workers are entitled to the same amount of holiday (pro rota) as full time colleagues
- Employers can set the times when workers can take their leave - for example a Christmas shut down
- If employment ends, workers have the right to be paid for any leave due but not taken
- There is no legal right to paid public holidays

Workers are entitled to receive holiday pay based on a 'week's normal remuneration' pay for each week of leave they take.

A week's pay is worked out according to the kind of hours someone works and how they are paid for the hours. This includes full-time, part-time and casual workers.

Working pattern	Pay
Fixed hours and fixed pay (part time or full time)	A week's holiday pay would normally be a week's normal remuneration.
Shift work with fixed hours (part time or full time)	A week's holiday pay is calculated by working out the average number of hours worked in the previous 12 weeks at their average hourly rate.
No fixed hours (i.e. casual work)	A week's holiday pay is calculated by working out the average pay received over the previous 12 weeks in which they were paid.

Recent changes: Bear Scotland judgement

Since November 2014 there are new rules in place to calculate holiday pay, based on a number of court judgements known collectively as Bear Scotland. In practice, this means that you need to consider whether other regular payments made to workers should be included in the holiday pay calculation. Payments which should be included are defined as 'those that have an intrinsic and direct link to the work being carried out by the employee'.

The following payments may therefore need to be included:

- **Commission*** - should be factored into statutory holiday pay calculations as linked directly to the work undertaken
- **Guaranteed overtime*** – should be factored into statutory holiday pay calculations
- **Non-guaranteed overtime*** – should be factored into holiday pay calculation
- **voluntary overtime*** – currently no definitive judgement, but if it is regular and linked to the work the employee does, then it is safe to assume that it needs to be taken into account and case law will follow

- **Work-related travel*** Where payments are made for time spent travelling to and from work as part of a worker's normal pay, these may need to be considered when calculating holiday pay
- **Standby and emergency call out payments** – related to work and therefore should be factored in to holiday pay calculations
- **'Acting Up' Supplements** – should be factored into the holiday pay calculations
- **Other allowances** – e.g. meal expenses - not usually seen as pay and therefore not included in holiday pay calculations
- **Annual discretionary (and other) bonuses** – this is currently a grey area. They are potentially linked to performance and may be included, but by nature, they are not regular payments and may not be included. One off bonuses from profits or for good will e.g. Christmas bonus should not be included as they are not directly linked to work carried out or to performance.

* For definitions – see below

Workers' rights to making a claim regarding underpayment of holiday pay

- Anybody making a claim must have had an underpayment for holiday pay that has taken place within three months of lodging an employment tribunal claim
- If a claim involves a series of underpayments, any claims for the earlier underpayments will fail if there has been a break of more than three months between those underpayments
- Only the 4 weeks' annual leave entitlement under the original Working Time Directive are covered by this judgment, rather than the full 5.6 weeks' leave provided by the Regulations as they operate in Great Britain
- The period that the claim can cover will be limited to a maximum of 2 years

Holiday pay and sickness

When a worker takes paid or unpaid sick leave, their annual leave will continue to accrue. If a worker is unable to take their annual leave in their current leave year because of sickness, they should be allowed to carry that annual leave over until they are able to take it, or they may choose to specify a period where they are sick but still wish to be paid annual leave at their usual annual leave rate.

Carrying leave over from one leave year to the next

Workers must take at least 4 weeks of statutory leave during the leave year, they may be able to carry over any remaining time off if the employer agrees. So if a worker gets 28 days of holiday, they may be able to carry over up to 8 days. It is not an automatic right to carry leave over to the next holiday year, but employers may agree to it.

Payment in lieu of holidays

While workers are in employment, 5.6 weeks of their annual leave (this is the amount all UK workers are statutorily entitled to) must be taken and cannot be 'paid off'. Anything above the statutory allowance may be paid in lieu but this would depend on the terms of the contract.

When a worker's employment is terminated, all outstanding holiday pay that has been accrued but not taken (including the statutory allowance) must be paid.

Definitions

Guaranteed overtime: the employer is obliged by the contract to offer and pay for agreed overtime

Non-guaranteed overtime: there is no obligation by the employer to offer overtime but if they do then the worker is obliged by the contract to work overtime.

Voluntary Overtime: the employer asks the worker to work overtime and the worker is free to turn down the request as there is no contractual obligation on either side to offer or refuse overtime.

Commission: an amount of money a worker receives as a result of making sales and can make up some or all of their earnings.

Work-related travel: this will usually mean any travel that is made for work purposes that is not a part of a workers commute to their usual place of work.

Want to know more?

If you have questions or want to discuss how holiday pay should be calculated in your business, then please call Angela Spooner on 01768 753001 or email angela@peopledecisions.co.uk