

Holidays and holiday pay

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Arrangements for holidays and holiday pay should be agreed between employers and workers or their representatives.

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Introduction

This leaflet gives a summary of holiday entitlements. It sets out:

- the right to annual leave
- when a leave year starts
- how and when workers can take leave
- how to calculate holiday pay.

There is also a question and answer section that covers issues such as:

- public holidays
- part-time workers and holidays
- leave years that start at different times
- accrual systems.

Holiday entitlement

Agreeing holiday rights

Annual leave should be agreed when an employee starts work. Holiday entitlements are sometimes mentioned in job advertisements and are often discussed at a job interview. The details of how much holiday an employee gets should be confirmed when a successful candidate receives a formal job offer.

Once an employee starts work details of holidays and holiday pay entitlement should be found in:

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

What's my 'working week'?

Your working week is your usual hourly pattern of work. This should be set out in your contract of employment.

The working week might include overtime (check your contract) but does not usually include journey time to your usual place of work.

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.

The legal minimum

Under the Working Time Regulations 1998 (as amended), workers (including part-timers and most agency and freelance workers) have the right to:

- 4.8 weeks' paid leave each year (from 1 October 2007)
- payment for untaken statutory leave entitlement on termination of employment.

Statutory annual leave entitlement will increase from 4.8 weeks to 5.6 weeks (capped at 28 days) on 1 April 2009. Many workers already get contractual leave which is more than 28 days. Their holiday entitlement will not change as a result of the amendments to the Working Time Regulations.

The leave year

The first thing an employee needs to do is check their written statement or contract of employment. Is there a set start and finish date for the holiday year – for example, April to March? If not, the leave will begin:

- on the date the worker began work for the current employer, or
- 1 October (the anniversary of the regulations becoming law).

If a worker starts work part way through the company's leave year, the initial holiday entitlement is 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.

Public holidays

Generally, public holidays include bank holidays, holidays by Royal Proclamation and 'common law holidays'. When public holidays in the Christmas and New Year period fall on Saturdays and Sundays, alternative week days are declared 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 public holidays are not expressly covered in the contract, the right to paid leave may have built up through custom and practice.

Paid public holidays can be counted as part of the statutory 4.8 weeks' holiday entitlement under the Working Time Regulations 1998 (as amended).

Taking leave

Building up leave

Under the Working Time Regulations, employers can use an accrual system to calculate how much leave a worker has built up during their 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 16 days' leave. This calculation is based on annual entitlement of 24 days \times 8/12ths = 16. From 1 April 2009, when the holiday entitlement increases to 28 days (5.6 weeks), the figure will be 18.6 days' leave (based on the calculation 28 days \times 8/12ths = 18.6).

An employer who chooses not to use the accrual system can still control the timing and taking of leave – see 'Restrictions on taking leave' below.

Carrying over leave

From 1 October 2007 any holiday entitlement over 4 weeks (20 days for a five-day week, 16 days for a four-day week etc) can be carried over into the following leave year. However, there is no statutory right to carry leave over – it must be agreed between the employer and the worker. As a **temporary** measure employers can pay employees in lieu of the additional days or part days introduced on 1 October 2007.

Applying 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 weeks' notice. The employer can refuse permission by giving counter notice at least as long as the leave requested, ie one week.

Restrictions on taking leave

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.

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.

Holiday pay

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.

Rolled-up holiday pay

Employers should pay their employees at the time they take their leave. They should not use any form of 'rolled-up pay', where holiday pay is staggered over the rest of the year. For further information see the Department for Business, Enterprise and Regulatory Reform website at www.berr.gov.uk

- **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 12 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.

The Department for Business, Enterprise and Regulatory Reform (BERR, formerly DTI) has more detailed information on holidays and holiday pay. BERR has also developed a 'ready reckoner' to help calculate holiday entitlement. This can be found in the 'Employment Matters' section of their website under 'Holidays' – visit www.berr.gov.uk.

Your questions answered

Do the Working Time Regulations apply to all workers?

No. The provisions in the regulations on holidays and holiday pay do not, at present, apply to 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.

Schedule 2 to the Regulations makes special provisions for annual leave in relation to agricultural workers. More information is available from the Agricultural Wages Helpline on 0845 000 0134.

Do I need to inform my employees about the increased holiday entitlement?

Yes. You need to inform your employees in writing of their increased holiday entitlement from 1 October 2007 (up from 4 to 4.8 weeks per year) and again in April 2009 (up from 4.8 to 5.6 weeks per year). You do not have to issue a new contract of employment but could notify employees using pay slips.

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 14.4 days' paid holiday – their normal working

week multiplied by 4.8. An employee who works four days a week is entitled to 19.2 days' paid holiday – their normal working week multiplied by 4.8.

An employee only works during term time. How much extra leave will they get?

You need to work out how many hours the employee works on average over the whole year. For example, if the employee works 40 hours a week for 40 weeks of the year, they work a total of 1,600 hours a year. This works out at 33½ hours a week over 48 weeks of the year (the four weeks of holiday under the Working Time Directive are excluded from the average working week calculations). The employee's holiday entitlement is 4.8 weeks x 33½ hours a week = 160 hours holiday for the year.

What if a leave year starts before 1 October 2007?

Many organisations have leave years that start before or after 1 October. How do you work out an employee's annual leave entitlement if, for example, your leave year runs from 1 April to 31 March?

You need to multiply the proportion of the year worked before 1 October by 4 weeks and multiply the proportion of the leave year worked after 1 October by 4.8 weeks. For example:

Between 1 April and 1 October = 26 weeks:
26 weeks ÷ 52 weeks x 4 weeks = 2 weeks

Between 1 October and 31 March = 26 weeks:
26 weeks ÷ 52 weeks x 4.8 weeks = 2.4 weeks

Total annual leave allowance = 4.4 weeks.

You may find it easier to work out holiday entitlement in hours rather than weeks. Simply multiply the weeks in the above calculations by the number of hours worked in a week. The Department for Business, Enterprise and Regulatory Reform has developed a useful 'ready reckoner' to help you work out your holiday entitlement. It can be found in the 'Employment Matters' section under 'Holidays' at www.berr.gov.uk.

How do you manage part days?

Holiday entitlements for some employees who work part-time may be made up of part days – for example, 19.2 days for someone working four days a week. Employees whose leave year starts before or after 1 October may also have holiday entitlements made up of part-days (see above). An employer can manage these part-days by:

- taking the part-day off a day's shift (an employee leaves early or comes in late)
- rounding the time up to the nearest full day (the time cannot be rounded down)
- paying the employee for the part-day owed
- allowing the employee to carry over the part-day to the next leave year.

As a temporary measure employers can also pay employees in lieu of the additional days or part days introduced on 1 October 2007 (4 days for a five-day week, 3.2 days for a four-day week and 2.4 for a three day week). From 1 April 2009 payment in lieu cannot be provided for anything less than the 5.6 weeks (28 days for those working full-time).

I work Wednesday to Friday. Can I claim the right to paid bank holidays which fall on a Monday?

Nobody has a statutory entitlement to paid leave for public holidays. You need to check what it says in your contract of employment. Some employers give part-time staff a pro-rata entitlement of days off in lieu according to the number of hours they work.

Employers will need to think about how the increase in annual leave entitlement affects their organisation and how fairly it is applied to different working patterns.

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.

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 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. This is a complex area and if you are in any doubt you should seek legal advice.

I broke my leg the day before I planned to go on holiday.

Does my absence count as sick leave or annual leave?

It is up to your employer to decide if your absence is sick leave or annual leave.

Maternity leave

Many employers allow women to add on all of their annual leave to the beginning or end of their maternity leave.

For the first 26 weeks of maternity leave, holiday entitlement accrues at the contractual rate. From the 27th week, leave accrues at the statutory rate (unless the contract says differently).

In the case of a broken leg it would be reasonable to assume that you were unable to go on holiday and therefore class your absence as sick leave.

Many employers use occupational health advisers to help them make these kinds of decisions. The Acas guide *Managing attendance and employee turnover* has an example of an absence policy which may be useful.

What can a worker do if holiday entitlement is denied?

Workers denied statutory entitlements to paid annual leave should seek to settle disputes with their employer by talking through the problem. If the problem cannot be resolved informally, the worker should follow the organisation's grievance procedure.

Workers must complete step 1 of the statutory grievance procedure if they wish to use the grievance as the basis of a complaint to an employment tribunal. This means they have to tell the employer about their grievance in writing. 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 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.

From 1 April 2009 holiday entitlement will increase from 4.8 weeks to 5.6 weeks (pro-rata for part-time workers).

For example, a worker who works five days a week, qualifies for 4.8 weeks' annual leave and finished employment after six months, having taken five days' leave, will be entitled to:

$$4.8 \text{ weeks} \times 0.5 - 1 \text{ week} = 1.4 \text{ weeks' pay or}$$

$$24 \text{ days} \times 0.5 - 5 \text{ days} = 7 \text{ days' pay}$$

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 five-day working week, 24 statutory days paid holiday are due in a year:

$$3/5 \text{ of a week} = 0.6$$

$$0.6 \div 52 \times 24 = 0.2769216$$

This sum represents approximately a third of a day. Therefore, payment on termination for holiday accrued on the basis of three days work, would be around three 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* (section 1 of 2) gives advice on drawing up a policy on extended leave and how to handle disciplinary matters.

Further information

Acas advisory handbook – *Discipline and grievances at work* (section 1 of 2) – you can order online or telephone Acas publications on – 08702 42 90 90.
Agricultural Wages Helpline – 0845 000 0134.

The Department for Business, Enterprise and Regulatory Reform (formerly DTI) website at www.berr.gov.uk has:

- some frequently asked questions on holidays and holiday pay (go to the 'Holidays' section under 'Employment Matters')
- a useful 'Holiday Entitlement Ready Reckoner' (also in the 'Holidays' section)
- the following guidance (see the 'Publications' section of the BERR website):

Written statement of employment particulars (PL700)

A guide to the Working Time Regulations 1998

Part-time work: the law and best practice

A quick guide to calculating holiday entitlement

Working Pattern	Before 1 October 2007	After 1 October 2007	After 1 April 2009
Full-time (5 day week)	4 weeks (20 days)	4.8 weeks (24 days)	5.6 weeks (28 days)
Part-time (4 day week)	4 weeks (16 days)	4.8 weeks (19.2 days)	5.6 weeks (22.4 days)
Part-time (3 day week)	4 weeks (12 days)	4.8 weeks (14.4 days)	5.6 weeks (16.8 days)
6 day week	4 weeks (24 days)	4.8 weeks (28 days – the maximum statutory entitlement)	5.6 weeks (28 days – the maximum statutory entitlement)
Compressed hours eg 36 hours in 4 days	4 weeks (16 days)	36 hours x 4.8 weeks = 172.8 hours per year	36 hours x 5.6 weeks = 201.6 hours per year
Annualised hours eg 1,600 hours at an average of 33.5 hours week		33.5 hours x 4.8 weeks = 160.8 hours per year	33.5 hours x 5.6 weeks = 187.6 hours per year
Bank Holidays	Can be included in the 4 weeks leave – check your contract	Can be included in the 4.8 weeks leave – check your contract	Can be included in the 5.6 weeks leave – check your contract

See p7 for annual leave years that start before or after 1 October 2007.

Information in this booklet has been revised up to the date of the last reprint – see date below.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

Acas aims to improve organisations and working life through better employment relations. We provide up-to-date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance.

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Acas main offices

Acas National

Brandon House,
180 Borough High Street,
London SE1 1LW

East Midlands

Lancaster House, 10 Sherwood Rise,
Nottingham NG7 6JE

East of England

Acas House, Kempson Way, Suffolk
Business Park, Bury St. Edmunds,
Suffolk IP32 7AR

London

22nd & 23rd Floors, Euston Tower,
286 Euston Road, London NW1 3JJ

North East

Cross House, Westgate Road,
Newcastle upon Tyne NE1 4XX

North West

Commercial Union House,
2-10 Albert Square, Manchester M60 8AD

Pavilion 1, The Matchworks, Speke Road,
Speke, Liverpool L19 2PH

Scotland

151 West George Street, Glasgow G2 2JJ

South East

Cygnus House, Ground Floor, Waterfront
Business Park, Fleet, Hampshire GU51 3 QT

Suites 3-5, Business Centre,
1-7 Commercial Road, Paddock Wood,
Kent TN12 6EN

South West

The Waterfront, Welsh Back,
Bristol BS1 4SB

Wales

3 Purbeck House, Lambourne Crescent,
Llanishen, Cardiff CF14 5GJ

West Midlands

Warwick House, 6 Highfield Road,
Edgbaston, Birmingham B15 3ED

Yorkshire & Humber

The Cube, 123 Albion Street,
Leeds LS2 8ER

Helpline **08457 47 47 47**

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