

Holiday entitlement and pay



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Holiday entitlement and pay is regulated by the Working Time Regulations 1998 (WTR).

The law in this area can be complex, and there are different rules for different types of worker. This Inbrief gives an overview of an employer's main obligations relating to holiday entitlement and pay under the WTR.

This Inbrief covers the legal position in England, Wales and Scotland. The law in Northern Ireland is different in some respects (please [contact us](#) for support if needed).

Standard holiday entitlement

Most workers are entitled to 5.6 weeks' paid holiday in each holiday year. This is made up of:

- ▶ A **basic** entitlement of four weeks, originally based on EU rules; and
- ▶ An **additional** UK entitlement of 1.6 weeks.

The law calculates holiday entitlement in weeks, but most employers will convert this into days. For someone working five days a week, the statutory entitlement of 5.6 weeks' holiday works out at 28 days. For someone working three days a week, it works out at 16.8 days.

The statutory minimum entitlement is capped at 28 days.

Employers often provide extra holiday on top of the statutory minimum. If you offer extra holiday then you can largely agree whatever terms you like around it. You do, however, need to observe some basic rules. For example, employees on maternity leave get to keep all their contractual benefits when on maternity leave - including extra holiday entitlement. Part-time and fixed term employees have the right not to be treated less favourably because of their contract type, so are generally entitled to a pro-rated amount of any extra holidays you give.

Irregular hours and part-year workers

There are special statutory rules for irregular hours and part-year workers. These rules apply for holiday years starting on or after 1 April 2024.

Instead of a yearly 5.6-week holiday allowance, their statutory holiday entitlement accrues at 12.07% of hours worked in each pay period, subject to the overall cap of 28 days.

Someone is an **irregular hours worker**, in relation to a leave year, if the number of paid hours they will work in each pay period is, under the terms of their contract, wholly or mostly variable. This is a new legal category and its scope is currently unclear. Workers on zero-hour contracts will, on the face of it, fall under these rules. It's not clear who else is covered but government guidance recommends that you state explicitly in the employment contract if the worker's hours are considered wholly or mostly variable.

A worker is classed as a **part-year worker** if they are required to work only part of the year, and there are periods within the year of at least a week which they are not required to work and for which they are not paid although they remain under contract. The scope of this category is also unclear, but it is likely to cover workers on term-time only contracts.

This accrue-as-you go system is intended to help manage holiday entitlement for workers with variable hours and ensure that holiday builds up in proportion to time worked.



Holiday entitlement in practice

When is the holiday year?

Employers can set the holiday year in the worker's contract. If they don't, each worker has an individual holiday year beginning on their start date. Most employers will set a standard holiday year for everyone.

Accruing holiday entitlement

Only irregular hours and part-year workers build up their holiday entitlement gradually as they work over the course of the holiday year. Everyone else simply gets their whole year's holiday entitlement up front at the beginning of the holiday year, rather than earning it gradually. The exception is in a worker's first year of employment, when there is a rule limiting the amount of holiday they can take. The rule says that workers are deemed to accrue their holiday entitlement in twelve equal monthly instalments throughout their first year and cannot take more than this. Note that most standard employment contracts nevertheless refer to holiday accrual, not just in the first year.

If the worker leaves employment during a holiday year, their statutory holiday entitlement is recalculated to reflect the proportion of the year they worked – see below.

Taking holidays

The law requires workers to give notice of any holiday they wish to take. Employers can refuse holiday (by giving counter-notice) and require workers to take holiday (by notice). The rules around notice can be agreed in the employment contract but, unless something else is agreed, the law is as follows:

- ▶ To take holiday, workers must give at least twice as many days' notice as the number of days' holiday (so four days' notice for a two-day holiday).
- ▶ To require a worker to take holiday, employers must give the same amount of notice as above.
- ▶ To refuse a worker's request for holiday, employers must give a counter-notice, at least as many days in advance as the number of days' holiday (so two days' counter-notice to cancel a two-day holiday).

If there are any periods of time that are not appropriate for holiday, it's best practice to communicate those well in advance rather than refusing holiday requests. Similarly, if you need workers to take holidays at particular times (for example, shutdowns or office closures) then it's best practice to say so in advance. Employers sometimes require workers to take holiday at shorter notice during their notice period or on garden leave.

Bank holidays

There is no statutory right under UK law to take bank holidays off work. The additional holiday entitlement of 1.6 weeks corresponds to the 8-day UK bank holiday entitlement, but it doesn't have to be taken on bank holidays. In many workplaces, employees take bank holidays off as standard practice. Whether or not a worker is required to work on bank holidays, however, is entirely down to what is agreed in the employment contract.

Bank holidays and part-time employees

There is often a question mark over what should happen with bank holidays for part-time employees in workplaces where full-time colleagues take bank holidays off.

There is – surprisingly – no conclusive caselaw or legislation answering this question.

A common approach – which we think is legally compliant – is to give the part-time employee a total holiday allowance which includes bank holidays (even if full-timers would typically get bank holidays on top of their holiday allowance).

For example, suppose your full-time employees get 25 days' holiday plus bank holidays. If you have a part-time employee working on a 0.6 FTE basis, you could give them a total holiday pot of 20 days including bank holidays. (The full-time allowance is 33 days and 60% of that would be 20 days). The part-time employee would then need to use a day from their allowance for any bank holiday that falls on a normal working day for them.

The practical outcome of this approach will depend on the part-time employee's working pattern. Someone who normally works Mondays would typically be using more of their overall allowance on bank holidays than someone who doesn't normally work Mondays. Overall, however, this approach provides part-time employees with a proportionate holiday allowance.



Holidays and sickness

Employees on sick leave keep their full statutory holiday entitlement. Statutory holidays cannot be reduced to reflect the fact that the employee was off sick for some of the holiday year.

Current caselaw says that employees can cancel any of their basic holiday entitlement and take it later if they fall sick when they were supposed to be on holiday (provided they comply with sickness absence procedures if required). They can also carry it forward into later holiday years if necessary – see below.

Caselaw also says that employees can choose to take their holiday when off sick. Employees might do this, for example, if they are on unpaid sick leave. This is the employee's choice – you cannot insist that they take holidays when sick.

Holidays and family leave

Employees on maternity, paternity, adoption and shared parental leave keep their full holiday entitlement for the holiday year. Current caselaw says that employees cannot be on holiday and family leave at the same time. This is different from sick leave. It means that employees must use up holidays before starting family leave or take them when they come back.

There are special rules allowing workers to carry forward unused holidays into the next holiday year – see below.

Unused holiday

The general rule is that holiday must be taken within the holiday year and cannot be replaced by payment in lieu.

There are several exceptions to the general rule.

- ▶ Unused holiday can be replaced by payment in lieu on termination of employment.
- ▶ The additional (1.6 week) holiday entitlement can be carried forward into the next holiday year, for any reason, if agreed.
- ▶ Workers can carry forward any unused statutory holiday entitlement into the next holiday year if they could not take it because they were on family leave.
- ▶ Workers can also carry forward unused statutory holiday entitlement if they could not take it because they were sick. Holiday carried forward on this basis must be used up within 18 months of the end of the holiday year in which it accrued – after that, it lapses. Irregular hours and part-year workers can carry forward all statutory holidays in sickness cases. For everyone else, this is limited to the basic four-week entitlement.
- ▶ Workers can carry forward any unused basic (four week) holiday entitlement (or their whole statutory holiday entitlement if they are an irregular hours or part year worker) indefinitely if their employer does not:
 - recognise their right to paid statutory holidays; or
 - give them a reasonable opportunity to take holidays or encourage them to do so; or
 - tell them that unused holiday will be lost.

To avoid a situation where employees have the legal right to carry forward lots of holiday, employers should warn workers about the need to take their holidays. In any case, it's good practice for workers to be taking their holidays.

Calculating holiday pay

There are complex rules for calculating holiday pay. The law remains contested and unclear in many respects. Here are the main principles.

Workers with normal working hours

If a worker has normal fixed working hours and a fixed rate of pay, then they should be paid that fixed rate when on holiday. For example, a salaried worker must get their normal salary when on holiday.

If a worker has normal hours, but their pay varies depending on when they work (because they work shifts, for example) their holiday pay can't be less than their average pay over the 52 weeks before the holiday (ignoring weeks of no work and bringing earlier weeks into account).

Additionally, for the basic four-week entitlement, employers must make sure that the following types of payment are included in holiday pay:

- ▶ payments, including commission payments, which are intrinsically linked to the performance of tasks which the worker is obliged to carry out under the terms of their contract
- ▶ payments for professional or personal status relating to length of service, seniority or professional qualification
- ▶ other payments, such as overtime payments, which have been regularly paid to the worker in the last 52 weeks.

There remains a degree of uncertainty as to what additional payments should be included. The courts are yet to rule conclusively on what makes a payment "intrinsically linked" to performance, or how "regular" payments must be paid in order to fall into scope.



The underlying principle, however, is that workers should receive normal pay when on holiday, so as not to lose out by taking their holidays.

These additional requirements apply only to the four-week basic holiday entitlement. This means that paying two types of holiday entitlement at different rates is allowed, but complicated. For example, if you have salaried workers earning commission, you could choose to factor their average commission into their (four-week) basic holiday entitlement but just pay normal salary for their remaining holidays.

To make things even more complicated, according to caselaw, the default legal position is that each day's holiday will be a composite of all types of holiday entitlement (basic, additional and contractual). If you want to pay different types of holiday at different rates then you may want to operate a different system where, for example, you stipulate that the basic holiday entitlement is used up first in the holiday year, and paid at a higher rate.

Workers with irregular hours and part-year workers

The rules for these workers are complicated but the basic principle is that holiday pay should not be less than average hourly pay (counting any sort of payment) over the 52 weeks before the holiday. You ignore weeks without pay and bring earlier weeks into account.

Rolled-up holiday pay

If the worker comes under the definition of an irregular hours worker or a part-year worker then, for holiday years starting on or after 1 April 2024, you have the option of paying holiday pay on a rolled-up basis, i.e. as a supplement to pay for work done.

Under this method, a 12.07% uplift is applied to the worker's remuneration for work done in each pay period. This will then mean that workers are not paid at the time they take their holiday but instead in each pay period. The uplift must be itemised on their payslip and be based on all pay.

This is a particularly helpful option for workers who work different hours each day and different days each week, with no predictability. For these workers, the concept of booking and taking a day's holiday can be difficult in practice. Rolled-up holiday pay can be a way to overcome this because it avoids having to earmark any particular days or hours as holiday. You should, however, take steps to ensure that workers do actually take at least 5.6 weeks off each year.

Holiday on termination of employment

If a worker leaves their job part way through the holiday year, their statutory minimum holiday entitlement is recalculated and pro-rated to reflect the proportion of the year they've been employed.

If the worker has taken less than the pro-rated amount, you will need to make a payment in lieu of this unused holiday. You are supposed to set out the basis on which you will make this calculation in the employment contract. Otherwise, there is a legal formula that applies. For a typical full-time salaried worker, it would be usual to say that they will be paid 1/260 of their annual salary for each unused day.

If the worker has taken more than the pro-rated amount, you can require that they repay you, and that the repayment is deducted from their final pay – but you can only do this if it is clearly agreed in the employment contract.

Claims about holiday pay

Workers can make various claims about holidays, but the most common type of claim is that their holidays have not been paid at the correct rate of pay. This is usually a claim for deduction from wages. A holiday pay claim for deduction from wages can be made for a series of underpayments going back for a maximum of two years.

If a worker has never been given any paid holiday at all (for example, because they have been misclassified as self-employed), they will carry forward the missing holiday (as explained above) so this two-year limit doesn't apply.

Holiday clauses

As a minimum, the employment contract should include:

- ▶ the amount of holiday
- ▶ the rules for bank holidays
- ▶ any rules around booking holidays
- ▶ any rules about how much holiday can be taken – or must be taken – in one go, for example if you insist on a two-week holiday or have an upper limit of a two-week holiday
- ▶ whether and when some holidays can be carried forward into the next holiday year
- ▶ what happens to holiday entitlement on termination, including how any unused holiday entitlement will be calculated and paid out, and whether employees need to repay excess holiday.



Unlimited holiday policies

The trend of offering “unlimited vacation” began in the US and is something that UK employers sometimes consider. Research suggests, however, that unlimited holiday entitlements can in practice result in fewer holidays being taken. There will need to be management buy-in to ensure that employees genuinely feel empowered to take holiday and that the overall effect is not to discourage employees from having a break from work.

If considering offering unlimited holiday, you will need to have in place a clear process for employees to request holiday and for you to reject holiday requests if they are not operationally practical. You will also need to think about how to ensure compliance with the statutory rules described above. If you do not track holiday at all, you risk claims that employees are not being allowed to take their statutory entitlement and complexity over termination payments. One approach is to agree a baseline statutory entitlement of 5.6 weeks but offer additional “unlimited” holiday on top.

For more information on this subject please contact:



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