



# Take a break from the Holiday Pay confusion

Given the variety of employment terms and conditions businesses must adhere to, it's understandable that there may still be confusion as to what employers can, and can't do, when it comes to holidays. This business bulletin mends the many myths and misunderstandings regarding holidays and holiday pay.

Full time workers working 5 or 6 days per week are entitled to 28 days per annum

- Are part-timers entitled to the same number of holidays?
- Can we insist that employees take holidays when we want them to take them?
- How do you calculate holiday pay for an employee on a zero hours contract?
- Can an employee just decide that they are taking a holiday without notice (or even with notice but without our consent)?

## What are the rules around Public and Bank Holidays?

Whilst businesses commonly give staff time off for public and bank holidays, there is nothing in employment law

that requires you to do so. The current 8 days may be incorporated within the 28 days, or in addition. Bank and Public holidays may be defined as normal work days or the time given off as part of the employee's entitlement. Either is acceptable if it is clear in your contractual terms and conditions.

## How should part-time employees' entitlement be calculated?

The simplest calculation is to divide 28 by 5 and multiply by the number of days the employee works. So, an employee working 3 days per week is entitled to 16.8 days (This may be rounded up but not down or even kept as a fraction). It doesn't matter if your employee works on bank holidays or not - you can apply the full entitlement, explained above, in any way that is fair and lawful.



### **Calculating entitlement for employees with variable hours or on zero hours contracts**

The simple solution is to calculate the holiday entitlement as a percentage of a full-time employee's annual work days. If the Holiday entitlement is 28 days this equates to 12.07% of their annual work days. You could then maintain a running total of employees work hours and multiply them by this percentage when holidays are being calculated. E.g. last 8 weeks work hours -  $120 \times 12.07\% = 14.5$  hours holiday accrued.

### **What to include in holiday pay?**

Well unfortunately the water is still a bit muddy on this one as there have been several Tribunal cases with different interpretations. Until we get a definitive judgement all overtime should be included as an average unless it's genuinely rare to work overtime. ACAS state it need not be paid where it is "genuinely occasional and on an infrequent basis". An average must also be included for bonuses and commission.

### **Who decides when holidays are taken?**

Employers can refuse holiday requests providing refusals are not unreasonably applied. You must be mindful that refusal to grant time off to observe religious holidays could result in indirect religious discrimination.

Both parties must give notice of at least equivalent to twice the period of the holiday requested, although employers may specify different rules in their employment contract. The employer may specify certain times of the year when part of the entitlement must be used (usually for annual shut-downs). Disciplinary action can be taken against employees who take holiday without consent or after consent has been refused.

### **Can employees be paid in lieu of holidays and/or carry them over to the following year?**

Under the working time directive each employee should take a minimum amount of holiday per year. For a full-time employee, that is 21 days, and pro-rated for part-time employees. As such only 7 days (for a full-time employee) should be carried over.

You must carry forward or pay unused holiday benefit in these 2 circumstances: -

**Maternity Leave.** Employees on maternity leave cannot take holidays during their leave without ending the maternity leave so any accrued entitlement, prior to and during the leave period, may be carried forward.

**Illness.** An employee who is prevented from working due to an illness certified by a Doctor's certificate, will be paid occupational sick pay as set out in their contract of employment. If they remain sick at the end of the occupational payment period, they will be eligible for Statutory Sick pay. They will accrue Holiday entitlement whilst they are sick and be entitled to take the holiday or payment in lieu when they are able to return to work.

### **How can we help?**

If you would like advice with no obligation, please talk to your Broker who can arrange for you to include Legal Expenses as part of your insurance program.