



Supporting the Carer Workforce

NATIONAL ASSOCIATION OF CARE & SUPPORT WORKERS

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Outline Guide to Holidays

1. What does the legislation say about paid holidays?

The Working Time Regulations entitle all Workers and Employees to a minimum of 28 days paid leave each year (5.6 weeks – pro rata if you are part-time). (An employer can also offer additional leave to workers; the additional leave does not have to be subject to the rules regarding statutory leave and may only accrue after a certain period of employment.)

If you are denied your rights to statutory holiday entitlement you can make a complaint to an Employment Tribunal. If your complaint is upheld they your employer can be ordered to pay compensation.

Holiday entitlement cannot be counted as weekly rest days.

Holiday pay starts to accrue as soon as a worker starts work. You need to give your employer notice of when you would like to take your leave, an employer can control when you take your leave by denying your request and specifying other dates. An employer should inform you in writing of the required notice periods for taking holiday.

No notice period?

Where notice periods are not specified a worker should give a notice period of twice the period of intended leave, so four days notice for a leave of two days. The employer should reply to your request, giving permission or denial (counter notice) within the same period as your intended leave, so as the example above two days leave is wanted so the employer should reply within 2 days.

An employer has no duty to ensure that you take your leave, however an employer can serve you a notice by which you are required to take your holiday on certain dates, the notice period should be of twice the leave period.

An employer can restrict leave by your employment contract, via custom/practice or by negotiations with a Trade Union or Employee Representative. Leave can also be restricted because an employer shuts down at a certain time.

2. Holiday leave and Agency Temps

The Agency that employs you (not the Employer you are working for) is responsible for ensuring you receive your statutory minimum holiday entitlement

3. Untaken holiday

There is no legal entitlement that the first 20 days holiday entitlement, if not taken, should be carried forward into the next leave year. This situation is different where holiday is not taken due to sickness. But the additional 8 days holiday entitlement can be carried over into the next holiday leave year, if unused, with an employer's agreement, in some cases employers may agree to more than 8 days being carried over. However an employer is not compelled to agree to holiday entitlement being carried over.

If you leave your employment you should be paid for untaken holiday, for each week of holiday owed you should be paid a week's pay. There is no entitlement to be paid if you cannot or have chosen not to take your leave (unless due to sickness.) This principle may well have been extended to other situations where a worker did not take leave due to situations beyond their control, we are awaiting further developments.

4. Bank Holidays and paid holidays

Currently there are 8 permanent Bank Holidays in England and Wales (9 in Scotland, 10 in Northern Ireland). There is no statutory right to paid leave on Bank Holidays; there is also no express right to extra pay for Bank Holiday working. In certain cases employers may provide paid Bank Holiday leave and financial compensation for Bank Holiday working, workers will find details of this in their contract of employment. The standard statutory holiday entitlement of 28 days can include Bank Holidays; again individual employers may allow Bank Holiday leave in addition to the 28 days. Workers would find details in their contract of employment. Therefore if a worker takes a day off as paid leave on a Bank Holiday, it may well count as a day of annual leave under WTD

Some Bank Holidays are part of the Christian festival timetable, for example Easter; employers are not obliged to grant leave on other such dates for employees who practice other religions.

Bank Holidays and part time employees

In the interests of fairness, a pro-rata allowance of paid Bank Holiday leave should be given to part time employees. This applies even in cases where they would not normally be working on the dates when the Bank Holidays fall.

Bank Holidays and other types of leave

If you are on Statutory Parental Leave, Statutory Maternity/Paternity Leave or Statutory Adoption Leave when a Bank Holiday falls you may be entitled to either a compensatory day off or payment in lieu. Generally if your 28 days leave includes Bank Holidays, and a Bank Holiday falls during your parental leave, then you would be entitled to a compensatory day off/payment in lieu. If your 28 days leave does not include Bank Holidays, for example your employer allows them as extra paid leave, then any rights to compensatory leave or payments in lieu in this situation will depend upon the provisions of your contract of employment or may be outlined in any company holiday policy documentation.

5. Holiday Pay and Sick Pay

If a worker becomes ill when about to go on prearranged holiday leave or during annual leave, they should inform their employer as soon as possible. Generally workers will be allowed to take their leave at a later date; however in this case they would now be paid rates of sick pay for time off and not paid leave rates.

The WTR allows workers who are already off sick to take holiday leave; they would be paid annual leave rates instead of sick pay rates for that amount of time classed as holiday leave.

Workers off sick can also continue to build up their holiday entitlements whilst they are off sick, holiday leave can also be carried over into another year if workers have not been able to take holiday leave due to sickness.

6. Rolled Up Holiday Pay

Rolled up holiday pay, was frequently used for workers hours of work varied throughout the year, it was particularly used in the cases of casual workers and agency temps. Workers would not be paid for leave at the time it was taken, instead an element of holiday pay would be factored into their hourly rate.

In 2006 the European Court of Justice ruled that the practice of rolling up holiday pay contravened the WTD and was unlawful, holiday pay should be paid in addition to work done and not as part of an hourly rate. Employers who still operate the policy of rolled up pay need

to alter their approach and ensure that holiday pay is actually paid when a worker takes their holiday. The Department for Trade and Industries guidance now states clearly that payment for statutory annual leave should be made at the time when leave is taken. Contracts of employment should show a rate for holiday pay separately to the daily/weekly rate.

7. How to calculate holiday entitlement

Remember when calculating that the statutory paid holiday entitlement is capped at 28 days, an employer may choose to grant more and workers should check their contract of employment.

Multiply the number of days worked each week by 5.6.

If you work part-time, irregular or freelance hours you can calculate your entitlement on **Direct Gov**.

The holiday entitlement of 5.6 weeks is equivalent to 12.07 % of the hours worked over a year.

Shift workers

It is simpler to average the number of shifts you get off over a 17 week period.

if a worker works 4 x 12 hour shifts then has 4 days off, the average working week is 3.5 x 12 hour shifts (this is calculated by the number of shifts worked (4) divided by the total number of days in the shift pattern (8) x 7 days – so 4 divided 8 x 7 = 3.5). So, 5.6 weeks holiday is 5.6 x 3.5 = 19.6 x 12 hour shifts holiday entitlement.

Term-time workers

Calculate how many hours a week you work on average each year, multiply this by your holiday entitlement, e.g.

If you work 40 hours per week for 40 weeks of the year – $40 \times 40 = 1600$ working hours a year. 1600 divided by 46.4 weeks (52 weeks less 5.6 weeks) = 34.48 hours.

Multiply 34.48 hours x 5.6 weeks = 193.09 hours holiday over a year.

To convert this to days, divide this number by the number of hours you work each day.

‘Rounding’ up holiday entitlement

If holiday entitlement includes a part-day, an employer can elect to round this up to a whole day, however they must not round it down.

How much is a week’s pay?

In the case of workers with fixed hours and pay, a week’s pay is the normal pay you receive for a weeks work.

For workers with no normal working hours; a week’s pay is the average pay received over the preceding 12 paid weeks.

For shift workers a week’s pay is pay received for your average weekly hours over the preceding 12 weeks at your average hourly rate.

For those workers working variable hours with variable pay, such as those who earn bonus or commission; a week’s pay is the average hourly rate over the preceding 12 weeks of pay multiplied by the normal working hours. Commission schemes vary and we recommend that guidance is taken in this area

The Employment Rights Act 1996 states that overtime is not included unless it is contractual, that is specified in your contract. However European case law has given further guidance in this area, when calculating holiday pay employers should include non-guaranteed overtime pay, this is overtime which is not specified in the contract of employment but which the worker must work if asked to do so by the employer. Generally employers should review the previous three months’ employment and take the average amount of overtime paid.

In general the following are not included in a week’s pay

Benefits in kind, pensions, cars etc.,

Discretionary bonuses, however annual bonuses may be included on a pro-rata basis if they are possible to quantify at the point of calculation.

Salary affected by a ‘salary sacrifice’ scheme

