



Private Edge Knowledge Bank

# Guide to minimum holiday rights

## HUMAN RESOURCES

**This guidance offers practical advice to businesses in complying with minimum holiday rights for employees. The guidance contains advice regarding holiday pay and considerations for employers when drafting contracts. Following this guidance will help to reduce the risk of successful claims by employees.**

Minimum holiday rights are contained in the Working Time Regulations 1998 (“WTR”). These rights apply to “workers”, a term which encompasses all employees and also includes individuals who may not be employees but who provide services personally, provided that in doing so they are not working for a client or a customer of a business or profession they are carrying on.

As a result of recent amendments to the WTR, which are effective for holiday years starting on or after 1 April 2024, some different rules have been introduced for “irregular hours” and “part-year” workers. The old rules will continue to apply to these workers in the meantime.

Irregular hours workers are defined as workers whose contractual hours in each pay period are wholly or mostly variable (eg casual workers, platform workers and workers on zero hours contracts). Part-year workers are those who do not have to work, and are not paid for, at least one week every year (eg seasonal workers and some term-time only workers). In this note these two separate groups of workers will be referred to as “atypical workers”. Where relevant, we will explain where the rules that apply to these workers differ from the rules that apply to all other workers.

Certain groups of workers are excluded from the provisions relating to paid holiday under the WTR, including seafarers and those working in civil aviation, but these will often benefit from equivalent legislation governing holiday entitlement.

### Amount of holiday

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Under the WTR, the normal rule is that workers are entitled to 5.6 weeks of paid holiday per year. This equates to 28 days for a worker working five days a week. For holiday years starting on or after 1 April, atypical workers’ holiday entitlement will accrue in hours not weeks, but the overall aim is to give them an equivalent pro rata entitlement. Many employers already choose to explain holiday entitlement to “normal” workers in terms of days or hours rather than weeks – which is fine, provided in substance workers receive 5.6 weeks’ holiday.

This minimum amount of paid holiday is often referred to as “statutory” holiday, because it is prescribed by law. You may choose to offer more holiday to your workers but are not obliged to do so by the WTR. Strictly, the rights referred to in this guide only apply to WTR holiday and not any additional holiday allowance you give workers – but most employers will treat both WTR holiday and any additional holiday identically to avoid the practical problem of having two sets of holiday rules.

The holiday entitlement under the WTR is inclusive of bank and public holidays. In other words, you are not obliged to provide for 5.6 weeks' holiday in addition to bank and public holidays. If you regard bank and public holidays as holiday for its workers, these days count towards the minimum holiday entitlement under the WTR. You can choose whether to express this to workers as (for example) "20 days' holiday plus the 8 normal bank and public holidays" or "28 days' holiday inclusive of the 8 normal bank and public holidays".

For "normal" workers holiday entitlement is calculated pro-rata in the first year and final year of work, when the worker will almost always only be engaged or employed for part of the holiday year. The new rules for atypical workers mean that their entitlement accrues on a pro rata basis throughout their engagement.

## Taking holiday

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The WTR impose default provisions for when the holiday year runs from and to, how much notice a worker has to give to take holiday, and how much notice you have to give to require a worker to take holiday. Usually, employers will vary these default arrangements in a written contract with the worker. When drafting contracts, you should consider whether:

- to specify a particular holiday year (employers usually opt for a calendar year or the business financial year);
- workers should be required to give longer notice of intention to take holiday than the default provisions (under which the notice only has to be twice as long as the period of holiday sought);
- requested holiday dates should require a manager's express (ideally, written) approval before the worker is at liberty to take the time off;
- there should be pre-set limits on the amount of annual leave that can be taken or requested in any given period (for example, no more than two weeks' holiday at a time or no more than one week's holiday in total during busy periods);
- workers should be obliged to take holiday at certain periods (e.g. a Christmas shut-down);
- workers who resign or are dismissed should be required to take any accrued but unused holiday during their notice period, rather than be paid in lieu (see below).

The key concept behind the WTR is that workers take their holiday entitlement, as far as possible, in the year in which it accrues. Although you are not obliged under the WTR to accept any particular holiday request from a worker, you should not refuse requests such that the worker is denied an opportunity to take their full holiday entitlement in the holiday year.

The WTR used to provide that holiday cannot be paid in lieu whilst the worker is still employed or engaged, and the only circumstance where a payment in lieu of any accrued holiday is permitted (and, indeed, necessary) is upon the termination of the arrangement. The new rules for atypical workers now allow employers to roll up holiday pay, subject to strict conditions, but the old rules continue to apply to other workers.

If a worker is unable to take all of their holiday in the holiday year due to long term sickness or family leave, the WTR now include specific provisions under which they entitled to carry the balance forward.

## Holiday pay

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The rationale behind the WTR is that workers should receive during periods of holiday the pay they would normally receive had they been at work, in order that there is no financial disincentive to take holiday. The law is currently in a state of flux as to how far variable pay elements like bonuses, commission and overtime payments ought to be reflected in holiday pay, and how these elements are to be calculated. Historically, many employers paid only basic salary during periods of holiday. Recent cases have confirmed that excluding certain variable pay elements from the calculation of holiday pay can result in workers being underpaid during periods of holiday and the broad ground rules are now set out in the WTR. However, there are rules and limits governing the extent to which workers might be able to seek compensation for historically underpaid holiday. Holiday pay is a complicated area and employers should obtain specific legal advice on their obligations in this respect if they are in doubt.

## Remedies for breach

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Failure to allow workers to take leave or to pay them the correct amount of holiday pay may result in workers claiming there has been an unlawful deduction from their wages or otherwise claim for compensation for breach of the WTR.

*This guidance note is not intended to constitute a definitive, up-to-date, or complete statement of the law, nor is any part of it intended to constitute legal advice for any specific situation. You should take specific advice when dealing with specific situations and jurisdictions outside England & Wales.*

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