



Holiday pay

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Who is entitled to holiday?

There are three ways of engaging staff in the UK. These are engaging staff as either employees (who are employed workers), non-employed workers or as genuinely self-employed. In the UK, only employees and non-employed workers are entitled to workers' rights such as paid holiday.

There are various legal tests that apply to help distinguish between these categories. Employers that have not already done so may want to undertake a staff audit to differentiate between these categories and who has these rights.

How much holiday must employers provide?

Each full-time employee or non-employed worker in the UK is legally entitled to have and take at least 28 days paid holiday per

holiday year. This is made up of:

- 20 days (4 weeks). This was originally required under the Working Time Directive ('WTD')
- plus 8 additional days ('Additional Holiday').

This entitlement can be pro-rated for part-time workers and for new joiners who start work part way through the holiday year to reflect how much of the holiday year they have worked.

What is 'holiday pay'?

Employers are required to pay the first four weeks (i.e. the WTD paid time off) at the rate of 'normal remuneration'. This includes any variable pay that is regularly or repeatedly paid such as all commission, overtime pay and allowances because the intention is that workers should be no worse off financially when they are on holiday than if they were at work.

The obligation to pay 'normal remuneration' does not apply to Additional Holiday but often employers will calculate it the same way to ease the administrative burden.

There are detailed rules on calculating holiday pay, which are outside the scope of this note and employers may want to take advice on this.

Can employers just pay workers for the leave instead?

Employers are not permitted to pay workers instead of giving them paid leave, except in respect of any holiday that has accrued but remains untaken on termination of employment.

There is a legal obligation to take care of workers' health and safety. This includes ensuring they can actually take their holiday to have rest and recuperation. So, employers may want to track workers are taking holiday to ensure these obligations are being complied with.

Can workers carry over holiday to another leave year?

Workers must take WTR holiday in the leave year to which it relates and are not permitted to carry it over to a new leave year except in limited circumstances such as where:

- the worker is on maternity leave
- the worker is unable to take their leave due to sick leave (although employers can place certain time limits on this)
- their employer deters them from taking leave, such as by refusing to pay it
- their employer does not give them sufficient opportunity to take their holiday.

What are the risks if the employer doesn't allow workers to take paid holiday?

Employers may face a claim for compensation if they cannot show that they:

- gave a worker the opportunity to take their paid annual leave
- encouraged them to take the leave and
- informed them that the right would be lost at the end of the leave year.

Note that under current case law, workers can bring claims for holiday that was:

- untaken because of an employer's refusal to pay them holiday pay
- taken but unpaid because the employer refused to pay it
- taken but paid incorrectly because the employer did not correctly calculate the holiday pay according to that person's 'normal remuneration'.

This could be costly because in certain cases workers may be able to claim compensation not just for unpaid holiday for the leave year when the claim was brought, but also for any holiday during any leave years before their termination date. This could potentially go back several years.

Looking forward

This has been an incredibly active area in the last ten years or so and we do not expect this to change. Bearing that in mind it is worth

employers ensuring they are fully aware of and comply with these obligations.