

## Desktop Guide to HR - Holiday Entitlement

### Who is Entitled to Paid Holiday?

All employees are entitled to receive paid annual leave, and holiday entitlement starts to 'accrue' (which means accumulate) immediately when an employee begins work.

Full-time workers have a right to a minimum of 5.6 weeks' paid annual leave, which equates to 28 days for someone working five or more days per week. Part-time workers are entitled to the same level of holiday entitlement pro rata, effectively 5.6 times the employee's usual working week – eg 22.4 days for an employee who works four days per week.

However, in order to qualify for the right to annual leave an employee needs to be classed as a worker. This means that if the individual is self-employed, they have no statutory right to paid annual leave.

### What About Public and Bank Holidays?

As the employer you can control some things about holiday, including when it should be taken and whether bank holidays are included in the entitlement (please seek advice specific to your business from an HR specialist).

Also, employees do not have a statutory right to paid leave on bank and public holidays, nor is there an automatic right to an enhanced pay rate for working on a bank holiday (what is paid is dependant upon the contract of employment).

If you choose to give paid leave on a bank or public holidays, you can count these days towards the minimum holiday entitlement. However, if bank holidays are granted to full time workers, then part-time workers must be given bank holidays pro rata as well, even if the bank holiday does not fall on their usual working day.

*There are eight permanent bank and public holidays in England and Wales (nine in Scotland and ten in Northern Ireland).*

### What About Employees with Casual or Irregular Working Patterns?

If employees work casually or have irregular hours it is usually easiest to calculate their holiday entitlement as hours are worked, with 12.07% of the hours worked accrued as holiday.

This 12.07% figure is calculated by dividing the full-time entitlement of 5.6 weeks by the remaining time in the year (46.4 weeks) and multiplying it by 100.

As an example, this means that an employee who works 10 hours would be entitled to 72.6 minutes' paid holiday:

12.07 per cent of 10 hours = 1.21 hours = 72.6 minutes

*As a guide, remember holiday entitlement is just over seven minutes for each hour worked.*

### What About Shift Workers?

Shift Workers' leave is calculated by using an average of their shifts over a 17 week period.

For example, if shift workers always work four 12 hour shifts, followed by four days off (the 'continental' shift pattern) then the average working week is three-and-a-half 12 hour shifts. They would be entitled to 19.6 shifts of 12 hours as annual leave a year:

5.6 weeks x 3.5 shifts of 12 hours = 19.6 'shifts' in holiday

For other shift patterns, it may be easier to calculate according to the current pattern of repeat.

## What About Term Time Workers?

Employees who only work during school term-time will have different holiday arrangements depending on their contract of employment. However, as a term-time only worker works a reduced number of weeks during the year, they accrue a pro-rata entitlement to paid leave, much like a traditional part-time worker.

To calculate a term-time only workers entitlement, you need to calculate how many hours a week are worked on average over the whole year, then multiply this by the allowance of 5.6 weeks.

For example, consider an employee with a contract for 40 hours a week for 40 weeks of the year:

1. multiply the weekly contracted hours by the number of weeks worked:

*40 hours x 40 weeks = 1,600 working hours for the year*

2. calculate the average hours worked each week by dividing the hours for the year by 46.4 (which is 52 weeks in the year minus the 5.6 weeks they would be on holiday):

*1,600 hours divided by 46.4 weeks = 34.48 average hours a week*

3. multiply the average working week by the holiday allowance:

*34.48 hours x 5.6 weeks = 193.09 working hours' holiday allowance a year*

4. to convert this into holiday days, then divide again by the number of hours per day that are worked.

*193.09 hours ÷ 8 hours (for example) = 24 days and 1.09 hours*

## What Happens to Holiday Entitlement When an Employee Leaves?

Employees must be paid for any holiday entitlement that has been accrued but not taken when they leave a company. However, if the employee has taken more than they have accrued at the termination date, the employer only has the right to make a deduction for the additional days taken provided agreement has been sought with the employee beforehand or there is a contractual right to make such a deduction.

***This is an example of one of the reasons why it is essential to make sure your contracts of employment are prepared specifically for your business by someone experienced in HR. 'Off the shelf' documents which are not written specifically for your business are unlikely to give you the protection and assurances you need.***

## What About Employees Who Work Part of a Year?

The 'leave' or 'holiday' year is a term used to describe the period in which employees are expected to take their annual leave, eg 1st January to 31st December.

If an employee starts a new job part-way through a leave year, then they will be entitled to a proportion of the leave depending on the number of months left in that leave year.

For example, if an employee starts half way through the leave year then they will be entitled to half of their leave. They will then be entitled to the full amount the following year as their entitlement will be reset at the start of the new leave year.

Similarly, if an employee leaves their job part way through a leave year they will be entitled to a proportion of their leave.

## Can Employees Opt Out of Taking Holiday?

Employees must take a minimum of 28 days during the leave year. If they have holiday entitlement over and above this amount, it is the employer's decision whether to allow holiday to be carried over to the following leave year.

Employees cannot exchange any untaken statutory leave for payment.

**--- PLEASE NOTE ---**

The information set out in this document is correct at 1<sup>st</sup> May, 2011. As the legislation that applies in this article/document is general in its context, your specific circumstances may require tailored advice for it to be effective. If in doubt, contact Crispin Rhodes on 01908 230969 or email [angela@crispinrhodes.co.uk](mailto:angela@crispinrhodes.co.uk)