# Annual leave, bank holiday and holiday pay

## Overview

The minimum amount of annual leave which an employer must provide to a full-time worker is currently 28 days a year (or 5.6 weeks). Bank holidays can still be counted towards the entitlement.

There is a limited ability to carry leave over from one holiday year to the next, subject to agreement between employer and worker.

Additional bank holidays (such as in 2022 and 2023) may also be added from time to time by the Government, to which an employee may be entitled.

## Annual Leave

As mentioned above a full-time worker is entitled to 28 days a year (or 5.6 weeks). Calculating holidays and pay for casual or part time workers, employees on long-term sick leave or on maternity or parental leave can present complexities. Two key points are:

- Employers should ensure that holiday pay takes commission, overtime, bonuses and other allowances into account.
- Bank or public holidays including Christmas and Easter can be counted towards the annual holiday entitlement.

## Part-time workers

Part-time workers are entitled to holiday proportionate to the time they normally work and which equates to 5.6 times their usual working week.

- two days a week is 11.2 days' leave per year
- three days a week is 16.8 days' leave per year
- four days a week is 22.4 days' leave per year.

The law does not specify how employers should deal with half days. Many employers round up, but some employers work out fractions of a day off.


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# Annual leave, bank holiday and holiday pay cont'd

### Holiday Pay

Holiday pay should be calculated at the worker's normal rate of pay on the basis of the worker's normal hours of work. Employers should start by calculating holiday pay based on an average weekly wage. This includes many of the extra payments regularly made to employees: for example, any extra payments for Sunday working should be included, not just normal hours.

Workers are all entitled to a week's normal holiday pay in respect of each week of their statutory 5.6 weeks' (or 28 days') holiday entitlement. A week's pay is either:

- The normal rate of weekly pay, if the worker's hours or pay do not vary.
- The average remuneration over the previous 52 weeks (or however many complete weeks the individual has worked if less than a year), if their hours or remuneration varies.

### Calculating holiday pay

When calculating holiday pay, it is common that the following elements should be included:

- Contractual overtime – the Employment Rights Act 1996 says that pay for a working week includes basic pay and overtime if this is contractual.
- Non-contractual overtime – case law has established that other types of overtime should be included (see Case law below).
- Contractual bonuses – if an employee's hours and pay vary, perhaps because of bonuses, or commission, or shift work premiums, then the average hourly rate over the preceding 52 weeks (12 weeks prior to 6 April 2020) takes into account the extra payments.

The following elements should be excluded:

- Discretionary bonuses – bonuses that are definitely not contractual are excluded.
- Salary sacrifice schemes – any salary that is sacrificed through such a scheme (for example, for childcare vouchers) may be excluded.
- Benefits such as pensions, cars, or health cover – a week's pay will generally not include these.

# Annual leave, bank holiday and holiday pay cont'd

**Overtime**

All overtime, both contractual and non-contractual, should now therefore be included when calculating holiday pay. The overtime must also be sufficiently regular and settled, to be classified as normal remuneration. This includes overtime which is:

- Compulsory – overtime that an employer can require the employee to do in addition to normal working hours.
- Guaranteed – overtime that an employee is contractually entitled to receive and is required to do.
- Regular but non-guaranteed – overtime the employee does regularly, but the employer is not obliged to provide.
- Voluntary overtime – overtime that the employer does not have to offer and which the employee does not have to do. (The Court of Appeal, in Flowers v East of England Ambulance Trust 2019, decided that voluntary overtime which is regularly worked should be included in normal pay for holiday pay calculation purposes.)

Employers should note that holiday pay should reflect payments that workers receive for overtime for the four weeks' annual leave which originally came from the EU Working Time Directive but not the extra eight days' holiday under the UK's WTR.

**The date from which a holiday pay reference period should start**

Under the Employment Rights Act 1996, the holiday pay reference period starts from the last whole week ending on or before the first day of the period of leave. This will typically be a week from Sunday to Saturday, but it could end on another day of the week if a worker is paid on a weekly basis.

However, if a worker's pay is calculated by a week ending with a Wednesday, then the employer should treat a week as starting on a Thursday and finishing on a Wednesday.

**Limiting how far back employers should look to calculate the average pay**

Previously employers looked back as far as necessary to get to 12 weeks' worth of pay data to complete the reference period (as they ignored weeks in which no remuneration was payable).

From 6 April, to prevent employers having to look back more than 2 years to reach 52 weeks' of pay data, a limitation on how far back employers should look has been introduced. Any weeks that are before the 104 complete weeks prior to the first day of the worker's holiday are not included. In this case the reference period is shortened to however many weeks are available in this 104-week period.

Employers should still only count back as far as is needed to achieve 52-weeks' worth of pay data if this is less than 104 weeks.

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Chartered Accountants

# Annual leave, bank holiday and holiday pay cont'd

Employers should keep count of the number of hours worked each week/month and the amount paid each week/month for the purpose of the holiday calculation.

| **Examples** | | |
|---|---|---|
| **Worker** | **Current holiday pay calculation** | **Holiday pay calculation prior to 6 April** |
| Joe has been working for his employer for over a year with variable pay. | Joe's holiday pay is averaged from his earnings in the past 52 weeks. | Joe's holiday pay is averaged from his earnings in the past 12 weeks. |
| Rachel started with a new employer 20 weeks ago and is on variable pay. | As Rachel's employer does not have 52 weeks' worth of data to use, they use what data is available. As such, Rachel's holiday pay is averaged from her earnings in the past 20 weeks. | Rachel's holiday pay is averaged from her earnings in the past 12 weeks. |
| Ben works irregularly for his employer and over the past 104 weeks has received pay in 45 of them. | As Ben only has 45 applicable weeks in the last 104, Ben's employer calculates his holiday pay using an average from his earnings in the 45 weeks in which he earned pay. | Ben's employer must look back as far as necessary to reach 12-weeks' worth of pay data to calculate his holiday entitlement. |
| Amy works irregularly for her employer and in the past 104 weeks she has received pay in 75 of them. | As Amy has at least 52 applicable weeks in the last 104, her holiday pay is averaged from her earnings in the most recent 52 complete weeks worked. | Amy's employer must look back as far as necessary to reach 12-weeks' worth of pay data to calculate her holiday entitlement. |

**Please feel free to contact us should you wish to discuss further**