

Key legislation

Holidays - here comes the Summer!

With the attentions of many employees now turning towards their forthcoming Summer holidays, employers need to ensure they at least understand the basics of the law on holidays and holiday pay – otherwise their legal position may not be quite so bright and sunny.

Key points for employers

Holidays

- Details of holiday entitlement should be stated in the worker's contract, or in an employee's written statement of particulars of employment (the written statement is required by law and must be given to employees within two months of commencement of employment).
- Under the Working Time Regulations 1998, workers are entitled to a minimum of 5.6 weeks' paid annual leave per holiday year – this equates to 28 days for a full-time worker.
- Part-time workers receive an equivalent entitlement, calculated on a pro-rata basis.
- Employers can include the bank and public holidays in the 5.6 week calculation if they wish, but otherwise there is no statutory right to paid leave for bank and public holidays – any right to paid time off for such holidays depends on the terms of the worker's contract.
- The minimum statutory annual leave entitlement is capped at 28 days, so a worker who works a six-day week would still only be entitled to a minimum of 28 days' paid annual leave.
- When calculating the amount of annual leave a worker is entitled to in a holiday year, partial days of annual leave need not be rounded up to the nearest half or full day.
- The entitlement to paid annual leave begins on the first day of employment. However, during the first year of employment, the employer can use an accrual system under which the proportion of the annual leave that can be taken by a worker, with the employer's agreement, builds up monthly in advance at the rate of 1/12th of the annual entitlement each month.
- There is no statutory right to carry over the first four weeks of the annual leave entitlement from one holiday year to the next. However, with the agreement of both the employer and the worker, some or all of the additional 1.6 weeks of annual leave can be carried over to the following holiday year.
- The holiday year can be determined by written agreement between the employer and the worker and indeed it is usual to specify the holiday year in the contract. If there is no such agreement, the holiday year will start on 1 October if the worker started work on or before 1 October 1998, or on the date the worker started employment if they started after 1 October 1998.
- If a worker starts work part-way through the employer's holiday year, the worker's annual leave entitlement will be proportionate to the amount of time left in that holiday year.
- There is no right for employers to pay wages in lieu of any untaken annual leave, unless the worker is leaving employment.

- On leaving employment, the worker will be apportioned days on a pro-rata basis and must be paid in lieu of any annual leave days which have accrued but which have not been taken on termination of employment.
- Employers can include a written claw-back clause in the contract for annual leave taken before it has been earned, enabling an amount equal to excess annual leave taken to be deducted from any final salary payment on termination of employment. Without such a clause, an amount equal to excess annual leave taken cannot be deducted from final salary.
- A worker's entitlement to annual leave will continue to accrue during sick leave, as well as during maternity, adoption, paternity and shared parental leave.
- Employers can be more generous than the statutory entitlements in their contractual provisions relating to holidays.
- The statutory provisions do not apply to any contractual annual leave that is granted by the employer over and above minimum requirements – that leave is governed by the terms of the worker's contract.

Holiday notice requirements

- Employers and workers can agree how and when to give notice of when annual leave is to be taken and the contract may accordingly set out notice provisions.
- However, in the absence of any agreement, the worker must give the employer, and the employer must give the worker, notice to take annual leave which is at least twice the period of annual leave to be taken, for example, two weeks' annual leave = four weeks' notice. If the employer then wishes to refuse the worker permission to take the annual leave requested, he has to give counter-notice at least as long as the period of annual leave requested.
- Employers can also set the times in the contract when a worker can or must take some or all of their annual leave, for example, during a Christmas or Summer shutdown.
- Although restrictions can be placed on when annual leave can be taken and the maximum amount that can be taken on any one occasion, employers cannot prevent workers from taking their leave entitlement.

Calculating holiday pay

- A worker is entitled to be paid for a period of annual leave at the rate of a 'week's pay' for each week of annual leave.
- There are different rules for calculating holiday pay depending on the working patterns involved.
- If the worker's normal working hours are the same every week and his pay does not vary with the amount of work done, the amount of a week's pay is the amount which is payable under the worker's contract.
- Where the amount of pay varies with the amount of work done but the normal working hours do not vary, the amount of a week's pay is the amount of pay for the number of normal working hours in a week, calculated at the average hourly rate of pay payable to the worker over the previous 12 working weeks. This may occur, say, under a piece work or commission scheme.
- Where the worker has no normal working hours, the amount of a week's pay is based upon the average pay received in the previous 12 working weeks.
- Employers are advised to take legal advice on holiday pay calculations, particularly if they pay overtime, commission or bonuses or standby, emergency call-out or similar payments or allowances, or they are contemplating making any changes to their current holiday pay practices.

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LHS Solicitors LLP

Corinthian House, 17 Lansdowne Road, Croydon CR0 2BX Tel: 0845 313 4143 Fax: 0845 076 2299

services@lhs-solicitors.com

www.lhs-solicitors.com

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