

Holidays and holiday pay

This leaflet contains helpful information about holiday entitlement, but it does NOT yet contain information about overtime and holiday pay following the Employment Appeal Tribunal Ruling in Bear Scotland Ltd v Fulton (and other joined cases) on 4 November 2014. For more up-to-date information on this area, go to www.acas.org.uk/holidays

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Arrangements for holidays and holiday pay should be agreed between employers and workers or their representatives.

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Introduction

This leaflet gives a summary of holiday entitlements. It sets out:

- the right to annual leave
- when a leave year starts
- how and when workers can take leave
- how to calculate holiday pay.

There is also a question and answer section that covers issues such as:

- public holidays
- part-time workers and holidays
- leave years that start at different times
- accrual systems.

If you would like more detailed advice on how these rights apply to your individual circumstances, please call the Acas Helpline on 0300 123 1100 (Open Monday – Friday 8am-6pm).

Holiday entitlement

Agreeing holiday rights

Annual leave should be agreed when an employee starts work. Holiday entitlements are sometimes mentioned in job advertisements and are often discussed at a job interview. The details of how much holiday an employee gets should be confirmed when a successful candidate receives a formal job offer.

Once an employee starts work details of holidays and holiday pay entitlement should be found in:

- the employee's written contract, where there is one
- a written statement of employment particulars given to employees by their employer.

What's my 'working week'?

Your working week is your usual hourly pattern of work. This should be set out in your contract of employment.

The working week does not usually include journey time to your usual place of work.

The written statement is required by law and must be given to employees by the employer no later than two months after the start of employment.

The document should contain sufficient detail to enable the employee's entitlement to be precisely calculated, including any entitlement to accrued holiday pay on the termination of employment.

The legal minimum

Under the Working Time Regulations 1998 (as amended), workers (including part-timers and most agency and freelance workers) have the right to:

- 5.6 weeks' paid leave each year (from 1 April 2009)
- payment for untaken statutory leave entitlement on termination of employment.

The leave year

The first thing an employee needs to do is check their written statement or contract of employment. Is there a set start and finish date for the holiday year – for example, April to March? If not, the leave will begin:

- on the date the worker began work for the current employer, or
- 1 October (the anniversary of the regulations becoming law).

If a worker starts work part way through the company's leave year, the initial holiday entitlement is based on the period from that date until the leave year ends. In most cases, employers will calculate entitlement for a part year pro-rata to the full year. So, if a worker begins work in July and the company's leave year runs from April to March, the entitlement will be three quarters of the full entitlement for that year.

Public holidays

Generally, public holidays include bank holidays, holidays by Royal Proclamation and 'common law holidays'. When public holidays in the Christmas and New Year period fall on Saturdays and Sundays, alternative week days are declared public holidays.

There is no statutory entitlement to paid leave for public holidays

Any right to paid time off for such holidays depends on the terms of the worker's contract. If public holidays are not expressly covered in the contract, the right to paid leave may have built up through custom and practice. Paid public holidays can be counted as part of the statutory 5.6 weeks' holiday entitlement under the Working Time Regulations 1998 (as amended).

Taking leave

Building up leave

Under the Working Time Regulations, employers can use an accrual system to calculate how much leave a worker has built up during their first year of employment. Under such an accrual system, leave is built up monthly in advance at the rate of one twelfth of the annual entitlement.

For example, a full-time worker in the eighth month of employment would have built up 18.6 days' leave. This calculation is based on annual entitlement of 28 days \times 8/12ths = 18.6.

Carrying over leave

From 1 October 2007 any holiday entitlement over four weeks (20 days for a five-day week, 16 days for a four-day week etc) may with agreement be carried over into the following leave year. This is a complex area and you may wish to seek independent legal advice. **If you need to know more about carrying over leave, contact the Acas Helpline on 0300 123 1100 (Open Monday – Friday 8am-8pm & Saturday 9am-1pm).**

Applying for leave

Workers are required to give notice to their employers if they wish to take a holiday. The default notice period must be twice as long as the period of leave requested (although an individual contract may state differently). For example, a worker wanting one week's holiday needs to give two weeks' notice. The employer can refuse permission by giving counter notice at least as long as the leave requested, ie one week.

Restrictions on taking leave

Restrictions on taking holidays may be expressly stated in the contract of employment, implied from custom and practice or incorporated into individual contracts from a collective agreement between the employer and trade union(s).

Employers may choose to:

- shut down for certain periods during which all or some groups of workers have to use their annual holiday entitlement
- nominate particular dates as days of closure, when workers are expected to take annual leave (for example, over the Christmas and New Year period)
- determine the maximum amounts of leave that can be taken on any one occasion and also the periods when leave may be taken.

An employer can require a worker to take all or any of the leave to which a worker is entitled at specific times, provided that the worker is given prior notice.

Holiday pay

For each week of their statutory leave entitlement workers are entitled to be paid a week's pay calculated in accordance with sections 221-224 of the Employment Rights Act 1996 as follows:

Workers with normal working hours

- If a worker's pay does not vary with the amount of work done then a week's pay is the amount due for a week's work under the worker's contract.
- If a worker's pay varies with the amount of work done then the amount of a week's pay is the pay for the normal weekly working hours multiplied by the workers average hourly rate over the preceding 12 weeks. This may occur under a piece work, bonus or commission system.

Rolled-up holiday pay

Employers should pay their employees at the time they take their leave. They should not use any form of 'rolled-up pay', where holiday pay is staggered over the rest of the year.

To calculate the average hourly rate, only hours where the worker was working, and the pay related to them, should be taken into account. Any week in which no pay was due, for hours worked, should be replaced by the last previous week in which pay was received for hours worked.

- **Shift and rota workers**, whose pay varies because they work their normal hours at varying times and in varying amounts in different weeks, have their week's pay calculated differently. Their average weekly hours of work, in the preceding 12 weeks, are multiplied by their average hourly rate. The hourly rate is calculated as above and includes any shift allowance which is payable.

Workers with no normal working hours:

- If a worker has no normal working hours then a week's pay is the average pay received over the preceding 12 weeks. Any week for which no pay was due should be replaced by the last previous week for which pay was due.

Gov.uk has more detailed information on holidays and holiday pay and has also developed a 'ready reckoner' to help calculate holiday entitlement. This can be found under 'working, jobs and pensions' at www.gov.uk.

Your questions answered

Do the Working Time Regulations apply to all workers?

No. The provisions in the regulations on holidays and holiday pay do not, at present, apply to services such as the armed forces or police or parts of the civil protection services where their activities conflict with the statutory entitlement to paid annual leave.

Some people, such as agricultural workers, are not covered by the regulations. For more information visit www.gov.uk.

How is a part-time worker's holiday entitlement calculated?

Part-time workers are entitled to the same holidays as full-time workers, calculated on a pro-rata basis. For example, an employee who works three days a week is entitled to 16.8 days' paid holiday – their normal working week multiplied by 5.6. An employee who works four days a week is entitled to 22.4 days' paid holiday- their normal working week multiplied by 5.6.

How do I calculate leave for my shift workers?

For shift workers it is sometimes easier to calculate how many shifts they get off.

If a member of staff works four 12-hour shifts followed by four days off, then they get half a day off for every 12-hour shift worked. So in a seven day week they get 3.5 days off and their average working week consists of 3.5 12-hour shifts. Their annual leave entitlement is: 5.6 weeks' holiday x 3.5 = 19.6 12-hour shifts= 19.6 12-hour shifts.

What leave do casual workers get?

If a member of staff works on a casual basis or very irregular hours, it is often easiest to calculate holiday entitlement that accrues as hours are worked.

The holiday entitlement of 5.6 weeks is equivalent to 12.07 per cent of hours worked over a year.

The 12.07 per cent figure is 5.6 weeks' holiday, divided by 46.4 weeks (being 52 weeks – 5.6 weeks). The 5.6 weeks are excluded from the calculation as the worker would not be at work during those 5.6 weeks in order to accrue annual leave.

So if someone works 10 hours, they are entitled to 72.6 minutes paid holiday (12.07/100 x 10 = 1.21 hours= 72.63 minutes).

What leave do term-time workers get?

There is no specific calculation for working out the holiday entitlement for term-time workers. You may find it useful to look at the calculations that are used for annualised hours or casual/irregular hours (see the table on page 12 or use the 'ready reckoner' calculator at www.gov.uk). If in doubt, the Acas helpline (0300 123 1100 Open Monday – Friday 8am-8pm & Saturday 9am-1pm) can talk to you about the holiday entitlement that might apply to your particular working arrangements.

How do you manage part days?

Holiday entitlements for some employees who work part-time may be made up of part days – for example, 22.4 days for someone working four days a week. Employees whose leave year starts before or after 1 April may also have holiday entitlements made up of part-days (see above). An employer can manage these part-days by:

- taking the part-day off a day's shift (an employee leaves early or comes in late)
- rounding the time up to the nearest full day (the time cannot be rounded down)
- paying the employee for the part-day owed
- allowing the employee to carry over the part-day to the next leave year.

I work Wednesday to Friday. Can I claim the right to paid bank holidays which fall on a Monday?

Nobody has a statutory entitlement to paid leave for public holidays. You need to check what it says in your contract of employment. Some employers give part-time staff a pro-rata entitlement of days off in lieu according to the number of hours they work.

Employers will need to think about how the increase in annual leave entitlement affects their organisation and how fairly it is applied to different working patterns.

What is the position of agency or casual workers regarding entitlement to paid leave?

Agency and casual workers are entitled to holidays under the Working Time Regulations 1998 in the same way as other workers. However, entitlement will depend on their employment relationship, pattern of work and length of service and therefore may be calculated on a pro-rata basis. Where this is the case, wages on each termination will normally contain an element of holiday pay where the appropriate leave entitlement has not been taken. The Agency Workers Regulations give agency workers the entitlement to the same or no less favourable treatment as comparable employees with respect to basic employment and working conditions, such as pay and annual leave, if and when they complete a qualifying period of 12 weeks in a particular job. For further information see the section on 'Your contract and working hours' in 'Working, jobs and pensions' at www.gov.uk

Does leave accrue during periods of absence?

In many cases, as long as a contract exists between the employer and the worker, the statutory minimum entitlement to paid holiday will continue to accrue during periods of absence, such as ordinary and additional maternity leave.

This is a complex area and if you are in any doubt you should seek legal advice.

How do you manage leave for an employee on maternity leave?

An employer should discuss leave arrangements with a pregnant employee as soon as possible. It is best to put any agreement you come to in writing so that you are clear about the taking of annual leave and maternity leave. For example, if an employee plans to take ten months off, they may decide to use a combination of their 5.6 weeks' annual leave and their maternity leave.

Case Law Update

Case law suggests that leave can accrue during sickness absence.

This is a complex area and if you are in any doubt, please contact the Acas Helpline on 0300 123 1100 (Open Monday – Friday 8am-8pm & Saturday 9am-1pm).

What happens if you are sick during your holiday?

Case law suggests that a worker who falls ill during a period of annual leave may be entitled to reclaim this leave. This is a complex area and you may need to seek legal advice.

What can a worker do if holiday entitlement is denied?

Workers denied statutory entitlements to paid annual leave should seek to settle disputes with their employer by talking through the problem. If the problem cannot be resolved informally, the worker should follow the organisation's grievance procedure.

Maternity leave

Many employers allow women to add on all of their annual leave to the beginning or end of their maternity leave. Any arrangements should be agreed following discussion between an employer and a pregnant employee and put in writing.

If it is not possible to reach an agreement in this way, workers may submit a complaint to an employment tribunal within three months of the refusal. If the complaint is upheld, the tribunal may award compensation to be paid to the worker by the employer.

The Acas Code of Practice *Disciplinary and grievance procedures* sets out principles for handling disciplinary and grievance situations in the workplace. Employment tribunals are legally required to take the Code into account when considering relevant cases. Tribunals will also be able to adjust any compensatory awards made in these cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code.

Is there an entitlement to accrued holiday pay for leave untaken on termination of employment?

Yes. No matter how short the period of employment, the worker has the right to be paid for leave accrued during that time. Under Section 1 of the Employment Rights Act 1996 employers should include in a written statement of employment particulars, sufficient detail to enable the precise calculation of a worker's entitlement to accrued holiday pay on termination of employment. Refer to appendix 1 which outlines important changes to making Employment tribunal claims.

Accrued holiday on termination need not to be rounded to the nearest half day – payment can be made for the exact amount of leave accrued. Unless a contract of employment improves the position, the provisions of the Working Time Regulations 1998 apply and payment for untaken leave should be calculated using this formula:

$$(A \times B) - C$$

where:

A is the period of leave to which the worker is entitled

B is the proportion of the worker's leave year which expired before employment ended

C is the period of leave taken by the worker between the start of the leave year and the termination date.

For example, a worker who works five days a week qualifies for 5.6 weeks' annual leave. If the worker finished employment after six months, having taken five days' leave, he/she will be entitled to:

$$5.6 \text{ weeks} \times 0.5 \text{ (half a year)} - 1 \text{ week} = 1.8 \text{ weeks' pay or}$$

$$28 \text{ days} \times 0.5 - 5 \text{ days} = 9 \text{ days' pay}$$

How can holiday pay be calculated for a worker who left after only three days in employment?

An employer should define in the written statement of employment particulars what is a working week.

For example, based on a five-day working week, 28 statutory days paid holiday are due in a year:

$$3/5 \text{ of a week} = 0.6$$

$$0.652 \times 28 = 0.3230769$$

This sum represents approximately a third of a day. Therefore, payment on termination for holiday accrued on the basis of three days work, would be around three hours' pay. Employers may use different methods to calculate holiday pay. If such methods are clearly set out in writing, the potential for claims to be made at an employment tribunal will be reduced. If you are (or expect to be) affected by such an issue, see Appendix 1 on important changes to making a tribunal claim.

What is meant by 'rounding up'?

'Rounding up' to the nearest half-day can happen when a worker requests leave and has, for example, only built up 0.3 of a day.

If employment is continuing, the employer may round up the fraction to a more convenient half a day's leave. This 'rounding up' will be taken into consideration when calculating the next period of leave.

However, if a worker has accrued 0.3 of a day's leave and his employment terminates, he receives payment for 0.3 of a day's leave only.

What happens when a worker has taken more leave than their entitlement on termination of employment?

Regulation 14 (4) of the Working Time Regulations 1998 states that an employer and worker can draw up a 'relevant agreement' (for example, in the contract of employment) to provide that a worker will compensate the employer, whether by payment, undertaking additional work or otherwise if leave already taken is in excess of entitlement when employment ends.

There should be a 'relevant agreement' in place; if not, and a deduction of overpayment is made by the employer from the worker's final wage payment, the worker may have the right to submit a claim to an employment tribunal under Section 13 of the Employment Rights Act 1996 – the right not to suffer unauthorised deductions. Refer to appendix 1 which outlines important changes to making Employment tribunal claims.

If you would like more detailed advice on how these rights apply to you individual circumstances, please call the Acas Helpline on 0300 123 1100 (Open Monday – Friday 8am-8pm & Saturday 9am-1pm).

What needs to be considered when workers request extended leave?

There is no general statutory right to extended leave without pay and whether it is granted is a matter for agreement between employers, their workers or, if appropriate, their trade unions. It may be helpful to have a policy on extended leave which applies to all workers.

Discipline and grievances at work: the Acas guide gives advice on drawing up a policy on extended leave and how to handle disciplinary matters.

Further information

- *Discipline and grievances at work: the Acas guide* – you can view and order online at www.acas.org.uk/publications.
- there is a useful ‘Holiday Entitlement Ready Reckoner’ at www.gov.uk.

A quick guide to calculating holiday entitlement

Working Pattern	Before 1 April 2009	After 1 April 2009
Full-time (5 day week)	4.8 weeks (24 days)	5.6 weeks (28 days)
Part-time (4 day week)	4.8 weeks (19.2 days)	5.6 weeks (22.4 days)
Part-time (3 day week)	4.8 weeks (14.4 days)	5.6 weeks (16.8 days)
6 day week	4.8 weeks (28 days) – the maximum statutory entitlement)	5.6 weeks (28 days) – the maximum statutory entitlement)
Compressed hours eg 36 hours in 4 days	36 hours x 4.8 weeks = 172.8 hours per year	36 hours x 5.6 weeks = 201.6 hours per year
Annualised hours eg 1,600 hours at an average of 33.5 hours week	33.5 hours x 4.8 weeks= 160.8 hours per year	33.5 hours x 5.6 weeks = 187.6 hours per year
Bank Holidays	Can be included in the 4.8 weeks leave – check your contract	Can be included in the 5.6 weeks leave – check your contract

Appendix 1: Important changes to making Employment Tribunal claims

Previously, an employee could go straight to the tribunal service, but this will change. From 6 April 2014, if an employee is considering making an Employment Tribunal claim against their employer, they should notify Acas that they intend to submit a claim.

Details of how and where to do this are given below.

Acas will, in most circumstances, offer to assist in settling differences between employee and employer. Employers intending to make a counter-claim against an employee must follow a similar procedure.

The process for agreeing settlement is called Early Conciliation. It is handled by experienced Acas conciliators and support officers and is:

- free of charge
- impartial and non-judgmental
- confidential
- independent of the Employment Tribunal service
- offered in addition to existing conciliation services.

Early Conciliation focuses on resolving matters on terms that employee and employer agree.

Early Conciliation may not resolve matters in every claim. When this is the case Acas will issue a certificate that is now required for a claim to be submitted to an Employment Tribunal.



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Remember, when a claim is lodged with a tribunal, Acas will continue to offer conciliation to both sides until the tribunal makes a judgment and, if the claim is successful, a remedy decision (usually financial compensation) has been made.

To find out more about Early Conciliation, go to www.acas.org.uk/earlyconciliation

Acas Training

Our training is carried out by experienced Acas staff who work with businesses every day. They will show you the value to your business of following best practice in employment matters and how to avoid the common pitfalls. We also run special training sessions on new legislation.

Look at the Acas website for up-to-date information about all our training or if you want to book a place online, just go to www.acas.org.uk/training or call the Acas customer services team on 0300 123 1150.

Training sessions are specially designed for smaller companies and our current programme includes:

- Managing discipline and grievances at work
- Managing absence at work
- Employment law update
- HR management for beginners
- Having difficult conversations
- Contracts of employment: how to get it right
- New employment legislation
- Redundancy and restructuring.

We also have free online learning to help you – just go to www.acas.org.uk and click on e-learning to look at the topics covered.

Acas Publications

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Whether you need to know how to write a contract of employment, how much holiday you are entitled to or about the latest employment legislation, our range of publications give practical information and advice for both employers and employees on employment matters.

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You can also sign up for Acas' free e-newsletter. It will keep you informed about the latest developments in employment legislation as well as best practice advice on a range of employment-related topics.

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Information in this booklet has been revised up to the date of the last reprint – see date below. For more up-to-date information go to the Acas website www.acas.org.uk.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

Acas aims to improve organisations and working life through better employment relations. We provide up-to-date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance.

We are an independent, publicly-funded organisation and many of our services are free.

November 2014

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