

Employment

Ad hoc workers and holiday

The Working Time Regulations 1998 state that all employees must receive 5.6 weeks of paid annual leave per year. For a full time employee, this equates to 28 days per year (generally taken as the 8 bank holidays plus 20 days to be taken at the election of the individual). For part time employees with fixed hours, the calculation of pro rata holiday entitlement is generally quite straightforward but for employees on variable hours (including zero hours) contracts, the calculation of annual leave can be much more complicated.

Accrual of holiday

For individuals with ad hoc hours the simplest way is to calculate their holiday as a number of hours that are accumulated each time they work a shift. By granting an individual 12.07% of their working time as holiday, the employer can meet its obligation to permit the mandatory 5.6 weeks of holiday per year.

The individual will continuously accrue holiday depending on the number of and the length of the shifts worked. Essentially, the individual will need to work approximately 8.3 hours to accumulate 1 hour of annual leave. Because accrual will be determined by the number of hours worked, each individual will have a different annual entitlement.

Taking holiday

As the entitlement will accrue only after the hours are worked rather than before (as with fixed hours individuals), the leave may only be taken once it is accrued. As it is not lawful to pay an individual in lieu of their holiday (except on termination of the working relationship), the individual must request their leave in order to be paid for it. Alternatively, each month the employer could give the required notice that the individual will take their leave.

As the individual's working hours are not fixed it may be administratively impossible for the individual to request leave at times when they know they will actually be required to work. As an alternative, the individual can notify the employer that they are not available at a particular time and will then not be scheduled to work. They can then request their accrued annual leave hours during that period of absence from work and will receive holiday pay for the hours requested.

It is clear from this system that the number of hours requested might have no bearing on the number of days the individual is actually away from work. The hours of leave requested will be for a nominal holiday period only and simply a means to the individual receiving pay for their holiday.

Holiday Pay

A recent holiday pay case in the Employment Appeal Tribunal has confirmed that individuals cannot simply be paid a fixed rate of 12.07% of their pay as a relevant rate for holiday pay. Instead, the rate of holiday pay for individuals working variable hours must be calculated in accordance with section 224 Employment Rights Act 1996. This involves calculating the average earnings across the 12 working weeks immediately before the leave is taken. The 12 week period ignores any weeks in which the employee did not work so can span a much longer period.

As the calculation must include total remuneration, the relevant holiday pay rate for the individual will likely be more than the basic rate set out in their contract. It should include things such as overtime, bonus, commission and tips if the individual has received any over the period. The employee should then receive a payment in their next pay packet in respect of the holiday pay calculated by reference to that relevant rate.

If you have any questions about holiday entitlement or pay, please contact our employment team.

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