

HOLIDAY PAY

This fact sheet outlines an employee's basic legal rights to holidays and explains how to go about claiming accrued holiday pay.

Statutory right to paid holidays under the Working Time Regulations 1998.

Under UK law there is now a statutory right to paid holiday. There is no statutory right to bank holidays even though they are often misleadingly called "statutory holidays".

The Working Time Regulations

You can obtain more information about statutory holidays by using the 'Holiday entitlement ready reckoner' available online by going to www.berr.gov.uk/employment/holidays.

Who is entitled under the Working Time Regulations?

Subject to the exceptions below virtually all workers, including agency, casual and part time workers, have the right to paid holiday.

Who is not entitled under the Working Time Regulations? (See Reg 18 for exclusions)

The statutory right to paid holidays does *not* apply to members of the armed forces, police and civil protection services, such as firefighters and coastguards, who will have to rely solely on contractual rights.

What is the entitlement?

The Working Time Regulations 1998 give workers a right to

- A minimum of 4 weeks paid holiday per year up to 1st October 2007.
- An increase in that entitlement to 4.8 weeks paid holiday per year applies from 1st October 2007
- A further increase to 5.6 weeks paid holiday per year applies from 1st April 2009.

This entitlement is not in addition to any bank holidays you may get and an employer can include bank holidays in the relevant entitlement. You must be paid your normal weekly wage for the time you take off. If your hours and / or pay are irregular your employer must pay your average week's pay based on the 12 weeks prior to your holiday period. You can take these holidays any time during the holiday year to which they relate so long as the notice provisions below are met: -

Notice of taking holidays

Generally, unless there is a contractual agreement to the contrary, employers can tell their employees when holiday should or should not be taken. The provisions for giving notice about taking holidays may be agreed between the employer and the employee. If there is no agreement the rules below apply: -

- i) an employer can require a worker to take all or any of the holiday at specified times, provided that the worker is given prior notice. The notice period should be at least twice the period of the holiday to be taken. For example, if an employer wished to have a Christmas

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shutdown spanning one week then two weeks' notice would be required.

b) a worker is required to give notice to the employer of when they wish to take holiday. The notice period should be at least twice the period of holiday to be taken. An employer may refuse the worker permission to take the period of holiday requested. To do so, they must notify the worker within a period equivalent to the holiday period. For example, if a worker wished to take a week's leave then the worker would have to give their employer at least 2 weeks' notice. The employer can come back within 1 week to refuse the leave.

Is there a qualifying period of service.

There is no qualifying period for acquiring the right to statutory paid holiday.

Calculating holiday entitlement

If a workers holiday leave year begins before 1st October 2007, the increased entitlement for that leave year is calculated by multiplying the proportion of leave year left to run at 1 October 2007 by the additional statutory entitlement (0.8 weeks). For example a worker with a minimum statutory leave entitlement, with a leave year beginning 1 January, will be entitled to a total of 4.2 weeks in the 2007 holiday year. i.e. the existing entitlement of 4 weeks, plus one quarter of the additional entitlement in respect of the period from 1 October to 31 December 2007. The table below details the entitlement for workers with leave years starting in January, April, July and October.

Leave year starts	<u>Statutory leave entitlement</u>		
	2007	2008	2009
1 January	4.2 weeks	4.8 weeks	5.4 weeks
1 April	4.4 weeks	4.8 weeks	5.6 weeks
1 July	4.6 weeks	5.0 weeks	5.6 weeks
1 October	4.8 weeks	5.2 weeks	5.6 weeks

Leave during the first year of employment.

Reg 15A Working Time Regulations provides that during the first year of employment the amount of leave a worker may take is limited to the amount of leave deemed to have accrued at that time. Leave is deemed to accrue over the course of the first year of employment at a rate of 1/12th of the annual entitlement on the first day of each month of that year. Thus, in the first month of employment, a five-day a week worker will accrue 1.67 days holiday (20 divided by 12). Fractions of days are rounded up to the nearest half-day i.e. 1.67 days entitlement would be 2 days, and 2.34 days entitlement would be 2.5 days.

Payments in Lieu

Employers may not ordinarily make payments in lieu of the minimum 4 weeks entitlement to holiday pay except upon termination. However, Employers may make payments in lieu of the

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new additional entitlement (the extra 0.8 weeks introduced on 1 October 2007) until April 2009. Thereafter, the extended entitlement of 1.6 weeks cannot be paid in lieu except where the employment is terminated. The additional entitlement though can be carried over into the next holiday year if there is a 'relevant agreement' for example through a collective agreement or workforce agreement. The worker is not able to insist on carrying the additional entitlement over without the benefit of a relevant agreement in the workplace.

Accrued holiday pay for the long term sick

In April 2005, the Court of Appeal held in the case of Ainsworth, that the right to four weeks' statutory paid holiday under the Working Time Regulations 1998 does not continue to accrue whilst an employee is off on long-term sick-leave. But all did not rest there, for the employees appealed to the House of Lords, who referred the question to the European Court of Justice (ECJ). The Advocate-General (whose opinion is often followed by the full court) stated in February 2008: *entitlement to paid holiday does accrue whilst an employee is absent on sick leave*; however, workers may not take their holiday while they are on sick leave; and, after termination of the contract, workers are entitled to a compensatory payment to reflect accrued but untaken holiday leave, even where the worker was on sick leave for the full holiday year. If you are affected by this decision you should seek further legal advice.

Contractual right to holidays

As an employee, your right to holidays is governed by what you have agreed, either verbally or in writing, with your employer. This is your contractual right to holidays. You may agree how many days a year you will get, whether it will be paid or unpaid, and how much notice you have to give before taking holidays. Your contractual right to paid holiday cannot be any less than the statutory minimum of four weeks.

Remedies

If you are not able to sort something out amicably with your employer in respect of your statutory holiday entitlement because your employer

- Refuses to let you take holiday or fails to pay you all or some of your pay for holidays or,
- Reduces your hours or pay as a result of having to give you paid holidays you need to do the following:

(i) Raise a formal grievance with your employers in writing outlining your complaint. Failure to do this will result in any claim you make to an employment tribunal being refused until this has been done.

(ii) Sign this grievance letter, take a photocopy and send it to the employer.

(iii) If you do not receive a response within 28 days of the date you hand-delivered, posted or emailed the grievance you can take a claim to an employment tribunal.

(iv). If your employer invites you to a meeting you should go to this as if you don't and you later bring a claim in the tribunal, any compensation you are awarded will be reduced by between 10 and 50%.

- You have a statutory right to be accompanied at this meeting by either a work

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colleague or trade union representative.

- The employer must arrange a meeting at a mutually convenient time and you are expected to make efforts to attend. Should you not be satisfied with the outcome of the meeting you can appeal the employer's decision. If you are not happy with the outcome of the appeal, you can then proceed with a tribunal application.

(v) Once 28 days have passed since you sent your grievance letter, you can then make an application to tribunal. You do not have to wait for the employer's decision on the grievance if you do not wish to. Please see fact sheet 13 *Claiming unpaid wages/holiday/notice pay in the employment tribunal*.

Dismissal.

If you are dismissed for trying to assert your right to holidays under the Working Time Regulations then, so long as you can prove this was the reason, you can claim unfair dismissal and will not need the normal one-year qualifying period of service to make this claim. You should take advice if you are considering making a claim for unfair dismissal on these grounds.

Accrued holiday pay

Problems often arise when an employee's work ends, either by resignation or dismissal.

Example:

Your employer's holiday year runs from January 1st 2008 to December 31st 2008. You are entitled to 4.8 weeks or 24 days' holiday per year. You leave work on April 1st (i.e. 1/4 of the way through the year). If you have taken 6 days holiday (i.e. 1/4 of what you're entitled to) there's no problem. However, if you have taken no holidays, should the employer pay you 6 days accrued holiday pay? Or, if you've taken 10 days holiday, do you have to pay back 4 days to your employer?

The answer to this, in part depends on what your contract says. You should normally be paid accrued holiday pay unless there is a contractual term that says you are entitled to an amount of accrued holiday pay less than the full amount.

If the contract says you are not entitled to any holiday pay this term will not be valid (see Witley and District Men's club v Mackay 2001 IRLR 595.) (NB any holiday entitlement above the statutory minimum will only have to be paid as accrued holiday pay at the end of the job if there is a contractual term to this effect). If the contract says you have to pay back any holiday you've taken over what you've accrued, then you'll have to pay it back. The employer can only deduct this money from your final wages if there is a written contractual term entitling the employer to do this. If there's no contractual term on this point, then you won't have to pay back any holiday you've taken above your entitlement.

What if your employer won't pay your accrued holiday pay?

If your contract entitles you to accrued holiday pay but the employer won't pay then this is a breach of the Working Time Regulations 1998.

You would again need to write a grievance letter in the first instance, following the steps outlined above. If you are not satisfied with the outcome of your grievance, or your employer

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refuses to hear your grievance, you can then bring a claim in the employment tribunal, so long as you have waited 28 days since sending your grievance letter. (See fact sheet 13 *Claiming unpaid wages/ holiday/notice pay in the employment tribunal*.)

What will you need to prove?

- You'll need to show what the holiday leave year is. You will probably find this in your written statement of terms of employment if you have one. If not, then if you started work on or before 1.10.98 it will run from 1st October. If you started after 1.10.98 it will run on the anniversary of the date you started work.
- You'll need to show how many holiday days a year you're entitled to. This may be in a written statement of terms or you may have agreed it verbally with the employer or you may be relying on the statutory minimum.
- You'll need to show how many holiday days you've already taken. Your wage slips will show this, or you may have a record in your diary or on a calendar.
- You'll need to show that your employer didn't pay your accrued pay when you left. Your final wage slip will show this.

Time limit

- The time limit for sending a grievance letter is normally 3 calendar months less one day from the date the money was due to be paid. This will usually be your last day of work. For example: payment is due but not received on the 10th January 2007. You have until the 9th April 2007 to send a grievance letter. In addition to sending the grievance letter within this 3-month time limit you must also submit an application to tribunal, which must be received within 6 months of the date the money was due. If you miss this time limit it may be possible to bring a claim in the small claims section of the county court where the time limit is 6 years.

Law Centre opening times:

You can contact the Law Centre for help by phoning 0114 273 1888 between 10 and 4 each weekday. When you phone, have with you any of the documents referred to above and have a copy of your application to the tribunal (Form ET1) with you if you have already made your application.