

Holiday pay reforms 1st January 2024 – information sheet for NTF members

Calculating leave entitlement when leaving a job part way through a leave year.

The new guidance sets out a 3 step method:

- Calculate the worker's full annual leave entitlement
- Work out the proportion of the leave year in employment
- Pro-rate based on the proportion of the year in employment

Example

Leave year commencing 1st January 2024

Worker leaves on 25th February 2024

Full holiday entitlement	Worker in this case entitled to 30 days per annum
Work out the proportion of the leave year	Worker has worked between 1 st January 2024 and 25 th February 2024, there are 56 days in this period
Days in employment during leave year	56 days employed / 365 days x 100 = 15.34. This means employee was in employment for 15.34% % of the leave year
Pro rate based on leave year	$30/100 \times 15.34 = 4.06$

The worker is entitled to 4.06 days holiday.

This is consistent with the existing way of calculating holiday but provides a simple way of doing the calculation and takes into account the different number of days in months of the year.

Carry over of leave

Key points from the reforms are that a worker will be entitled to carry over holiday into the next year leave year if:

- the employer has not given the worker a reasonable opportunity to take the leave and encouraged them to do so,
- the employer has failed to inform the worker that untaken leave must be used before the end of the holiday year to prevent it from being lost, or
- the employer has not permitted the worker to take annual leave – this is likely to arise because the person is wrongly classified as a self employed.

These carry forward rights apply to the four week (20 days) entitlement based on EU law.

- This highlights the importance of having good records in place so that you can show that a worker has been given the opportunity to take leave and has been told that it will be lost if not taken. We advise that at a suitable point or points of the holiday year, workers are notified in writing of their outstanding holiday, when it must be taken by and that it will be lost if not taken.

Where somebody cannot take their holiday because of being on maternity or other family related relief leave, then the full statutory holiday entitlement carries over. The legislation also confirms that where a worker has carried forward their four weeks (20 days) EU based annual leave because of sick leave it must be used up within 18 months at the end of the holiday year in which the original entitlement originally arose.

Holiday pay calculations

The reforms confirm that holiday is split into different legal entitlements – 4 weeks (20 days) leave based on European law which must be paid at normal pay and an extra 1.6 weeks leave based purely on UK law which confusingly can be paid at basic pay.

The regulations confirm that the pay for the full week (20 days) EU based leave entitlement must include:

- Payments, including commission payments which are intrinsically linked to the performance of tasks, which the worker is obliged to carry out under the terms of that contract
- Payments for professional or personal status relating to length of service, seniority or professional qualifications
- Other payments such as overtime payments which have been regularly paid to the worker in the last 52 weeks.

We anticipate that impact this will not alter in practice how many trainers treat holiday pay as most will have factored in regular overtime for a number of years, based on the advice arising from case law. Many treat the whole holiday the same as that approach simplifies administration time. If this is what you already do, then there is no need to change the practice.

Other changes

For employees working irregular hours and employees who are part year workers - other changes to the calculation of holiday pay will be effective for holiday years starting on or after 1st April 2024. Guidance on those changes will be issued in the coming months.

The Government guidance on all the changes with worked examples can be found here:

[Holiday pay and entitlement reforms from 1 January 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/holiday-pay-and-entitlement-reforms-from-1-january-2024)