

Under the Working Time Regulations 1998 workers are entitled to paid statutory annual leave.

The minimum holiday entitlement from 1 April 2009 is 5.6 weeks i.e. 28 days (for an employee working 5 days per week). However the 28 days includes bank holidays, therefore the minimum holiday entitlement an employer must give to his staff in addition to bank holidays is 20 days.

This increase will move more UK workers' annual leave entitlement closer to that of workers in other European countries, where holiday allowance is typically more generous. Workers in Ireland are entitled to 29 days; the highest minimum entitlement is in Austria at 38 days.

abacus has prepared a holiday entitlement policy for our clients which is appended to the end of this factsheet. Contact your local **abacus** accountant for additional information.

Payment for annual leave

A worker is entitled to be paid in respect of any period of annual leave for which they are entitled, at a rate of one week's pay for each week's leave. For employees with normal working hours a week's pay is the pay due for the basic hours the employee is contracted to work. Any regular contractual bonuses or allowances (except expense allowances) which do not vary with the amount of work done are also included. Voluntary overtime and commission payments are excluded.

Under the Regulations any statutory annual leave may not be replaced by a payment in lieu, except on termination of employment. In such cases, a payment can be made for any untaken leave in the leave year that termination occurs, although no payments can be made for any untaken leave with regard to previous leave years.

Rolled up leave

The ECJ has ruled that it is unlawful for employers to roll up workers' annual leave payments. In accordance with this it is recommended that employers renegotiate contracts involving such pay for existing workers as soon as possible so that payment for statutory annual leave is made at the time when the leave is taken.

Requesting leave

Employees should be allowed to choose when they take some of their leave although many employers do set certain conditions, for example that only a certain number of workers may take leave at the same time or that workers may not take more than a certain number of consecutive working days off in one go.

It is common for employers to have a procedure in place for these instances and it should include the procedure for notification. If this is excluded then the legal position is that an employee requesting a period of leave must give notice of at least twice the period of leave to his or her employer. A similar arrangement of notice must be given by the employer if they are requesting the employee to take leave at specific times.

First year of employment

Workers accrue their annual leave entitlement on a pro-rata basis during their first year of employment. This is calculated in relation to the proportion of the employment year worked. Therefore, the annual leave entitlement will accrue over the course of the worker's first year of employment at the rate of 1/12 of the annual entitlement starting on the first day of each month. If the calculation does not result in an exact number of days then the figure will be rounded up to the nearest half day.

Annual leave and part-time employees

Under the Regulations, time off for bank holidays should be calculated pro-rata. Part-time workers are currently entitled to 5.6 weeks holiday, based on the hours per week that they work, regardless of whether they work on days on which bank holidays fall.

Contractual annual leave entitlement

An employer can increase a worker's statutory annual leave entitlement via a contractual arrangement. In such cases any unused additional annual leave may be carried over to the next leave year. This is often a matter of employer discretion and will depend on the terms of the contract.

It is recommended to review any contractual documentation and handbooks to take into account the recent developments.

Annual leave and maternity

An employee continues to accrue their statutory annual leave entitlement of 5.6 weeks throughout both ordinary maternity leave (OML) and additional maternity leave (AML).

In addition, from October 2008, contractual annual leave entitlement – i.e. any holiday entitlement over and above the statutory minimum – also continues to accrue during OML and AML.

How abacus can help

We will be more than happy to assist you in implementing a holiday entitlement policy or provide you with any additional information you require.

For information of users: This material is published for the information of clients. It provides only an overview of the regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material can be accepted by the authors or the firm.

Appendix 1 - Holiday Procedure

1. Holiday Year

The holiday year runs from 1st April to 31st March.

2. Holiday Entitlement

- a) Employees are entitled to 20 days (or 4 weeks, whichever is the greater) paid holiday per year – excluding public holidays.
- b) Paid holiday entitlement is calculated on the basis of continuous service during the holiday year. An employee joining the Company after the 1st April shall be entitled to holidays proportional to the employee's length of service for the remainder of the year.

3. Public Holidays

- a) Payment for working public holidays will be at an agreed rate.
- b) Public holidays are New Years Day, Good Friday, Easter Monday, May Day, Spring Bank Holiday, Summer Bank Holiday, Christmas Day, Boxing Day.

4. Fixed Holidays

The Company has the right to fix 3 days holiday in each holiday year.

5. Holiday Requests

Employees must obtain the permission of their immediate manager prior to taking annual leave using the Annual Holiday Record form (see Appendix 3) in accordance with the following notification arrangements:

- For up to 10 days annual holiday at any one time the employee must request approval 1 month prior to the date of the intended holiday leave.
- For up to 3 – 9 days annual holiday at any one time the employee must request approval 2 weeks prior to the date of the intended holiday leave.
- For up to 1 – 2 days annual holiday at any one time the employee must request approval 1 day prior to the date of the intended holiday leave.

6. Carry-Over Holidays

Employees may not carry forward any unused holiday entitlement at the end of the holiday year without the written consent of the Board of Directors.

7. Late Return

If, for any reason, an employee knows that they will be late returning from holiday they must contact the company and notify of their late return as soon as possible. Failure to do so, or where the employee has been found to have provided misleading information on the booking conditions of their holiday to the Company, then the employee will be liable to disciplinary action for unauthorised absence. Such disciplinary action may lead to dismissal.

8. Withdrawal of Holiday Approval

- a) Once approval is given for a holiday it is not normally withdrawn. However, there may be some occasions when the business needs of the Company prohibit the possibility of any notice being given, and in these circumstances the Company reserve the right to withdraw holiday approval. Every effort will be made to minimise any inconvenience or hardship for the employee.

- b) The Company's right to withdraw the approval of holiday is subject to the provision of the Working Time Regulations 1998 that stipulate that employees must be allowed to take four weeks annual leave in the holiday year. If it becomes apparent towards the end of the holiday year that employees have not been given the opportunity to take their minimum statutory entitlement, arrangements will be made to ensure that the employee is given the opportunity to take his or her statutory entitlement before the end of the year.

9. Termination of Employment

- a) When employment terminates part way through a holiday year, employees' holiday entitlement during that year will be assessed on a pro-rata basis. Deductions from final salary due to the employee on termination of employment will be made in respect of any holidays taken in excess of entitlement. Employees will be entitled to payment in lieu of holidays accrued but not taken as at the date of termination of employment.
- b) If an employee leaves as a result of Gross Misconduct, the employee will be paid the minimum amount of notice as required by the Working Time Regulations 1998.

Appendix 2 - Working time agreement procedure

Policy

The Company believes that its established working hours suit both its employees and the Company's business needs as well. The Working Time Regulations state that an employee cannot be required to work more than an average of 48 hours per week unless he/she signs an individual opt-out agreement agreeing that this limit will not apply to him/her.

Agreement

Any employee who wishes to work more than 48 hours per week from time to time is required to sign and return an "opt-out" agreement form to ensure their working practices comply with the law.

Termination of Agreement

The agreement to opt-out may be terminated by the employee by giving three months notice in writing to the Company.

Employees who do not Opt-Out

Employees who do not opt-out of the working time arrangements are not allowed to work more than 48 hours per week in any rolling 17 week period.

