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Reforms to Working Time Regulations and TUPE

The government has announced some significant changes to holiday entitlement and the way in which holiday pay is calculated. The new legislation is intended to introduce a more simplified process and addresses concerns over the complexity of statutory working time rights.

The reforms come as a result of a government consultation on proposals to amend the calculation of holiday entitlement under the Working Time Regulations 1998 (WTR).

The guidance, published by the Department for Business and Trade (DBT), is a response to a consultation on these three key areas:

- + Simplifying annual leave and holiday pay calculations in the Working Time Regulations;
- + Record keeping requirements under the Working Time Regulations 1998 (WTR); and
- + Consultation requirements under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

In this fact sheet we explain here the detail of the new guidance and what it means for employers and employees.

Holiday pay and entitlement reforms

Simplifications of the rules governing holiday entitlement and holiday pay calculations have been introduced in the Working Time Regulations.

The following reforms apply from 1 January 2024:

- + Removing the Working Time (Coronavirus) (Amendment) Regulations 2020;
- + Maintaining the current rates of holiday pay, where 4 weeks is paid at the normal rate of pay and 1.6 weeks is paid at the basic rate of pay, whilst retaining the 2 distinct pots of leave; and
- + Defining what is considered 'normal remuneration' in relation to the 4 weeks of statutory annual leave.

The following reforms apply to leave years beginning on or after 1 April 2024:

- + Introducing a method to calculate statutory holiday entitlement for irregular hours and part-year workers;
- + Introducing a method to calculate how much leave an irregular hour or part-year worker has accrued when they take maternity or family related leave or are off sick; and
- + Introducing rolled-up holiday pay as an alternative method to calculate holiday pay for irregular hours workers and part-year workers.

Calculating holiday entitlement for irregular hours and part-year workers

For leave years beginning on or after 1 April 2024, there is a new accrual method for irregular hour workers and part-year workers in the first year of employment and beyond.

- + Holiday entitlement for these workers will be calculated as 12.07% of actual hours worked in a pay period; and
- + Holiday entitlement will be calculated at the end of each pay period, rather than monthly, to give flexibility to employers.

The government has defined an irregular hours worker as:

“A worker is an irregular hours worker, in relation to a leave year, if the number of paid hours that they will work in each pay period during the term of their contract in that year is, under the terms of their contract, wholly or mostly variable.”

The government has defined a part-year worker as:

“A worker is a part-year worker, in relation to a leave year, if, under the terms of their contract, they are required to work only part of that year and there are periods within that year (during the term of the contract) of at least a week which they are not required to work and for which they are not paid. This includes part-year workers who may have fixed hours, for example, teaching assistants who only work during term time, and who are paid only when working.”

For workers who are not irregular hours or part-year workers, there is no change in how their statutory holiday entitlement is accrued.

Calculating statutory holiday entitlement accrued by irregular hours and part-year workers while they are on maternity or family related leave or off sick

A calculation method has been introduced for leave years beginning on or after 1 April 2024 to help employers find out how much leave is accrued by an irregular hours or part-year worker when they are on maternity or family related leave or are off sick.

- + The method follows the same principle as the accrual method for statutory holiday entitlement;
- + This reform introduces a 52-week reference period, enabling employers to look back and work out an average of hours worked across that period; and
- + When calculating the average weekly hours worked, employers should not include weeks where the worker is on maternity or family related leave or off sick for any amount of time.

Entitlement for full-year workers

All full-year workers are legally entitled to 5.6 weeks of paid statutory holiday entitlement per year.

- + Four weeks of this entitlement must be paid at a worker's 'normal' rate of pay; and
- + The remaining 1.6 weeks' entitlement can be paid at the 'basic' rate of pay.

From 1 January 2024, there are defined payments that must be included in the 4 weeks of 'normal' holiday pay, these are:

- + Payments, including commission payments, intrinsically linked to the performance of tasks which a worker is contractually obliged to carry out;
- + Payments relating to professional or personal status relating to length of service, seniority or professional qualifications; and
- + Other payments, such as overtime payments, which have been regularly paid to a worker in the 52 weeks preceding the calculation date.

Workers with regular hours and fixed pay must receive the same holiday pay as the pay they would receive if they were at work and working.



Rolled-up holiday pay for part-year and irregular hours workers

Rolled-up holiday pay allows employers to include an additional amount with every payslip to cover a worker's holiday pay, as opposed to paying holiday pay when a worker takes annual leave.

For leave years beginning on or after 1 April 2024, employers can use rolled-up holiday pay as an additional way of calculating holiday pay - this is only for irregular hours and part-year workers.

- + The calculation of holiday pay by employers is 12.07% of a worker's total pay;
- + The holiday pay should be paid at the same time as the worker is paid for the work done in each pay period;
- + Rolled-up holiday pay is to be paid in addition to the worker's normal salary, which should be at National Minimum Wage or above; and
- + If a worker goes off sick or takes maternity / family-related leave, their rolled-up holiday pay would be calculated according to the average amount of their total earnings in each pay period during the 52-week relevant period.

If employers do not wish to use rolled-up holiday pay, they can continue to use the existing 52-week reference period to calculate holiday pay.

- + If a worker has not been in employment for long enough to build up 52 weeks' worth of pay data, their employer should use however many complete weeks of data they have;
 - + The reference period must include the last 52 weeks for which they actually earned, and so excludes any weeks where no work was performed; and
 - + The reference period should go back no more than 104 weeks.
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Carryover of leave

From 1 January 2024, the following rules apply to the carry over of leave:

- + Workers can normally carry over a maximum of 8 days into the next leave year, with the agreement of their employer;
 - + If a worker gets more than 28 days' leave, their employer may allow them to carry over any additional untaken leave;
 - + If any worker is unable to take some or all of their statutory holiday entitlement, as a result of taking a period of maternity or other family related leave, they will be entitled to carry forward up to 28 days of their untaken leave into the following leave year; and
 - + If a worker working regular hours all year round is unable to take some or all of their statutory holiday entitlement as a result of being off sick, then the worker will be entitled to carry forward up to 20 days of their untaken leave into the following leave year.
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Removing the Working Time Coronavirus Regulations 2020

During the pandemic, the Working Time Regulations were amended to enable workers to carry over up to four weeks of leave due to the effects of COVID.

- + From 1 January 2024, workers can no longer accrue COVID carryover leave; and
- + Workers will have until 31 March 2024 to use any leave accrued prior to 1 January 2024.

Record-keeping requirements

The 2019 judgment of the Court of Justice of the European Union (*Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE*) presented a risk that employers would need to comply with increased record keeping requirements by recording all daily working hours of all workers.

- + The Working Time Regulations have been amended to make it clear that employers are not required to keep a record of the daily working hours of each worker, if they are able to demonstrate compliance without doing so; and
- + Employers will still need to keep adequate records to demonstrate compliance with the Working Time Regulations, as is currently prescribed in legislation.

Transfer of Undertakings (Protection of Employment) Regulations (TUPE)

From 1 January 2024 it is no longer a requirement for employers to consult with affected employees via representatives on a TUPE transfer if their business employs fewer than 50 employees, or (for transfers on or after 1 July 2024) where a TUPE transfer involves fewer than 10 employees (regardless of the size of the employer).

The changes to the consultation process apply to instances where businesses do not have existing employee representatives to consult. Where employee representatives - including trade unions are in place, employers will still be required to consult them.

Next steps

The new legislation presents some important changes to holiday rules under WTR and requires employers to ensure they are correctly assessing the status and working arrangements of all their workers.

Many of the changes will be welcomed by employers and employees alike as they help to provide clarity around what are complex regulations.

In particular, the reforms offer much needed guidance around holiday pay entitlement for irregular and part-year workers, an area that can present its own challenges and ambiguities. Employers should ensure they are familiar with the definitions of irregular hour and part-year workers, enabling them to identify the employees that fall under these categories and the new calculation method for statutory holiday.

Employers should review their policies and procedures to make sure they are taking the reforms into account. The guidance focuses on the legal minimum entitlement of 5.6 weeks' paid holiday. Some workers will have additional paid holiday, beyond the statutory minimum – contracts should be checked and, where required, legal advice sought.

Having the right systems and reporting in place will support a smooth payroll process and compliance with the new regulations. Effective communication with employees is key, making them aware of any changes, the amount of holiday they can take, and how much they will be paid.

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