

# PAY & EMPLOYMENT RIGHTS SERVICE

PERS leaflet number 4

## PAID HOLIDAYS

What you need to know about:

**YOUR RIGHT TO PAID HOLIDAYS  
BANK HOLIDAYS  
BREAKS AND REST PERIODS**

*Community  
Legal Service*



**NOVEMBER 2009**

## YOUR RIGHTS TO PAID HOLIDAYS

Workers have the legal entitlement to minimum paid holidays each year under the Working Time Regulations. From April 09, workers are entitled to **5.6 weeks paid holiday per year** (28 days if you work a five day week). Before April 2009 the minimum entitlement was 4.8 weeks per year (24 days if you worked a 5 day week).

**Statutory** holiday is the minimum of 5.6 weeks. **Contractual** holiday is anything over and above this that your employer has agreed to give you. Your employer may give you a contractual right to *more* holiday than the statutory minimum, but not less.

### Statutory Cap

Workers who work more than five days a week (e.g. **6 day a week workers**) will not get more than 28 days of statutory holiday, even though 5.6 weeks equates to more than 28 days. Anything over and above 28 days that your employer may give you is contractual holiday and should remain unaffected from April 09.

## DO YOU QUALIFY FOR PAID HOLIDAYS?

Most workers are covered by the Working Time Regulations, which give minimum rights to paid holidays. At present the Regulations only exclude the following:

- \* in certain circumstances, those in the armed forces, the police force or in the emergency services (unless you are a young worker, that is over the school leaving age but under 18);
- \* some workers who work in jobs where different regulations apply: that is, some *mobile* workers in air, sea and inland waterways/lake transport, and workers on board sea going fishing vessels;
- \* self employed people.

Most mobile workers in road transport are also *included in some aspects* of the Regulations, including the right to paid holidays. Doctors in training are also covered by the Regulations.

### Part time workers

You qualify for paid holidays even if you only work a few hours each week.

## WHEN DO YOU QUALIFY FOR PAID HOLIDAYS?

You are entitled to receive paid holidays from day one of your employment. During your first year, the entitlement to paid holidays will accrue monthly, in advance, at a rate of one-twelfth of your annual entitlement.

So, for example, if you are a part-time worker who works 2.5 days a week, you have a statutory minimum annual holiday entitlement of 14 days (5.6 weeks x 2.5 days). **In your sixth month of your employment, you will be entitled to seven days holiday (6/12 of 14 days).**

If you are a full-time worker who works 5 days a week you have a statutory minimum annual holiday entitlement of 28 days (5.6 weeks x 5 days). **In your third month of employment, you will be entitled to 7 days holiday (3/12 of 28 days).**

After your first year of employment you do not have to wait until you have accrued your holidays in order to take them. See back pages for more examples of holiday calculations.

### Part days

If your holiday calculation results in a figure that is not a whole number (e.g. 14.4 days) your employer no longer has to round this up to the nearest half day under these new regulations.

## HOW MANY DAYS HOLIDAY ARE YOU ENTITLED TO?

You are entitled to 5.6 weeks (subject to statutory cap, see above) paid holiday per year. A 'week' is your normal week - the number of days or hours you usually work. Therefore, if you **work 5 days a week**, you will be entitled to **28 days paid holiday a year**.

If your working time is set in terms of hours, your annual holiday may be calculated in hours. So, if you **work 25 hours a week**, you will be entitled to **140 hours paid holiday a year (25 x 5.6)**.

If you are a **shift worker**, you need to work out the number of shifts you work in a week. For example, if you work four shifts followed by four days off (commonly known as the 'continental shift' pattern) you work four shifts in eight days which works out to be half a shift per day. This equates to 3.5 shifts per week. You are therefore entitled to  $3.5 \times 5.6 = 19.6$  shifts of holiday.

If you are a **term-time only worker**, you need to work out how much of the year you are actually working and divide this by the number of working weeks in a year (46.4, this is 52 weeks with 5.6 weeks holidays subtracted). This figure is then multiplied by 5.6 to give you the amount of holiday you are entitled to. For example, if you work 36 weeks of the year, you will be entitled to  $36 \div 46.4 \times 5.6$  weeks which equates to just over 4.3 weeks.

If you are a **casual worker on irregular hours on a short term contract**, your statutory holiday entitlement is approximately 12.1% of your working time or 7.24 minutes of every hour you have worked. So, if you have done a week's work for an agency at 35 hours you should get just over 4.2 (four hours and 12 minutes) hours holiday pay. Otherwise your holiday pay should be calculated by averaging your hours over the last 12 weeks worked (see below).

## **HOW MUCH HOLIDAY PAY WILL YOU GET?**

You should receive your normal pay when you take your holidays, but shift allowances can be excluded. If you have regular working hours, then you should receive your normal daily or weekly pay. If your hours vary from week to week your pay should be the average of your weekly pay over the previous 12 weeks that you have **actually** worked - excluding weeks of holiday or sickness. Your normal pay usually does not include overtime or bonuses, but check your contract to be sure.

## **DO YOU STILL ACCRUE HOLIDAYS IF YOU ARE NOT AT WORK?**

Workers on sick leave do accrue statutory holiday pay even though they are not actually at work. This holiday can then be taken on return to work, or paid to you if you leave employment in that holiday year.

If you are sick when on holiday, you may have the right to retake this holiday when you have recovered. Your organisation's sick reporting procedures will apply.

While you are on **Maternity Leave** you keep all of your statutory *and* all your contractual rights (other than wages) just as if you

were still at work. This means that you continue to accrue both statutory and contractual holiday for the 52 weeks of your leave. Case law has shown that if your maternity leave spans two holiday years you should be able to carry over your unused entitlement.

## **HOW MUCH NOTICE DO YOU HAVE TO GIVE?**

The law requires you to give notice to your employer of when you want to take holidays. Your employer should make an agreement with you as to what notice is required to take holiday. In the absence of such an agreement, the following applies:

\* **you** are required to give notice to your employer when you want to take holiday.

This notice should be at least twice the length of the period of holiday you want to take. Your employer can refuse you permission to take holiday at that time, provided the notice they give you of this decision is at least as long as the holiday you wish to take.

\* **your employer** can require you to take some or all of your holiday at specified times, such as for a Christmas shutdown, as long as they give you prior notice of at least twice the period of the holiday to be taken. Therefore, if your employer wants to shut down for two weeks, they must give you notice at least four weeks beforehand.

## **WHEN DOES THE HOLIDAY YEAR RUN FROM?**

Your employer should tell you when the holiday year will run from and until. Holiday years can run from:

\* when you began work for your employer, *or*

\* 1<sup>st</sup> October (when statutory holiday entitlement first came into force), *or*

\* a date agreed by your firm, which should be set down in the Written Statement of Employment Particulars (often called the contract). This could be, say, from 1<sup>st</sup> January to 31<sup>st</sup> December, or from 1<sup>st</sup> April to 31<sup>st</sup> March.

If your employer does not have an agreed holiday year, then it will be from October to September for those workers who started on or before the 1<sup>st</sup> October 1998 or, if you started work after that date, from your own start date. In practice, workplaces will benefit by having the same contractual holiday year for everyone who works there.

You must take four weeks of leave in a year. Anything over and above this may be carried over with the agreement of your employer or if there is a relevant contractual agreement in place allowing this.

## **WHAT IF YOU LEAVE YOUR JOB?**

If you leave part way through your holiday year, you will be entitled to any outstanding holiday pay accrued so far. For example, if you are entitled to 28 days paid holiday, and you leave half way through your holiday year, your entitlement will be 14 days. If you have already taken 14 days, you will not be entitled to any holiday pay. However, if you have only taken 7 days, you will be entitled to be paid for the remaining 7 days or your employer can ask you to take them in your notice period.

## **ARE YOU ENTITLED TO BANK HOLIDAYS?**

There are usually eight public or 'bank' holidays a year (New Year's Day, Good Friday, Easter Monday, May Day, Spring Bank Holiday, late August, Christmas Day, Boxing Day). Even though they are sometimes called 'statutory' holidays, only bank workers are entitled by law to take these days as holiday. Your employer may count these as part of your minimum entitlement. So, if you are entitled to 28 days paid holiday a year, you might have to take eight of them on bank holidays, even if you do not want to. Try and negotiate with your employer about what happens on bank holidays.

Unless it is in your contract, there is no right to have bank holidays paid at a higher rate if you are asked to work on those days.

## **ARE YOU ENTITLED TO BREAKS?**

As well as giving you legal entitlement to holidays, the Working Time Regulations give most workers entitlements to rest and meal breaks. If you work 6 hours or more a day, you are entitled to at least one 20 minute break. If you under 18, you have the right to 30 minutes break if you work 4.5 hours or more a day. You are also entitled to a daily rest period of 11 hours between shifts, and a weekly rest period of at least 24 hours in each seven day period. Adolescents have the right to 12 hours daily rest and 48 hours weekly rest.

In special cases the employer may alter the duration and frequency of daily and weekly rest breaks. If so the employer should allow for

*compensatory rest* to be taken - See our Hours & Breaks Factsheet for more information.

## **CHANGES TO YOUR CONTRACT**

In most cases, it is unlawful for your employer to **reduce** any existing holiday entitlement to bring it into line with the legal minimum holidays. If this happens, you should make a formal objection in writing as soon as the change takes place. Otherwise the changes could become part of your wider contract of employment and thus be binding on you.

*PERS has an Action Pack on Changes to Contracts of Employment which may help you if you are in this situation.*

## **HOW CAN YOU ENFORCE YOUR RIGHTS?**

If you have asked for your paid holiday entitlement and been denied it by your employer, you can make a complaint to an Employment Tribunal (ET) within three months. It is usually a good idea to write to your employer before taking legal action. The ET will try and establish the facts of your case, and may award you compensation if they agree that your employer has infringed your rights. Your employer will have to repay any shortfall of your holiday pay in the current holiday year and may be liable for unpaid holiday pay in previous years.

If you are dismissed for asking for your entitlement to paid holidays or to minimum breaks laid down by law, you can claim unfair dismissal at an Employment Tribunal even if you have worked for your employer for less than one year. See *PERS leaflet no. 11, Dismissal, for more information.*

Please contact **PERS** for information on Employment Tribunals and how to enforce your rights.

This leaflet is intended as a guide and is not a full statement of the law.

Please seek advice before taking any action.

PERS has a complaints and comments procedure. Please contact us for a copy if you wish to make a complaint or comment about our services.

## HOLIDAY CALCULATION EXAMPLES

**Example 1:** Mrs A is a newly appointed part-time worker who does 3 days a week. She has an annual leave entitlement of 16.8 days a year (5.6 weeks x 3 days). From day one of her employment she will have an entitlement to 1.4 days of holiday (1/12 of 16.8 days). From day one of her second month of employment, she will be entitled to 2.8 days holiday (2/12 of 16.8), and so on.

**Example 2:** Mr B works full-time for 5 days a week. His annual entitlement is 28 days (5.6 weeks x 5 days). From the beginning of his third month of employment he will have a total accrued entitlement of 7 days holiday (3/12 of 28 days).

If you leave your job during a holiday year, outstanding holiday will still be calculated on a pro rata basis from day one of your current holiday year.

### **Dealing with contractual entitlements, including bank holidays**

Bank holidays *may* be included in 5.6 weeks statutory holiday providing this is not breaching previously agreed contractual entitlements. However, they are frequently allowed as contractual holiday in addition to annual leave. Since the majority of bank holidays fall on Mondays, this can mean that part-timers who only work certain days of the week are disadvantaged, especially if they do not normally work on Mondays. The easiest way to deal with this inequality is to treat bank holidays as part of annual leave. Part-timers' total entitlement will be calculated as a proportion of this, as follows:

- a 5 day a week full-timer who gets 28 days statutory holidays plus 8 days bank holidays would have a total of 36 days holiday per year
- a 4 day a week worker will get 80% of 36 days, a total of 28.8 days per year
- a 3 day a week worker will get 60% of 36 days, a total of 21.6 days per year
- a 2 day a week worker will get 40% of 36 days, a total of 14.4 days per year
- a 1 day a week worker will get 20% of 36 days, a total of 7.2 days per year

You can use hours, days or weeks for this calculation. Additional contractual holiday entitlement may also be worked out on this basis.

### Calculating part-years

You may need to calculate holiday accrued in part of a year, either in situations where a worker leaves employment part way through a holiday year or, sometimes, where a worker changes the number of hours or days that they work in a week.

In order to calculate entitlement for a part of a holiday year, you need to divide the *total annual entitlement* by the *total number of weeks in the year* and then multiply this by the *length of time the worker has been accruing holiday*. You can use hours, days or weeks to work this out, depending on which is easiest in the circumstances.

**Example 3:** Ms C works in a shop for 3 days a week, working 8 hours a day. Her holiday can be worked out by dividing 16.8 days (3 days x 5.6 weeks) by 52 (number of weeks in the year) and multiplying it by the number of weeks she has worked.

$$\frac{3 \text{ days} \times 5.6 \text{ weeks}}{52} \times \text{number of weeks worked} = \text{number of days accrued}$$

### A week - hours or days?

If someone works for a set number of days a week, calculating holiday entitlement is relatively easy. However, where someone works shifts or other irregular patterns, or only does a few hours a week, it can be easier to base the calculation on the average number of *hours* worked in a week, rather than on the number of *days*.

**Example 4:** Ms D works in a shop, 4 hours on Monday, 8 hours on Wednesday and 6 hours every other Saturday. She therefore works 15 hours a week. She is entitled to 15 (hours) x 5.6 (weeks) of holiday pay per year, which is 84 hours per year. The number of hours accrued in a part-year would be worked out by dividing 84 (hours) by 52 (weeks) and multiplying by the number of weeks she has worked.

$$\frac{15 \text{ hours} \times 5.6 \text{ weeks}}{52} \times \text{number of weeks worked} = \text{number of hours accrued}$$

**Example 5:** Mrs E had a holiday year running from April to March each year. She had been in her job since the beginning of April, working 4 days a week. She left on December 31<sup>st</sup>.

For 39 weeks from 1<sup>st</sup> April to 31<sup>st</sup> December, while entitled to 5.6 weeks per year (22.4 days):

Divide the number of days which the worker would accrue over a year (22.4 days) by the total number of weeks in the year (52), to give you the amount that will be accrued each week. Then multiply this by the number of weeks worked before 31<sup>st</sup> December (39 weeks).

$$\frac{22.4 \text{ days (5.6 weeks} \times 4 \text{ days)}}{52 \text{ (total weeks in the year)}} \times 39 \text{ weeks worked} = 16.8 \text{ days}$$

### **Calculating holiday for casual workers.**

This can be used for workers with irregular hours, who haven't worked long enough (12 weeks) in order to work out the average number of hours worked per week. This calculation should only be used for those workers who will not be taking any leave during the time they are working (e.g. agency workers).

**Example 6:** James worked for an agency for 3 weeks. He worked 12 hours the first week, 20 hours the second and 35 hours in the third. A total of 67 hours. He is entitled to the statutory minimum of 5.6 weeks per year.

5.6 weeks per year equates to 12.1% of actual hours worked. This means that James gets 7.26 minutes of holiday for every hour worked. So James will be entitled to,

12.1% of 67 hours of holiday,

$$\frac{12.1}{100} \times 67 = 8.1 \text{ hours}$$

Or 7.26 minutes x 67 hours = 486.4 minutes which is 8.1 hours.

# PERS LEAFLETS

This is one of a series of leaflets which look at aspects of your rights at work:

- 1 Contracts of Employment
- 2 NI and Income Tax
- 3 Statutory Sick Pay
- 4 Paid Holidays
- 5 Maternity & Paternity Rights
- 6 Redundancy
- 7 Equal Pay
- 8 Race Discrimination
- 9 Sex Discrimination
- 10 Part Timers
- 11 Dismissal
- 12 Trade Unions
- 13 Disability Discrimination
- 14 The National Minimum Wage

PERS publishes a range of factsheets and action packs about rights at work.

## **ACTION PACKS**

Changes to employment contracts

A fair day's pay

Notice and notice pay

Where to go for more help with employment problems

## **FACTSHEETS**

Calculating holiday entitlement

Hours and breaks

Employment of young people

Parental and dependants leave

Grievance and disciplinary procedure

Lay off , guarantee pay and redundancy

Categories of worker and types of contract

Rights for workers on fixed term contracts

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**[www.pers.org.uk](http://www.pers.org.uk)**

**Telephone advice is available from PERS at the following times:**

<b>Monday:</b>	<b>10am to 1pm</b>
<b>Tuesday:</b>	<b>10am to 4pm &amp; 5.30pm to 7.30pm</b>
<b>Wednesday:</b>	<b>10am to 4pm</b>
<b>Thursday:</b>	<b>10am to 4pm</b>
<b>Friday:</b>	<b>10am to 1pm</b>



**PERS is an independent charity providing advice, information,  
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