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Guidance on Paid Holiday Entitlement

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The Law

Currently UK legislation states that employees are entitled to a minimum of 5.6 weeks annual leave entitlement each year. This is inclusive of Bank Holidays or any days that the business usually closes. (See the section headed 'reason for clarity in holiday year').

5.6 weeks equates to 28 days for an employee working 5 days per week.

If the employee's terms and conditions of employment state a higher level of holiday entitlement then this will take precedence over legislation.

NB: it can be illegal to give holiday pay whilst not ensuring the employee actually takes the leave. For example, if the end of the holiday year is close and the employee has not taken their total entitlement, to pay them holiday money would, with very few exceptions, be illegal - they lose the entitlement. See notes below regarding rules.

Calculation of Entitlement

For the purposes of this section we are assuming you give the minimum entitlement permitted by law.

1. If the person works 5 days in any 7-day week their entitlement is 28 working days in a full holiday year. This applies whether they are working 8 hours a day or 3 hours a day - they are entitled to 28 days off at their normal rate of pay. (See pay calculation later in this document).
2. If the employee works less than 5 days, the following calculation applies:-

divide 28 by 5 (normal working days for a full time employee) = 5.6

multiply 5.6 by the number of days the part time person works, eg an employee working 3 days per week: 5.6 x 3 = 16.8 days. You cannot round down and we would recommend you round this figure up to 17 days.

How much to pay for each day holiday day?

The easiest way to decide this factor equitably for all employees is to use their basic pay for a normal working week divided by the number of days they work in the week, e.g. a person earning £120 per week and working 3 days receives £40 irrespective of the number of hours they would have worked that day or the amount they would actually have earned. This formula overcomes the problem of staff who work various hours on different days, say 3 hours one day and 4 hours the other two days.

The reason for clarity and careful consideration in holiday year start date

In the past employers have used statements such as "20 days holiday plus Bank Holidays" in their contracts of employment. Many have also started their holiday year on 01 April. This can unwittingly lead to breaking the law in a number of ways.

Looking at starting the holiday year on 01 April - sometimes Easter is in April and sometimes it is in March. If it is in April both this year and next year there will be no problem. However if it is in April this year and March next year, you will be paying for 10 bank holidays in the first year and, as there are no Easter days in the following year, you are only paying for six. In the first of these years you are overpaying by two holidays and in the next year you will have to make up the entitlement by giving two extra days.

If your statement of entitlement is wrong you could have someone starting or leaving during a holiday year and you may not pay them correctly, leading to a Tribunal claim. Working on 28 days and not 20 days plus Bank Holidays is the answer, providing you set out your rules correctly.

closed? Can they carry any holiday forward to the next year and if so how much? (Legal limits apply). What happens if they go sick during a holiday? Do they have the opportunity to take the holiday at another time or not? All this, and more, needs to be covered.

What happens if I refuse an employee a holiday request and he takes it anyway?

If you refuse an employee a request to take holiday, and you think he might take it anyway, we advise you send a letter stating you have refused the request and why, and reminding him that if he takes the holiday without permission it could be classed as gross misconduct and he may lose his job.

An employee has phoned in sick and has asked for it to be classed as holiday - should I allow it?

We believe not. If he is genuinely sick then he would not be enjoying the day as a holiday; if he is not sick this should be dealt with under disciplinary. There are also a number of other good reasons for our views, which can be provided if you ring us to discuss a particular situation.

The importance of the contract of employment

The contract of employment, if worded correctly, should prevent the bulk of disputes regarding holiday entitlement, but most importantly should contain a good strong grievance and appeal procedure to ensure any disputes are handled in-house and do not lead to expensive Tribunal claims. A Tribunal always costs time and money and creates stress, something to be avoided whenever possible.

This information is of a generic nature and is for guidance purposes only. Particular situations may require modification.

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