

Average Holiday Pay

Calculating Holiday Pay - Are you paying the correct amount?

Working Time Regulations refers to the ERA 1996 for the calculation of a week's pay.

Case law has expanded upon the elements of pay which must be included when calculating 'basic pay'. Statutory holiday should be paid at the same rate as a normal working day.

So, what about overtime payments? If it is normal working practice for an employee to work extra hours and receive additional pay, then this must be reflected in their holiday pay.

It is the employer's responsibility to ensure that the employee does not lose out.

Contractual/Guaranteed Overtime: If an employee is contracted to 35 hours normal rate plus 10 hours overtime per week, their holiday pay should include these 10 hours.

Non-Contractual Overtime: If an employee works extra hours on a regular basis but is not stated in their contract, this should be reflected in the holiday pay too.

If the overtime hours vary from week to week then the procedure to calculate an average week using the previous 12 weeks' pay should be implemented.

Total monetary value of 12 weeks / 12 = Average weekly pay.

NB. Other intrinsically linked payments such as shift allowance, travel allowance & commission should also be included in the average pay calculation.

Recent holiday pay case

See Willetts V Dudley 2017 Metropolitan Borough Council. The employees usual pay was made up of on call payments and voluntary overtime. It was intrinsically linked even

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though it was voluntary. If this happens regularly over a long period of time, it supports the case for 'normal pay', for further information please visit <https://www.personneltoday.com/hr/holiday-pay-regular-voluntary-overtime-included-confirms-eat/>

ACAS have revised their guidance and now state:

All types of overtime, including voluntary overtime, must be included when calculating a worker's statutory holiday pay entitlement. Only overtime that is worked on a genuinely occasional and infrequent basis is exempt.

Points for consideration by the employer

- **Office Closure:** If an employee is required to take some of their statutory leave during a Christmas shut down for example, it must be stated in their contract of employment.
- **Time off:** Employees must have taken at least 4 weeks break, away from work, throughout the year.
- **Payments:** Statutory leave must be taken; an employee must not be paid in lieu of statutory leave.
- **Termination:** Only when employment ends can the employee receive the cash value. If an employee has taken too many holidays the employer may recover those days. It is only legal to do this if the employer has sufficient evidence and it must be stated in the employee's contract.
- **Employment Status:** Self-employed, or are they? Be aware that if a self-employed worker has been turning up to work for the same company, using the same desk for three years, they may be classed as a worker and therefore become entitled to take statutory leave. For more information on employment status please visit: <https://www.gov.uk/employment-status>
- **Absent Workers:** (i.e. Sick leave, maternity leave) If an employee has built up a considerable amount of holiday entitlement due to being on statutory leave, they must be allowed to be carried over to the next holiday year. These must be taken within 18 months of the holiday year end date.

To avoid employees building up high amounts of holiday entitlement encourage them to take these holidays at either the beginning or the end of the leave.



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