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Holiday Pay and Entitlement Summary

There are three separate legal issues here:

1. Calculation of pay for holidays taken
2. Calculation of holiday entitlement
3. Bank Holidays

Calculation of pay

The holiday pay is based on the contracted hours if they work the same hours every week/month.

For anyone doing variable hours or "regular" overtime if on contracted hours, when they take a holiday the amount of pay they receive for that holiday should be calculated on the previous 52 weeks' pay.

In regard to commission payments, they should also be included if the employee can lose commission through being on holiday. If their leads and sales are held for their return, the employer can choose to remunerate them with basic pay only.

Calculation of Holiday Entitlement

The rule here is that everyone gets the 5.6 weeks (28 days including bank holidays). This is based entirely on their contracted hours.

If they work part-time, you take the number of days worked each week and multiply it by 5.6 to get the annual entitlement.

For hours (if they don't work days of the same length but have a set number of contractual hours per week), you take the weekly hours worked and multiply them by 5.6 to get the annual entitlement in hours.

"Regular" overtime should be included in the calculation of pay, but it does not attract holiday entitlement of itself. The holiday entitlement is based on the contracted hours, and overtime is disregarded but if someone is regularly working over their contracted hours I would suggest the contract is adjusted.

You cannot round down but you can round up.

For people who work truly variable hours, ie casuals or zero hours, the common way of calculating entitlement was that they accrued 12.07% of an hour's holiday for every hour worked. This method has now been ruled unlawful in the case of Brazel (2022) so should not be used.

For those on permanent contracts including zero hours, term-time and casual, but whose work varies through the year the method is now as follows:

1. Add up pay for the last 52 weeks worked, discarding any weeks not worked – the furthest point you can go back in time is 104 weeks – this gives you a "week's pay"
2. Use this average to calculate their pay whenever they take leave
3. Even if they work only a few hours a week on average, they are still entitled to 5.6 weeks' paid holiday (or more if your standard holiday is higher)

This does not affect part-time or term-time contracts where the hours are regular.

Bank Holidays

If the business closes on bank holidays, an employer can choose to indicate leave only in terms of the days they can book, eg 20 days, ignoring the bank holidays.

However, this does create a potential problem with part-time workers. Most bank holidays fall on Mondays, so an employee working Monday to Wednesday would only be entitled to 4.8 bank holidays pro rata. They may get more than that, particularly if Christmas/New Year falls at the beginning of the week. Conversely, someone working Wednesday to Friday will in most years receive fewer bank holidays than their entitlement. So with part-time workers you may need to work it out on a yearly basis, and include bank holidays in their entitlement, deducting from or adding to their 20 days accordingly.

Another occasional problem arises when the government adds an extra bank holiday in one year or moves one to a different day. Whether an employee is entitled to these depends on how their contract is written.

Other Issues

It is crucial that holiday taken is recorded carefully; in the case of a dispute with an employee it is not unknown for people to claim they have not taken holiday for a year.

Employers also have a duty of care towards employees to ensure they take their leave so you should regularly remind people about this. It is possible to enforce the taking of leave and in some cases it can be required, but please take advice if you want to do this.