

# Holiday Pay

## Paying workers correctly



For employers with workers who receive variable pay due to working variable hours, such as overtime or who are entitled to be paid additional elements of pay above basic pay such as commission and allowances, there are a number of important rules, principles and changes to be considered in relation to the calculation and payment of holiday pay.

### Overview



- Legislation, case law and guidance regarding holiday entitlement and the calculation of holiday pay has evolved over recent years. From 6 April 2020 new legislation was enacted to change one aspect (the length of the averaging period to be used in the variable pay calculation), but several cases in recent years have significantly affected what pay should be included in the holiday pay calculation.
- Government guidance relating to variable pay workers provides for calculations to be performed in a specific way, but this should be considered in the context of case law and legislation.
- Workers are entitled to 5.6 weeks' leave per year – 4 weeks under the EU Working Time Directive and 1.6 additional weeks under the UK Working Time Regulations. The principle aim of the EU Directive is that the structure of pay/holidays should not deter a worker from taking at least 4 weeks' leave each year.
- Normal remuneration includes most elements of variable pay, to be calculated on an average basis (e.g. overtime, commission, allowances).
- UK holiday pay (the additional 1.6 weeks) is calculated according to the rules relating to a week's pay set out in the Employment Rights Act 1996 – this is a different calculation from that for EU holiday pay.

### Why focus on this now?



- **Inconsistencies and non-compliance** - Currently there is inconsistency in how employers calculate holiday pay, with the government estimating that holiday pay is a £3.2bn a year problem in the UK.
- **Legislative changes** - From April 2020, employers should use an average of the previous 52 weeks' pay to calculate UK holiday pay, meaning a greater amount of data will need to be analysed (previously a basis of 12 weeks was used).
- **Government focus** - The UK government is increasing its focus on this area, see for example, the Good Work Plan (please see our separate document for more information) which includes reviewing worker's knowledge and rights in relation to holiday pay.
- **Single Enforcement Body** - It is anticipated that a statutory enforcement body will be introduced by the government in the foreseeable future. The aim of this will be to enforce proactively worker rights, independently from individual worker claims. This could be similar to how NMW is currently enforced with the financial risk of penalties and reputational risk of naming and shaming. This may include holiday pay.

### Considerations



Below are some of the key considerations employers should be taking into account now:

- **Pay elements and cost impact** - as additional pay elements are deemed to fall within 'normal remuneration', holiday pay continues to become more expensive for employers.
- **Systems & processes** – as the rules currently operate, calculating holiday pay is complex and systems may not include the necessary functionality (which may be out of date and/or rely on manual intervention/work arounds). Taking account of changes driven by case law may be particularly challenging.
- Systems and employers may still apply “rolled up” holiday pay calculations which are technically not permissible. Consideration should therefore be given to the risks associated with this approach and whether it remains appropriate for the business.
- **Worker awareness** – increasing worker awareness of holiday pay entitlement is a specific aim of the government, as stated in the **Good Work Plan** as has been demonstrated by the recent government announcement of a holiday pay marketing campaign.

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### How Deloitte can help

#### Deloitte can help employers navigate their way through the complexity of holiday pay:

- **Understand** – Facilitating a workshop with key stakeholders to discuss the rules and risks around holiday pay with relevant personnel and for Deloitte to understand the processes in place to calculate holiday entitlement and holiday payments.
- **Identify** – Undertaking a legal review (including holiday pay experts from the Fair Pay team) of contracts, policies, pay elements, systems and processes to identify any differences between the current legislation/case law and current calculations/processes used by the business.
- **Calculate and quantify** – Assessing and calculating any potential historical cost impact and potential future costs/savings arising from moving to a compliant position.
- **Systems and processes** – Update systems, processes and policies to be robust, consistent and improve compliance with holiday pay rules and principles. In most instances this is done by understanding the functionality available in different systems and advising on how the functionality can best be used to meet the relevant holiday pay requirements.
- **Communications** – Where required, we can assist employers with communicating changes to holiday pay to key stakeholders. This may be workers impacted by the change in calculations but also managers within the holiday booking and administration processes.
- **Dispute resolution** – We can help manage instances of worker complaints, including providing advice under legal privilege and where appropriate, using data analytics to perform updated/relevant calculations.
- **Ongoing compliance** – Undertaking periodic reviews to assess whether systems are working appropriately and general compliance with holiday pay.
- **Legal advice** – We can provide legal advice in many of the areas mentioned above, with certain advice being provided under legal privilege.

The Good  
Work Plan

National  
Minimum  
Wage

Holiday Pay

Pensions  
Automatic  
Enrolment

Diversity  
and Inclusion



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