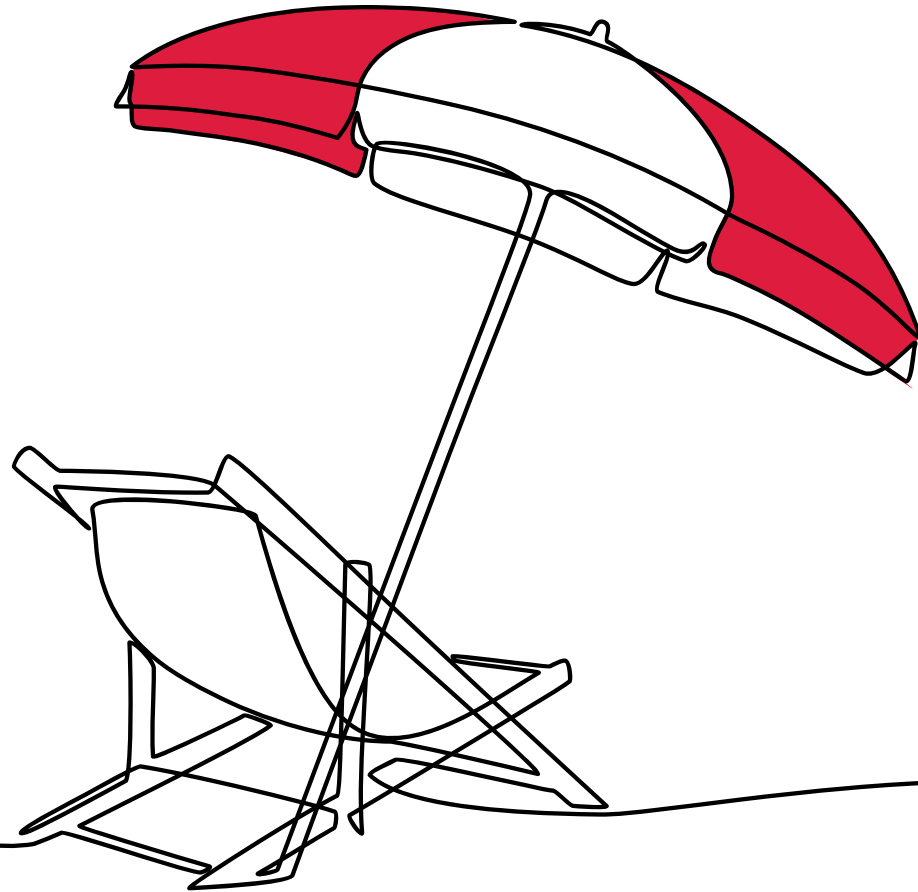




# Holiday Pay



## Straight → Talking Advice

Calculating holiday pay can be complex where your employees have bonuses, commission or overtime payments. Make sure you carry out a full analysis to ensure employees receive “normal remuneration” for the relevant part of their holiday to avoid claims.

Calculating holiday pay has been a hot topic across the UK and Europe over the last few years.

For England, Scotland and Wales, the minimum holiday entitlement is 5.6 weeks’ paid holiday each year (equivalent to 28 days for a full-time worker). This is made up of 20 days of “EU leave” and 8 days of “additional leave” – representing 8 standard bank holidays in England and Wales.

There have been a number of court judgments in the last few years concerning the calculation of holiday pay in the UK for the 20 days’ EU leave. Although it has been law for a while that employees should be paid their “normal” rate of pay during holiday for their EU leave (20 days), many UK employers decided to ignore the holiday pay rules under EU law as they believed it would be overturned post-Brexit, and chose to pay basic pay only.

However, the government recently introduced new legislation to simplify holiday entitlement and holiday pay calculations. Holiday pay is based on the legal principle that a worker should not suffer financially for taking holiday. The new legislation provides that, for holiday years commencing **on or after 1 April 2024**, workers’ holiday pay for their EU leave entitlement (20 days of a worker’s statutory annual holiday) must reflect “normal remuneration”, which includes:

- Payments which are intrinsically linked to performance of tasks which the worker is obliged to carry out under the terms of their contract (for example, commission or bonus);
- Payments for professional or personal status relating to length of service, seniority or professional qualifications; and
- Other payments, such as overtime, which have been regularly paid to the worker in the last 52 weeks.

The remaining 8 days’ statutory holiday can be paid at basic pay only (i.e., base salary), as can any additional contractual leave.

# Let us Introduce Ourselves



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**Disclaimer:** This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

Employers must also ensure that all workers are given a reasonable opportunity to take leave, encourage them to do so, and inform them that leave not taken by the end of the holiday year will be lost. Otherwise the employee will be able to carry over their leave to the next leave year. There are also special rules regarding holiday accrual and carry over for family leave and sick leave.

## **Special Rules for Irregular hours workers / Casual workers**

Additionally (and, again for leave years starting on or after 1 April 2024), people who work irregular hours (for example, casual workers) or for part of the year (for example, seasonal workers) will accrue holiday differently. Their entitlement will be 12.07% of the actual hours they work in a pay period, up to a maximum of 5.6 weeks, and this will accrue on the last day of each pay period.

The holiday pay for these workers must be paid at the rate of a week's pay for each week's holiday (i.e., "normal remuneration"). A week's pay will be the average amount of weekly pay over the previous 52 weeks (including commission, bonus and overtime).

This entitlement can either be paid when the worker takes holiday, or it can be "rolled-up" and paid to the worker on top of their normal hourly rate when they complete the work (i.e. at the end of the pay period, irrespective of whether they take holiday or not).

As noted in this quick guide, the rules on holiday pay are complex, and we strongly recommend employers keep their processes, policies and contracts under review. The sooner that employers start calculating holiday correctly, the more they will reduce their risk of historic holiday claims.

Please get in touch with us today to discuss further.