

# Fact sheet

## number 10

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# Statutory minimum holidays

## INTRODUCTION

The statutory minimum paid holiday entitlement was originally set at four weeks for those workers covered by the Working Time Regulations 1998, for workers covered by amendments to these regulations and by subsequent regulations governing working time.

The statutory minimum holiday entitlement has now increased to 4.8 weeks, capped at 28 days (with effect from 1 October 2007) and will increase again to 5.6 weeks, capped at 28 days, with effect from 1 April 2009. This *Fact sheet* covers the transition from 4 weeks to 4.8 weeks.

## THE CALCULATION

The entitlement is based on service either in the employers' holiday year if they have one or, for employers who do not have a contractual holiday year, from the individual worker's starting date.

Using the example of an employer with a holiday year from 1 January to 31 December 2007 and workers who have a five-day week, the statutory minimum holiday entitlement for the full holiday year is 9/12ths of the year at 4 weeks (for January to September) and 3/12ths of the year at 4.8 weeks (for October to December). 9/12ths of 4 weeks is 3 weeks and 3/12ths of 4.8 weeks is 1.2 weeks, giving a total of 4.2 weeks for the January to December 2007 holiday year. This equates to 21 days for a five-day worker.

For workers who started work during the holiday year, their entitlement to the end of the holiday year is pro rata to the above. For example, a worker who joined on 30 April can complete 22 weeks' service in the 4-week entitlement period ending 30 September and is entitled to:

$$\frac{22}{52} \times 4 = 1.69 \text{ weeks for these 22 weeks of service.}$$

The worker is also entitled to the 1.2 weeks of holiday for service from October to December as shown above, giving a total entitlement of 2.89 weeks from 30 April to 31 December 2007.

The *taking* of leave in the first year of service is limited to 1/12th of the applicable annual entitlement for each month or part month of service. If this calculation results in a fraction of a day other than a half-day, the fraction is rounded up to a half-day if it is less than a half-day, and to a whole day if it is more than a half-day.

If this worker leaves during the holiday year, the holiday is calculated pro-rata to the worker's entitlement. For example, if this worker leaves after 30 weeks, the calculation is the original 22

weeks' entitlement at four weeks a year (1.69 weeks) plus the remaining eight weeks at 4.8 weeks a year as follows:

$$\frac{8}{52} \times 4.8 = 0.74 \text{ weeks, plus the 1.69 weeks gives a total of 2.43 weeks.}$$

### **CONTRACTUAL v STATUTORY HOLIDAYS**

The above example only relates to the *statutory minimum* entitlement. Employers who give more than the statutory minimum can use different methods of calculation for part years, but the result must not be less than the statutory minimum.

Take the example of an employer who gives four weeks' annual holidays from 1 January to 31 December plus the eight public/bank holidays as they occur – 28 days in total for five-day week workers (5.6 weeks), and who allocates the annual holiday element on the basis of 1.67 days for each completed month of service. A worker joins on 3 September and leaves on 14 December and, having served three complete months of service (3 September to 2 December), has a contractual holiday entitlement of 1.67 days x 3, which is 5 days.

In theory, the employer's 28 days of holiday is better than the statutory minimum entitlement, but the statutory calculation for the 15 weeks of service (four weeks before 1 October and 11 weeks from 1 October) is:

$$\frac{4}{52} \times 4 = 0.31 \text{ weeks, plus } \frac{11}{52} \times 4.8 = 1.02 \text{ weeks – a total of 1.33 weeks (6.67 days).}$$

Although the 28 days of contractual holiday entitlement looks far better than the statutory minimum entitlement, in this particular example it is over a day less than the statutory minimum entitlement.

It is for this reason that the holiday entitlement should ideally be based on 1/52nd for each week of service and not on 1/12th for each complete month of service. Where "1/12th a month" is used, the result should always be compared to the "1/52nd a week" calculation for those who join or leave during the holiday year.

### **HOLIDAY PAY**

All statutory minimum holidays must be with pay and workers no longer "accrue" holiday pay with service. If a worker leaves and has not taken all the statutory minimum holiday entitlement, the worker has a legal right to a payment in lieu of the statutory minimum holidays not taken. However, if a worker leaves having taken more than the statutory minimum holidays, there is no automatic right to deduct the difference from the worker's pay. What the employer does have is the right to include a clause in the worker's contract that entitles the employer to deduct any over-payment of holidays from the worker's pay. If such a clause is not contained in the worker's contract, over-payment of holidays cannot be recovered.

### **BUY-OUT AND CARRY-OVER**

The statutory minimum holidays are an entitlement and workers do not have to take them, although for health and safety reasons employers should always encourage workers to take them. Employers cannot buy out un-taken holidays with pay in lieu except for the transitional increase (the 0.8 weeks). In addition, workers can only carry over holidays in excess of four weeks (currently 0.8 weeks) into the following holiday year, and then only with the employer's agreement.

### **NOTICE TO TAKE A HOLIDAY**

The statutory minimum notice that a worker is required to give when requesting a holiday is twice the length of the holiday and an employer can refuse a holiday request by giving at least the same notice as the length of the holiday. An employer is also required to give twice the length of the holiday for any imposed holiday, but a worker cannot refuse an imposed holiday. The employer can, however, have contractual notice requirements for the taking of holidays that are longer than the statutory minimum requirements.

***This Fact sheet is only intended as a general statement and no action should be taken in reliance on it without specific Helpline advice.***