

HOLIDAY PAY EXPLAINED

Legislation – The Law

- Under the Working Time Regulations 1998, and as from 1st April 2009 the Temporary Worker is entitled to 5.6 weeks' paid leave per leave year (28 days for a person who normally works 5 days/week, 22.4 days if work 4 days per week, 16.8 days if a regular 3 day week).
- Entitlement to Annual Leave is Health & Safety Legislation and governs the statutory and entitled periods of rest; therefore this is why we accrue and Pay Annual leave in units of time. This is because HEADS must demonstrate an Agency Worker has accrued and taken their statutory entitlement (minimum 5.6 weeks per year or proportion of) as per the Working Time Regulations 1998.
- Regulation 13 of the Working Time Regulations 1998 states the entitlement to statutory holiday pay is to be based on a week's pay. Agency Workers under Contract for Services by definition have no obligation to attend, and HEADS have no obligation to offer work therefore no working week is guaranteed. Also Agency Workers may have the opportunity to work on numerous contracts within a week on numerous pay rates; therefore there is **no standard week** or basic pay. Thus Sections 221 to 224 of the Employment Rights Act 1996 state, if there is no set basic weeks' pay then the calculation for Annual Leave would be the average pay earned over a 12-week reference period. (12 paid weeks).

How your average hours and pay is worked out.

Holiday pay is based upon your last twelve weeks pay (not 12 calendar weeks). However if you have only worked for the company for 4 weeks, your average would be based over 4 weeks.

We add up the total number of normal hours you have worked within the last 12 paid weeks and we add up the amount of gross pay you have been paid. Please remember that bonus payments and adhoc overtime do not form part of the calculation unless the overtime is guaranteed to be offered and you are expected to work it. Only hours that form part of your 'normal working week' and are included in the calculation.

So if you have worked a total of 412 hours and have earned £3090 for these hours, these are the figures we will use to calculate your average hours per week and your average hourly rate.

412 hours divided by 12 = 34.33 hours per week would be your average working week.

£3090 divided by 412 hours = £7.50 which is your average hourly rate.

You must remember that although you think you always work a 35 hour week, the fact that we have had a bank holiday or you took a day off sick or had two hours off to go to the dentist, will all affect your average hours per week.

How many days are you entitled to per year?

The current rules say that you should have 5.6 weeks per year holiday; the legislation is in unit weeks as people have different working weeks e.g. 5 day week, 2 day week, 3.5 day week (4 on 4 off).

Therefore in the situation of a 5 day week; 0.2 of a week is 1 day, 0.4 of a week is 2 days etc.

In the situation of a 2 day week; 0.5 of a week is 1 day, and 2 days would represent a whole week off so will be 1.0.

As the year is 52 week long we take away the 5.6 weeks holiday and this leaves each person with a total of 46.4 weeks per year when they are available to work.

So if we divide 5.6 holiday weeks by 46.4 working weeks, this gives us 0.1207 (4 d.p).

This means that for every week you work you are entitled to 0.1207 of a week or in other words just over half a day. If you worked for 5 weeks you would be entitled to 5 x 0.1207 which is 0.6035 – about 3 days pay. If you worked 10 weeks you would be entitled to 10 x 0.1207 which gives you 1.207 weeks or put another way a little over 6 days.

Below is a table of holiday weeks and corresponding days (Please note this table will be different should your normal working week not be a 5 day week):

0.1 weeks	0.5 day	1.0 week	5.0 days
0.2 weeks	1.0 day	2.0 weeks	10 days
0.3 weeks	1.5 days	3.0 weeks	15 days
0.4 weeks	2.0 days	4.0 weeks	20 days
0.5 weeks	2.5 days	5.0 weeks	25 days
0.6 weeks	3.0 days		
0.7 weeks	3.5 days		
0.8 weeks	4.0 days		
0.9 weeks	4.5 days		

So how much will I get paid.

In the examples above, let's keep it simple.

You have worked for the last 12 weeks, worked 412 hours and have earned £3090 gross. You decide to take 1 week off and leave the rest of your holidays for another time.

You would be paid 412 divide by 12 = 34.33 hours, which is your **average working week**.

£3090 divide by 12 = £257.50 is your **average weekly pay**.

£257.50 ÷ 34.33 hours = £7.50 is **average hourly pay per week**.

Again using the above figures, if this person wanted to take 1 day

You would be paid 412 divide by 12 = 34.33 hours

£3090 divide by 412 = £7.50 per hour

34.33 hours per week, divided by 5 days = 6.87 hours per day

Therefore, 6.87 hours x £7.50 = £51.53 **Holiday Pay for 1 day**.

Where a Temporary Worker wishes to take paid leave s/he should notify the Client and Heads Recruitment by completing a Holiday Request form giving at least 1 weeks notice. Payments will only be made for holiday time accrued and payments cannot be made in lieu of holiday entitlement.

Where a Bank Holiday or other public holiday falls during an Assignment and the Temporary Worker does not work on that day, then subject to the worker having accrued entitlement to payment for leave then payment will be made automatically for the Bank Holiday.

Where the contract is terminated by either party and the P45 is requested the Temporary Worker shall be entitled to a payment in lieu of any untaken leave.