

Holidays: HR guide

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Navigating the law on **holidays** is not easy. Here is a brief guide highlighting some of the key issues.

Holidays and statutory entitlement

Workers are usually entitled to paid **statutory** minimum **holiday**.

A worker is a person who provides work or services, personally, and is not in business themselves. Workers are entitled to certain rights including the national minimum wage and **statutory** minimum **holiday**. The worker category includes employees.

There have been a number of recent cases brought by people working in the gig economy, claiming worker status and associated rights.

[The statutory holiday entitlement for workers is 5.6 weeks' each year. People who are working five days a week would be entitled to 28 days leave. People who are working part-time would have 28 days' leave pro-rated calculated by reference to how many days per week they work.](#)

Bank and public **holidays** are included, and workers do not have rights to take annual leave on those days.

During the first year of employment the rules state that **holiday** entitlement is deemed to accrue at

the rate of 1/12 of a full year's entitlement at the beginning of each month.

[Holiday entitlement for a casual worker is often calculated on the basis of 12.07% of hours worked \(5.6 weeks being 12.07% of 46.4 weeks, which is the 52 week year less the 5.6 weeks' holiday entitlement\).](#)



Notice and carry over

Notice is required if a worker wishes to take **statutory holiday**. The notice that the worker has to provide needs to be at least twice as long as the length of the period of leave asked for. That means that if someone requests five days' leave the person must provide a minimum ten days' notice.

Providing an employer provides the correct notice, an employer can refuse the **holiday** request. The required length of minimum notice is as many days ahead of the **holiday** as how many days that the employer is not allowing.

A worker is not normally able to carry over holiday into the next leave year. There are, however, a few exceptions, including when employees are on [maternity leave](#) or [long-term sickness absence](#).

[The European Court of Justice has held that in situations where workers are not allowed to exercise their rights to paid leave they can claim for their entire period of work.](#)

The rules regarding **holiday** claims are complicated, and specific advice should be sought.



Holiday pay

According to EU law and recent interpretations in the UK Courts, the first four weeks of any **statutory** annual **leave** each year must be calculated on the basis of normal remuneration which should include:

- [Contractual commission payments](#)
- Productivity, performance and incentive bonuses
- Overtime ([including voluntary overtime where there is a settled and regular pattern](#))
- Shift allowances, premiums and travel allowances
- Standby payments



[Under UK law, there are various rules for calculating statutory holiday pay - depending on the working arrangements.](#)

[Following a European Court of Justice decision, the practice of rolling up holiday pay \(i.e rolling](#)

[holiday pay into basic pay or increasing basic pay\) is unlawful and therefore should be avoided.](#)

Contractual holiday

These requirements do not apply to contractual **holiday** over and above **statutory** minimum **holiday** though having different calculations could cause administrative challenges for employers.

The law on **holiday** entitlement and **holiday** pay is notoriously complicated, and has been in a state of flux for some time. There are plenty of other matters to grapple with too, and if you are in any doubt you should obtain specific legal advice.

This guide is intended for guidance only and should not be relied upon for specific advice.

If you have any queries relating to **holidays** or need advice on other employment law queries please do not hesitate to [contact](#) me on [0203 797 1264](tel:02037971264).

Do check mattgingell.com regularly for updated information.