

Government updates guidance on holiday rules: What employers need to know

📅 09 April 2024 👤 Claire Rosney & Lee Ashwood

In January we brought you news of the [biggest changes to holiday entitlement and holiday pay since the Working Time Regulations were introduced in 1998](#).

To assist employers to get to grips with the changes, the Government published non-statutory guidance. However, rather than clarify the new rules, parts of the guidance created further confusion. In response to concerns being raised, the Government has now updated its guidance and below we summarise the key changes.

Part-year workers

The previous guidance included an example of “Ian” who worked for part of the year but was paid in 12 equal monthly instalments. The guidance suggested that as there were no weeks in which Ian did not receive pay, he would not be classed as a part-year worker. This meant that those who work, for example, during school term-time only (a common flexible working arrangement) but receive their pay throughout the year did not meet the definition of a ‘part-year worker’. Therefore, such workers would continue to benefit from 5.6 weeks’ holiday per year rather than their entitlement being pro-rated to the time spent working. However, this overlooked the fact that whilst such workers receive their salary throughout the year as a purely an administrative convenience, there are actually periods during the year when the worker is not required to work, is not on holiday and not in receipt of pay. This example has now been removed and additional text added to the updated guidance which suggests that workers who work for part of the year but receive their salary throughout the year still meet the definition of a ‘part-year worker’ meaning that their holiday entitlement can be pro-rotated.

Bonuses

The position on whether bonuses should be included in the calculation of a week’s pay has been debated for several years. The previous version of the guidance did not expressly deal with this point except to say that a worker should not suffer financially for taking holiday. The updated guidance includes additional text which provides that “whether bonuses are included in normal holiday pay depends on the nature of the bonus”. Whilst this does not provide additional clarity, it highlights that the debate on this issue is ongoing.

Accrual entitlement for part-year and irregular hours workers during periods of statutory leave

In the example of how to calculate leave accrued for a part-year or irregular hours worker while they are on statutory leave (e.g. sick or family leave) the annual leave entitlement is divided by 46.4 weeks so that weeks the worker was on annual leave are discounted. However, the regulations themselves refer to a 52-week reference period and make no allowance for weeks spent on annual leave to be discounted. Whilst this calculation remains unchanged in the updated guidance, additional text has been added to explain why 46.4 weeks is used rather than 52 weeks. The updated guidance states that the regulations do not specify how the average hours per week that the worker worked during the 52-week period before the leave started should be calculated but expresses the view that the time the worker spent on annual leave should not be counted. This does, in fact, produce a fairer result because if the weeks spent on annual leave were included in the calculation, it would result in a lower rate of leave accrual. Arguably, this is still at odds with the wording of the regulations and it remains to be seen if an Employment Tribunal would adopt the same approach.

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