

Holiday pay: Government change clarifies treatment of term time only workers

📅 08 April 2024 👤 Sarah Linden & Heather Mitchell

On 1 April 2024 the government's Department for Business and Trade (DBT) updated the non-statutory guidance relating to [holiday pay and entitlement reforms](#), providing helpful clarification. [Education employers](#) should now ensure their contractual arrangements with their term time only workers (TTOs) are clear that TTOs are not paid for unworked periods unless they are on holiday.

Background – holiday pay regulations

Education employers will be aware that the government introduced new holiday pay regulations on 1 January 2024. [We previously outlined in detail the effect of those regulations](#), which impact a large number of workers in the sector.

The DBT originally published non-statutory guidance on 1 January 2024 to accompany the new holiday pay regulations. That guidance cast doubt on how the new regulations applied to TTO workers, suggesting that they could not be part-year workers.

If correct, this would have meant TTOs remained entitled to a minimum of 5.6 weeks statutory holiday per year and employers would not have been able to take advantage of the new statutory holiday calculation for part-year workers in respect of TTOs, who work a reduced proportion of the year compared to full-year workers.

Statutory holiday pay entitlement calculations

The new statutory holiday entitlement calculation has the effect of pro-rating 5.6 weeks statutory holiday so that worker's holiday entitlement (and therefore also the amount of holiday pay they are entitled to) is proportionate to the amount of work undertaken by part-year and irregular hours workers.

In most cases, this will result in a statutory holiday entitlement of less than 5.6 weeks, reducing costs to the employer. We have previously warned that we believe the government's original guidance was wrong on this point.

An urgent review

On 12 March 2024, Browne Jacobson, in conjunction with Stone King and the Confederation of School Trusts (CST), wrote to the DBT, seeking an urgent review of their non-statutory holiday pay guidance.

In response to our concerns, DBT have written to us clarifying that it was the government's intention that workers who are only paid to work during term-time were included within the definition of part-year workers under the new holiday pay regulations; this would include TTOs.

We're pleased to share that on 1 April 2024 DBT updated [their guidance](#).

What does this mean?

The change in the non-statutory guidance is a helpful clarification, reducing the previous uncertainty around the holiday pay treatment caused by the original government guidance.

Given that the changes to the calculation of statutory holiday pay for part-year and irregular hours workers are not effective until the commencement of employer's next holiday year on or after 1 April 2024, it's unlikely that any employers will have applied an incorrect approach in reliance on that earlier, incorrect government guidance.

Education employers should ensure that their contractual arrangements with their TTOs are clear that TTOs are not paid for unworked periods unless they are on holiday.

What employers need to know

Employers are reminded that a number of changes to holiday pay have been introduced this year affecting their workers. In particular:

From 1 January 2024

- Normal remuneration for the purposes of calculating full-year workers statutory holiday pay has clarified. For education employers, it is important to note normal remuneration for this purpose includes regular overtime payments.
- Workers are entitled to automatically carry-over unused holiday entitlement in certain circumstances, including family leave or sickness absence, where they have not been afforded the opportunity to take leave or encouraged to do so, or where they were not warned that they would lose their leave entitlement if they did not use it by the end of the holiday year.

For your next holiday year on or after 1 April 2024, for part-year and irregular hours workers only (including TTOs):

- A new statutory holiday entitlement calculation applies, calculated at 12.07% of the total hours worked in a pay period.
- A new holiday accrual calculation applies during statutory family leave and sickness absence.
- Employers are able to utilise rolled-up holiday pay subject to certain conditions, including that their worker is still afforded the time off as leave.

How Browne Jacobson can help

To support our clients' understanding and implementation of the new regulations, we've developed training and a toolkit of resources to help you prepare for these changes. These can be purchased separately, or together for a discount.

- [Our Holiday Pay Training](#) consists of an intensive 2.5 hour live remote training session, to equip your key personnel with the knowledge and understanding of what the new regulations mean for your workers and how to navigate this in practice in your organisation.
- [Our Holiday Pay Toolkit](#) contains a detailed guidance note explaining holiday pay and a host of resources to aid your implementation of the new rules including worked examples, template contract wording and letters to staff, decision tree and template briefing your executive team and trustees.

If you have other questions, please do not hesitate to contact us.

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