

# New guidance published to accompany holiday entitlement and pay reforms

On 1 January 2024, the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023 introduced changes to the law governing holiday entitlement and pay. On the same date, the Government published detailed new guidance for employers designed to accompany the reforms. In this briefing, we outline the key points for employers to note.

**What changes are being made to holiday entitlements and pay and when?**

On 8 November 2023, the Government published its response to a consultation paper which had proposed a number of reforms in the areas of working time and paid holiday rights. In summary, the Government's response confirmed that the following reforms would be taken forward on 1 January 2024 (save as otherwise stated):

1. **Record-keeping requirements:** Regulation 9 of the Working Time Regulations (WTR) would be amended to clarify that businesses do not have to keep a separate record of the daily working hours of workers.
2. **One vs two pots of annual leave:** Regulation 13 annual

leave (4 weeks) and Regulation 13A annual leave (1.6 weeks) would not be replaced with a single leave entitlement of 5.6 weeks. However, the WTR would be amended to spell out what counts as “pay” for the purposes of Regulation 13 leave.

3. **Accrual of annual leave:** the position on accrual of annual leave will be changed for “irregular hours workers” and “part-year workers” only. These workers will accrue their annual leave entitlement at the end of each “pay period” at a rate of 12.07% of the number of hours worked in that pay period, up to a maximum of 28 days per year. The new accrual system for irregular hours and part-year workers will apply to leave years commencing on or after 1 April 2024 only.
4. **Introduction of rolled-up holiday pay:** a system of “rolled-up holiday pay” would be permitted for irregular hours and part-year workers, but not for other types of workers. Where an employer elects to pay rolled-up holiday pay, it must be calculated at 12.07% of the worker’s pay. Rolled-up holiday pay will be permitted for leave years commencing on or after 1 April 2024 only.
5. **Carry-over of annual leave:** from 1 January 2024, workers will not be able to carry over any accrued Covid-related Regulation 13 leave. On top of this, the WTR would be amended to clarify when workers may carry over accrued leave in other circumstances.

You can read our detailed briefing on these reforms [here](#).

On 1 January 2024, the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023 came into force to effect these reforms. On the same day, the Department for Business and Trade published detailed new guidance to accompany the reforms (the Guidance).

### **What does the new guidance say?**

The Guidance is designed to provide further details to support an understanding of the reforms. The Guidance applies only to the minimum statutory leave entitlement (i.e. 5.6 weeks' leave per year), but not to additional contractual holiday over and above this.

### ***Meaning of “irregular hours worker” and “part-year worker”***

The new “accrue as you go” system of holiday entitlement and the new system of rolled-up holiday pay will apply to irregular hours workers and part-year workers only. The Regulations provide that a worker will be:

- **an irregular hours worker**, in relation to a leave year, if the number of paid hours that they will work in each pay period during the term of their contract in that year is, under the terms of their contract wholly or mostly variable; and
- **a part year worker**, in relation to a leave year, if, under the terms of their contract, they are required to

work only part of that year and there are periods within that year (during the term of the contract) of at least a week which they are not required to work and for which they are not paid.

Section 2 of the Guidance offers examples of workers who would fall into these categories. The example is given of an irregular hours worker is a hospitality worker who worked a different number of hours each week. In contrast, a worker who worked a rotating two-week shift pattern of 15 hours in the first week and 20 hours in the second week would not qualify as an irregular hours workers as their working hours are fixed and not variable.

The example given of a part year worker is a seasonal worker in the farming industry who only works and get paid during the Spring and Summer months. In contrast, a worker who is paid a flat salary over 12 months but has periods of time that last more than one week when he is not working would not qualify as a part year worker as he would be paid throughout the year. Typically, this would mean that term-time only workers in the educational sector would not qualify as part year workers as their salary tends to be paid in equal instalments across the year, including periods when they are not working.

### ***Calculating holiday entitlement for irregular hours and part-year workers***

Section 3 of the Guidance sets out that for leave years beginning on 1 April 2024, irregular hours and part year

workers will accrue statutory holiday entitlement at the rate of 12.07% of actual hours worked in a pay period. An example is given of how to calculate the statutory leave entitlement as follows:

- **Scenario:** A worker works 68 hours in the month of June.
- **Step 1:** Divide the hours worked in a pay period by 100:  $68 / 100 = 0.68$ .
- **Step 2:** Multiple the answer to Step 1 by 12.07:  $0.68 \times 12.07 = 8.2076$ .
- **Step 3:** Round up or down to the nearest hour: 8.2076 rounds down to 8.
- **Answer:** A worker who worked 68 hours in June accrued 8 hours of statutory annual leave that month.

This calculation method works for workers entitled to statutory holiday only. However, the Guidance goes on to explain how employers may calculate the entitlement for workers with an additional contractual leave entitlement.

The Guidance also goes on to explain (with worked examples) how to calculate the statutory leave entitlement for irregular

hours and part year workers who:

- leave their role part way through the leave year;
- work a fixed number of hours each week, but a variable number of hours each day;
- are on maternity or other family-related leave; and/or
- are off sick.

### ***Calculating holiday pay for irregular hours and part year workers***

Section 5 of the Guidance explains that for leave years beginning on 1 April 2024, employers may elect to pay irregular hours and part year workers using the system of “rolled up holiday pay”. However, this method of paying holiday pay may not be used for workers with regular hours and fixed pay.

Where rolled-up holiday pay is used:

- the employer should check the worker's contract in case payment in this way would amount to a variation of their contract (for which their agreement would usually be needed);
- instead of paying holiday pay when the worker takes their annual leave, an additional payment must be paid at the same time as the worker is paid for work done;
- the rolled-up holiday pay is calculated as 12.07% of the worker's total pay in a pay period (e.g. weekly, fortnightly, monthly) and must be clearly itemised on the pay slip;
- if the worker carries any annual leave over into a new holiday year, they will have already been paid for the period of leave carried over.

The Guidance goes on to offer some worked examples of how to calculate rolled-up holiday pay.

Alternatively, employers who do not wish to adopt a system of rolled-up holiday pay may continue to pay irregular hours and part years workers in the usual way (i.e. pay holiday pay at the time the holiday is taken). Where this is done, holiday pay for such workers should be calculated by reference to the worker's average pay over a reference period of the last 52 weeks in which they were paid. This may mean that, in some cases, employers will need to look back further than 52 weeks if there are weeks where the worker did not get paid (or where they were absent on family-related leave or sick

leave). However, this look back period is capped at 104 weeks. Where the worker has not been paid for 52 out of 104 weeks, the reference period is shortened to that lower number of weeks.

### ***Carrying unused leave forward into a new holiday leave year***

Section 4 of the Guidance explains the circumstances in which all workers are entitled to carry forward any unused annual leave into a new leave year:

- **Family leave:** if a worker is unable to take some or all of the statutory holiday entitlement as a result of taking a period of maternity or other family-related leave, they will be entitled to carry forward up to 5.6 weeks' leave to be used in the following leave year.
  
- **Sickness:** if a worker working regular hours throughout the year is unable to take some or all of their statutory holiday entitlement as a result of being off sick, they will be entitled to carry forward up to 4 weeks' leave to be used within 18 months of the end of the leave year in which the holiday accrued. However, if the worker is an irregular hours or part year worker then they are able to carry forward up to 5.6 weeks' leave, again, to be used within 18 months of the end of the leave year in which the holiday accrued.



- **Denial of leave:** if a worker does not take annual leave because the employer:
  - refuses to pay them;
  - denies the worker's right to paid annual leave (e.g. they maintain that the individual does not have worker status);
  - does not give the worker a reasonable opportunity to take leave or encourage them to do so; or
  - does not warn the worker that they will lose their leave if they do not use it by the end of the leave year,

then they are entitled to carry forward up to four weeks' leave into the next holiday year.

- **Covid-19:** from 1 January 2024, workers will not be able to carry forward any accrued Covid-related leave. Workers have until 31 March 2024 to use up any Covid-related leave accrued before 1 January 2024.

### ***The rate of holiday pay***

Section 5 of the Guidance clarifies the position about rates of pay for statutory annual leave for all workers.

It confirms that for the first four weeks of leave, a worker is entitled to be paid their normal rate of pay and that, from 1 January 2024, the WTR was amended to state that this includes:

- payments, including commission payments, intrinsically linked to the performance of tasks which a worker is contractually obliged to carry out;
- payments relating to professional or personal status relating to length of service, seniority or professional qualifications; and/or
- other payments, such as overtime payments, which have been regularly paid to a worker in the 52 weeks preceding the calculation date.

In contrast, a worker is only entitled to be paid their basic rate of pay for the remaining 1.6 weeks of leave (although it is noted that, in practice, many employers will also pay normal pay for this portion of leave). The Guidance recommends that where an employer wishes to pay different rates of pay for the two portions of leave, this should be explained clearly in the worker's contract or the staff handbook.

## Comment

Where you have irregular hours and/or part year workers, you will need to become familiar with the calculations for the new “accrue as you go” system of accruing annual leave. Further, if you intend to introduce a system of rolled-up holiday, your payroll team will need to become familiar with the new method of calculating holiday pay, and be clear about when it should be paid and the related pay slip requirements.

Some of these changes are involved and may necessitate changes to employment contracts and Staff Handbooks, for example, clarifying when leave may be carried over and for how long, or introducing rolled-up holiday pay. It is always a good idea to seek legal advice before making major changes to holiday arrangements.

[Retained EU Law – Government Response, 8 November 2023](#)

[The Employment Rights \(Amendment, Revocation and Transitional Provision\) Regulations 2023](#)

[Guidance – Holiday Pay and Entitlement Reforms from 1 January 2024](#)

**BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual BDBF contact.**