

## Calculating holiday pay

**(Lecture B1202 - 26.58 minutes)**

### *Holiday entitlement*

Currently, all workers, except those who are self-employed, are entitled to 5.6 weeks of paid holiday a year. This will include part time, zero hour and flexible hour contracted staff. The actual entitlement is 28 paid days and normally consists of 20 working days of paid leave under the Working Time Directive and EU law plus usually, the 8 UK bank holiday days. An employer may choose to enhance the number of days holiday that an employee is actually give, maybe as a reward for long service.

Entitlement to paid holiday starts to accrue from the first day of working and runs to the end of the contract period, including any periods of sick leave, maternity and other family related leave as well as the employee's notice period. It also accrues while on furlough.

In some cases, employees may not be able to take all of their annual leave, but strictly speaking, the employer cannot propose or agree to pay for holidays not taken; equally an employer is not entitled to pay an employee not to go on holiday.

The 20 statutory days of holiday must be taken in the holiday leave year, unless the employee is on maternity leave or off sick. Provided that both the employee and employer agree, the additional 8 days may be carried forward into the next holiday year. By contrast, any enhanced holiday not taken can be paid or carried forward.

Where an employer requires the employee to take some of their holiday at a specified time of year, maybe because the factory closes down for a week at Christmas, this must be clearly stated in the employment contract.

### *Changes due to Covid-19*

Special legislation has been introduced to amend the Working Time Regulations and allows unused holiday to be carried forward for up to two holiday years where it is not reasonably practicable to take time off.

### *Zero and casual hours staff*

Holiday entitlement for these staff accrues and is calculated based on 12.07% of the hours worked calculated as 5.6 weeks/46.4 weeks (52 - 5.6). As it can be difficult to know when these staff may be needed for work, it is not uncommon for the employer to pay the holiday as they go through the year. Such payments must be shown separately on the payslip; holiday pay entitlement cannot be rolled up into an enhanced hourly rate of standard pay.

### *Employees leaving*

When an employee leaves, including when they are made redundant, holiday entitlement is calculated up to the end of their contract. An employee leaving on 31 July would have unpaid holiday accrued to that date included on their final pay day;

Where an employee has taken too much holiday, the employer can only claw back the excess as a deduction from final pay if the employment contract states that this is allowed.

### *Holiday pay*

Holiday pay should be paid at their normal pay rate and this must include any guaranteed overtime and any other guaranteed amounts including commission contained within the employment contract. Further, where a certain amount of overtime has become the norm on a voluntary basis, this must also be included.

For casual and zero hour employees, their pay will vary and so their pay is calculated by looking at the previous 52 paid weeks actually worked so this may involve looking back more than 52 weeks to find 52 weeks. If they have worked for less than 52 weeks for an employer, that shorter period is used instead.

### *Furloughed employees*

While furloughed, holiday entitlement continues to accrue even if the employee is doing voluntary work or working for someone else. Employees are allowed to use up holiday entitlement while they are furloughed; it does not affect the Coronavirus Job Retention Scheme (CJRS) grant.

Any holiday taken must be paid at the rate that they would usually earn if not furloughed so 100% of their normal pay with the grant covering some of that cost.

### *Example 1*

An employee is furloughed in June and their usual gross pay is £1,500 per month. Under the CJRS, 80% of that would be covered by the grant so £1,200. Assuming that the employer is not topping up to normal pay, the employee will receive £1,200.

What happens if the employee takes one week of holiday in June? The employee's pay is calculated as two amounts: 23 days as normal which will be covered by the CJRS grant and 7 days where the employer must top up to full pay.

### Holiday pay for 7 days

$(1,500 \times 12/52)$	346.15	CJRS covers 80%
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### Furloughed pay for 23 days

$(1,500 \times 23/30 \times 80\%)$	<u>920.00</u>	CJRS covers this
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Total gross pay	<u>£1,266.15</u>	
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### *Example 2*

Let's now assume that the employee earns £5,000 a month. Under the CJRS, 80% of that would be covered by the grant but this is capped at £2,500.

If this employee takes a one-week holiday in June, their gross pay would be calculated as:

Holiday pay for 7 days

(5,000 x 12 / 52)	1,153.85	CJRS (2,500 / 30 = 83.34 x 7)
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Furloughed pay for 23 days

(23 days at 83.34)	<u>1,916.82</u>	CJRS covers this
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Total gross pay	<u>£3,070.67</u>	
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Grant covers £2,500 with the excess covered by the employer.

*Holiday pay and redundancy*

Any holiday not taken must be paid at this point, with the holiday accruing up until the contract is terminated.

The employee is entitled to take holiday during their notice period and should be paid at their normal rate of pay.

Where the employment contract is terminated with no notice period, they are still entitled to holiday accrued to that date so:

*Example*

On 30 June an employee is given notice that they are being made redundant on 30 September. Their contract states that they are due two months notice and entitled to 30 days holiday a year. At 30 June they had used 5 days holiday.

The holiday year runs to 31 December, so at 30 September their holiday entitlement is 22.5 days and as they have taken 5 days, they are still entitled to 17.5 days to be paid up to termination date.

If their salary is £5,000 a month, their holiday pay due to 30 September is £4,038.46 (5,000 x 12 / 260 x 17.5) based on 260 working days.

If the employee were made redundant and ceased employment on 30 June with no notice, so the contract is terminated on 30 June, holiday entitlement would be 15 days less the 5 already taken. Their holiday pay would be £2,307.69 (5,000 x 12 / 260 x 10).

*Created from a seminar recorded by Alexandra Durrant*