



Holiday Pay and Overtime

Under UK law, workers are entitled to 5.6 weeks of paid annual leave. This equates to 28 working days (inclusive of the 8 bank holiday days) for a full-time worker, or a reduced pro-rated amount for part-time staff.

When considering how much pay a worker should receive for their annual leave, legislation dictates that a worker should be paid one week's pay for each week of leave. However, this has caused a great deal of confusion with regards to workers whose pay varies, either because they often work overtime or earn commission. It leads to discussions as to whether the worker is entitled to their salary with the added benefits of overtime and commission, or if they are only entitled to a week's basic salary.

Following a series of Employment Tribunal cases, it is clear that the following payments must now be included when calculating holiday pay:

- Compulsory overtime
- Guaranteed overtime
- Result-based commission
- Non-guaranteed overtime (if it is so frequent that it is considered "normal")
- Voluntary overtime (if worked for a sufficient period of time on a regular basis)
- Out-of-hours standby pay
- Call-out payments
- Mileage allowance (if usually treated as a taxable benefit)

With all these points potentially leading to variations of pay on a weekly basis, it can be very difficult to work out what should be

considered a "week's pay" for a worker. To make this calculation, an employer can use two methods:

- To create an average of the amount earned by the worker over the past 12 working weeks; or
- Where the first option would detrimentally skew the results because a worker may be offered more hours work for part of the year compared to another part, the employer should pay the worker's base salary, and at the end of the year, work out an average of how much extra has been earned by overtime and/or commission, and make an additional payment based on the past 52 weeks.

Whilst this provides some guidance to employers to help determine how much holiday pay should be provided in situations where overtime or commission is involved, there are still a number of unanswered questions. For example, what do you do when a worker commences employment and does not have the requisite 12 weeks' employment to make this

calculation based on the first method? Or started part way through the year, so cannot assess the full 52 weeks in relation to the second method? This second point also causes problems for someone who leaves part way through the year. Additionally, it is not clear how contractual terms would affect these calculations.

While the Employment Tribunals have been working to make the law clearer for workers and employers in relation to annual leave calculations, it is evident that there is a long way to go to iron out the ambiguities when calculating pay for annual leave.

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