



**Employers
Direct**

TM

Your essential guide to

Annual Leave

Free Advice
for Employers on

0800 144 4050

www.employersdirect-uk.org

Annual Leave



Employers have a statutory obligation to give [paid annual leave](#) to all workers covered by the Working Time Regulations 1998. The statutory minimum leave entitlement in a leave year is 5.6 working weeks which calculates as 28 days for someone who works 5 days a week. It is permitted for an employer to cap total leave at 28 days regardless of the number of days a worker works. This means that anyone who works 6 days a week can have their entitlement held to 28, rather than the 33.6 (5.6 x 6) which they would have been entitled to without the cap.

The leave year is a period of 12 months which starts with a defined date. Many employers use the calendar year as the leave year, however, it is also common to use 1st April to 31st March as the leave year. Other employers may decide to use the employee's start date as the commencement of the leave year.

Contractual Entitlement

5.6 weeks is the minimum entitlement to be provided by an employer although many choose to provide [annual leave entitlement](#) in excess of this. It is at the employer's discretion to decide how much annual leave he will provide, subject to the minimum of 5.6 weeks.

An employer may operate different levels of entitlement within the business meaning that it differs from department to department, however, protected characteristics (e.g. race, gender, age) should not be used as a factor to determine entitlement.

Bank Holidays

Bank Holidays are included within the 5.6 week entitlement. There is no statutory entitlement for a worker to take the day off on a bank holiday - whether this happens or not will depend on the contract of employment. If a worker does work on a bank holiday, the employer must ensure that there is opportunity for the worker to still take their full entitlement throughout the leave year.

Although there are a standard number of Bank Holidays across Great Britain, occasionally an extra Bank Holiday will be granted by the Government to mark an occasion, e.g. Royal weddings etc.

There is no statutory entitlement to enhanced pay for working on a Bank Holiday although employers may decide to provide this as part of the contract of employment.

Part-time Workers

It is unlawful to treat part-time workers less favourably than full-time workers, however, benefits and entitlements can be offered on a pro-rata basis. With regard to annual leave, this means that the amount of leave is reduced in accordance with the number of days the worker works.

For example, if a worker works 3 days a week, their entitlement is $5.6 \times 3 = 16.8$ days.

Problems may arise in relation to Bank Holidays and part-time workers because the part-time worker's working pattern may mean that they do not actually work on any Bank Holidays. It is advisable in this situation to include the Bank Holiday entitlement within their total entitlement and then should the part-time worker be due to work on a Bank Holiday, require them to 'book' the Bank Holiday as annual leave and [deduct a day from their entitlement](#).

Carry Over

An employer must ensure that a worker has the opportunity to take their annual leave entitlement in the leave year it is due. However, it is possible, where there is a written agreement between employer and worker, for the worker to carry over 1.6 weeks' leave to the next leave year (this calculates as 8 days for someone who works 5 days a week). Where the minimum 5.6 weeks' leave is provided, it is not permitted to carry over any annual leave in excess of 1.6 weeks (i.e. a minimum of 4 weeks must be taken in the leave year on which it is due). The law may apply differently where the employee is on sick leave or maternity leave.

Payment in lieu of annual leave

It is not permitted to pay in lieu of [statutory minimum annual leave](#), except upon termination of employment. However, employers may set their own rules about pay in lieu of any contractual leave provided in excess of 5.6 weeks.

Requesting Annual Leave

Employers may implement their own rules on notice requirements in relation to annual leave, or they can use the notice provisions stipulated in the Regulations. These provide that:

- When requesting a period of annual leave, a worker must give notice of at least twice the length of the period of leave requested i.e. 2 weeks' notice for a period of 1 week's annual leave;
- When refusing a request for annual leave, the employer must give notice that is equal to the length of the period of requested leave i.e. 1 week's refusal notice when a period of 1 week has been requested;

It is important for employers to remember that they are able to refuse a request for annual leave when either the notice requirements have not been complied with, or for operational reasons, for example, when only a certain number of staff may be off at any one time.

Workers begin to accrue annual leave from their first day of employment at a rate of 1/12th of their annual entitlement from the first day of each month. The Regulations permit an employer to restrict annual leave during the first year of employment to that which has accrued at the time of the request.

Enforcing Annual Leave

An employer is permitted to designate periods of time when annual leave must be taken (to cover an annual shutdown, for example), or periods during which annual leave may not be taken. These are commonly set out in the worker's contract of employment, however, this is not necessary because the Regulations allow for some flexibility in this area provided that the required notice provisions are met.

In order for an employer to enforce a period of annual leave, he must give notice of at least twice the length of the period of leave required i.e. 2 weeks' notice for a period of 1 week's enforced annual leave.

Holiday Pay

Pay for annual leave should be made in the normal way at the time the holiday is taken i.e. where a monthly paid worker takes a week's holiday, he should continue to receive his full monthly pay at the normal time.

The practice of 'rolled up' holiday pay, whereby a worker's normal hourly rate is increased by an element representing payment for holidays, and the worker would then not receive any pay when they took annual leave, was declared unlawful by the Courts a number of years ago.

Where pay varies from week to week, holiday pay should be paid at the rate obtained by averaging the weekly earnings from the last 12 weeks in which work was done.



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