

Calculating holiday entitlement for part-year and irregular hours workers

Response to government consultation

Overview

NHS Employers is the employers' organisation for the NHS in England. We help employers to develop a sustainable workforce, improve staff experience and be the best employers they can be.

Our response to the consultation on calculating holiday entitlement for part-year and irregular hours workers is based on collective views, feedback and suggestions received from employers in the NHS.

Background

A recent Supreme Court judgement (Harpur Trust v Brazel) ruled that part-year and irregular hours workers are entitled to 5.6 weeks (or 28 days) of statutory holiday pay each year. This is the same amount of holiday as full-time workers are entitled to and means that part-year workers have a more generous statutory holiday entitlement than part-time workers who work the same number of hours over a year.

The government wants to address this issue, and is consulting on proposals to ensure that statutory holiday entitlement for part-year and irregular hours workers is proportionate to the time that they spend working throughout the year.

The NHS has national terms and conditions (for both medical and non-medical staff) that provides a more generous holiday entitlement than the statutory minimum.

As part of the consultation, NHS Employers undertook its own survey to gather the views of employers in the NHS.

Consultation response

Proposal: Include weeks with no work in the 52-week holiday entitlement reference period.

Most employers who responded agree that statutory holiday entitlement for part-year and irregular hour workers should be proportionate to the time they spend working, therefore the majority agree with the proposal to 'include weeks with no work in the 52-week holiday entitlement reference period'.

Employers felt this was important for the following reasons:

- Ensuring equity and fairness between part-time workers, part-year workers and workers with irregular hours. This is particularly important to employers in the NHS, as there is a lot of variety in working patterns across the workforce, and there has been renewed emphasis on employers actively promoting flexible working patterns to staff as part of the NHS People Plan.
- Ensuring consistency in decision making both within and between employing organisations. Employers currently have to interpret case law in order to calculate holiday entitlement for part-year and irregular hours workers, which has the potential to lead to inconsistencies.
- Provides clarity and transparency to all parties on their rights and expectations.

Proposal: Use a fixed reference period to calculate holiday entitlement.

Half of employers surveyed agree that the 52-week reference period used should be fixed, rather than rolling, so agree with the proposal 'Use a fixed reference period to calculate holiday entitlement', half stated that they were unsure.

Further comments:

- The preference would be that the fixed period should align with the NHS leave year (April-March) or to provide an option to determine own fixed period. This would ease any administrative burden.

- Employers agreed with the consultation that a rolling period would be difficult to administer.

Proposal: Calculate holiday entitlement using hours - 12.07 per cent.

The majority of employers felt that the method of calculation was suitable however they raised concerns that 12.07 per cent is the statutory minimum and the NHS Terms and Conditions (TCS) Handbook is more generous. It is NHS Employers understanding that the calculation should reflect the relevant contractual terms to ensure fairness for all employees.

Changing the method of calculating and recording holiday entitlement is likely to require a change to the NHS payroll system (the electronic staff record (ESR) system), therefore sufficient notice would be required to enable this to happen to reduce any administrative burden.

Proposal: Monthly accrual of holiday entitlement for workers with irregular hours in their first year of employment.

The majority of employers surveyed agree with the proposal to accrue holiday entitlement on a monthly basis for workers with irregular hours in their first year of employment.

Reported disadvantages of using this monthly accrual method:

- heavy administrative workload for employers (potentially 11 calculations for each new starter)
- unclear how this could be managed for a member of staff who is leaving.

Suggested alternative:

- calculating entitlement over a longer period for example, quarterly, in arrears.

Proposal: Use a flat average working day to calculate holiday used for a day off

Of the employers who responded, all agree with the proposal, 'Use a flat average working day to calculate holiday used for a day off'. This would be the simpler method to implement and for staff to understand rather than the alternative of calculating the average hours worked for specific days.

Current calculation methods

Current calculations in the NHS for non-medical staff for the amount of holiday used for a day's leave varied dependant on the type of worker but the main response for those working irregular hours was that the leave would be deducted for the average number of hours the employee was expected to work.

Employers reported that calculations used for a day's leave did not apply for term time only (TTO) workers as annual leave is built into the contract for example, all holidays taken during school holidays. Pay for TTO employees is usually calculated annually pro-rata (based on the number of hours the employee is contracted to work each week, the weeks worked over the year, and usually including the proportional annual leave and bank holiday entitlement averaged over the whole year) and paid in 12 equal monthly payments.

Whilst the exact calculation may vary slightly for example by hours, days or weeks employers reported for TTO contractual entitlement is calculated using the following principles:

Summary of calculations

Establish the year-round equivalent for comparison.

Year-round contract total days: 365 days divided by 7 x 5 = 260.71 total paid days.

260.71 days minus year-round contractual annual leave (including public holidays) = total working days.

Annual leave divided by total working days = annual leave accrual rate per working day.

Term-time only calculation:

Working days per year x annual leave accrual rate per working day = number of days' annual leave entitlement.

Working days plus annual leave days = total paid days.

TTO total paid days divided by total paid days for year-round employees x 100 = pro rata pay % of full time equivalent provided this is not less than 5.6 weeks.

Further information

For more information about this response, please contact the Employment Relations team at NHS Employers.

Email: EmploymentRelationsSupport@nhsemployers.org