

FAQs - Holiday pay and entitlement reforms

Audience: Schools, academies, and trusts

Action required: Familiarise yourself with these FAQs in line with the bulletin focused on Holiday pay and entitlement reforms

EPM support: Please contact your EPM Adviser for further details.

Summary

Following recent case law, the most notable of which has been the outcome of the Supreme Court case for *Harpur Trust v Brazel*, the government has outlined guidance on the legislation that came into effect from 1 January 2024, intended to simplify holiday entitlement and pay calculations in the Working Time Regulations (WTR).

When can we start using Rolled-up Holiday Pay (RHP)?

The legislative changes allowing you to use the accrual method and RHP for workers who meet the definition of 'irregular' or 'part-year' workers, apply to leave years starting on or after 1 April 2024.

Therefore, if the employer's leave year commences on 1 April, you can use the accrual method and RHP from 1 April 2024. If the leave year starts on 1 September, you can use the accrual method and RHP from 1 September 2024. Prior to and up to the date that the Regulations become effective, all workers will be entitled to 5.6 weeks holiday in accordance with the *Harpur Trust v Brazel* decision.

If a Teaching Assistant works for 39 weeks of the year and receives a flat salary paid in equal instalments over 12 months, are they a part-year worker?

This was a question subject to much debate until the government revised their non-statutory guidance in April 2024 to clarify their position. Their guidance now explains that *"the regulations require that there must be a period of at least one week 'for which they are not paid' which means that it would still be possible for a worker to be paid 'during' that period so long as there is no expectation of them working in that period and nor are they receiving payment 'for' that period."*

As a result of this amendment to the guidance, it is possible to interpret the definition of a "part-year worker" as applying to term-time only (TTO) staff. Some law firms, the LGA and the NJC had already taken this approach and were pleased to see the revision to the government's guidance. The Green Book has been amended, removing the need (except in Northern Ireland) for those who follow it to top up the holiday entitlement of term-time only staff to 5.6 weeks should their pro rata holiday entitlement fall short of this.

This hasn't yet been tested by case law, but you may wish to accept this interpretation. Do remember that for workers who do not meet the new irregular hours or part-year workers definitions, the decision in *Harpur Trust v Brazel* will still apply and those workers should receive and be paid a minimum of 5.6 weeks' holiday.

We increased the leave entitlement of affected term-time employees so they received 5.6 weeks' holiday pay following the Harpur Trust v Brazel ruling. Do the new Regulations mean we can reverse this now?

You will need to continue paying these employees at least 5.6 weeks' holiday pay, which is pro rata on the hours they work if they work less than full-time hours, in accordance with their contracts of employment. If you wish to consider making a change to contractual terms and conditions to reduce holiday entitlement, you will need to review the employment contracts to determine if consultation and agreement from the employee is required, which is likely in most cases. If you wish to consider changing your approach, either for existing TTO employees or new TTO employees, please contact your EPM Adviser for further guidance on how to do this and whether this is the right approach for your School or Trust, taking into consideration possible negative effect on employee and trade union relations. It is also likely to be unattractive for recruitment and retention reasons. We therefore expect that schools and trusts will maintain their current holiday entitlements for existing TTO employees.

Following the Harpur Trust v Brazel ruling, we did not take any action to top up affected TTO employee's holiday entitlements to 5.6 weeks. What do I need to do now?

The *Harpur Trust v Brazel* decision still applies to all workers up to the point the new Regulations take effect, which is dependent on when your holiday year commences, which is covered in more detail in the question above 'when can we start using RHP?'. This means that if you have TTO staff whose holiday entitlement weeks fall below 5.6, you are at risk of a claim for unpaid holiday pay in respect of the period before the Regulations take effect. If you are concerned about possible claims, please speak to your EPM Adviser for further guidance.

Can I pay my TTO staff RHP at 12.07% of their hours worked instead of calculating a flat salary based on their contractual holiday entitlement, which is then paid in 12 equal instalments?

There is no requirement to change how you pay your TTO employees. We expect that for TTO employees most, if not all schools and trusts, currently include holiday pay in the employee's salary by combining the weeks worked and holiday entitlement weeks to calculate the salary and then pay it in 12 equal monthly instalments, which you can continue to do. This approach is administratively beneficial for employers, and beneficial for employees because they receive an equal monthly amount i.e. their pay doesn't reduce in the months where they work fewer weeks. We are not expecting schools and trusts will want to change this approach.

Most employers have contractual holiday entitlements that result in TTO employees accruing holiday at a higher rate than 12.07%, which is the case if you follow the Green Book. Your part-time staff should not be subject to less generous terms and conditions of employment – this includes entitlement to holiday pay. You must therefore consider the current contractual position for your employees. If the contractual holiday entitlement for full-time staff is higher than the statutory minimum (i.e. in the case of schools/trusts following the Green Book), the entitlement for your part-time staff must be proportionate to that of your full-time staff, and you should not therefore reduce the entitlement to pay a rate of 12.07% based on the statutory minimum, you would need to continue paying the contractual entitlement at the equivalent rate, which will be a higher percentage. If you apply the Green Book, you can continue to calculate holiday pay in accordance with the examples provided in the Green Book.

Paying TTO employees their holiday entitlement at an appropriate percentage, reflective of their contractual entitlement, via RHP, would require you to calculate the amount of RHP due in each pay period based on the hours worked in that period e.g. each month. As such, moving to RHP would increase the administrative burden on employers, along with financial uncertainty for staff paid in this way due to salary fluctuations month by month. You would also need to consider the contractual position for existing

employees, as such changes are likely to require consultation and agreement from employees.

If a casual Teaching Assistant regularly works the same number of hours almost every month, are they an irregular or part-year worker?

If the number of hours the casual worker is working are mostly the same each month, they are not likely to be an irregular hours worker. That's because the definition of an irregular hours worker is one whose hours in each pay period, in accordance with their contract, are "*wholly or mostly variable*" in that leave year. The definition does not mention when the hours are worked; it only says the "*number of paid hours they will work in each pay period*." Therefore, it does not matter if the worker works 2 hours one week and 4 hours the next week if the total hours in the month (pay period) does not vary each month.

In this scenario, the worker is also not likely to be a genuine casual worker where the arrangement is regular work undertaken on specified days each month, and the employer should consider offering them a contract of employment instead.

Do we have to pay RHP at 12.07% to calculate holiday pay for irregular hours and part-year workers?

12.07% is the minimum set by the regulations, which is based on 28 days statutory holiday entitlement. You can increase this under the terms of the contract if you wish. For example, for your casual workers you could offer the same holiday entitlement as your employees who usually receive an enhanced contractual holiday entitlement and pay RHP based on the enhanced accrual rate. This would have a cost implication, and if considering this for your casual workers, it is recommended you discuss it with your EPM Adviser.

You don't have to use the accrual method and RHP, you can if you choose to, continue using the 52-week reference method to calculate holiday pay due. Please refer to the government guidance for detailed calculation examples > [Holiday pay and entitlement reforms from 1 January 2024](#).

Should all pay be included in the RHP calculation for irregular hours and part-year workers?

Yes, use their total pay for the hours worked in the period.

If we decide to pay RHP for irregular hours and part-year workers, when should we pay this?

It should be paid at the same time the worker is paid for the hours they have worked. For example, if the worker has claimed for hours worked in April and you are paying them for the work in May, you pay the RHP in May's payroll at the same time as their pay for the hours they worked. RHP should be clearly shown on the payslip as a separate item.

How much holiday can workers carry forward?

From 1 January 2024, workers can carry forward up to 8 days into the next leave year.

Do we have to allow workers on family-related leave, such as maternity leave, to carry their holiday entitlement into the next leave year?

Yes, the regulations require that 5.6 weeks (28 days) be carried forward to the next leave year if they have been unable to take it because of maternity or other family-related leave. You will have already been doing this because previous case law had established this; the regulations are simply catching up with the case law and existing practice.

Are workers on long-term sick leave allowed to carry forward their holiday entitlement?

Yes, the regulations require holiday entitlement for workers who are unable to take it due to their sickness absence. This applies only to the 4 weeks' (20 days) annual leave entitlement derived from EU law, not the full 5.6 weeks, and it must be taken within 18 months of the end of the leave year in which it accrued.

Can workers still carry forward leave that was untaken due to Covid?

No, from 1 January 2024, workers can no longer carry forward leave that was untaken because of Covid. They must have taken any outstanding leave they carried forward to the current leave year by 31 March 2024.

Should a worker be allowed to carry forward holiday entitlement if they haven't been able to take it in the leave year?

The regulations allow workers to carry forward untaken holiday in respect of the 4 weeks statutory leave derived from EU law if the employer has not:

- recognised their right to paid statutory leave
- given them a reasonable opportunity to take their leave
- encouraged them to take the leave
- informed them that any untaken leave that cannot be carried forward will be lost at the end of the holiday year
- paid the worker for leave that you have allowed them to take.

The right for the worker to carry it forward will continue for as long as the employer fails to enable the worker to take it.

Should we send reminders to workers when they have holiday outstanding?

You should ensure you have processes in place to monitor whether workers are taking their holiday, send reminders to encourage them to take it where necessary and ensure workers have a reasonable opportunity to take their holiday before the end of the leave year.

This will apply to workers who work 52 weeks of the year. For teachers and most TTO+ employees who are required in accordance with their employment contracts to take their leave during school closure periods, reminders should not be necessary because they take their holiday entitlement during the weeks they are not required to work.

What does 'normal pay' include when calculating a week's pay when calculating holiday pay?

The regulations now specify what normal pay must include:

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

This only applies to the 4 weeks' statutory leave derived from EU law, and to the payment of [accrued holiday for irregular hours workers and part-year workers](#).

How do I account for holiday entitlement of TTO employees working overtime?

Most schools and trusts include holiday pay in the staff member's salary and spread the salary across the year into 12 equal monthly payments. If you do this, you need to be aware of the need to top up holiday where a TTO employee does regular overtime or receives commission payments and payments for professional or personal status, which must be factored into your calculation of holiday pay at the correct accrual rate proportionate to a full-time member of staff i.e. if you apply Green Book entitlements this is a higher accrual rate than the minimum 12.07% that you will need to top up by. So, you would need to calculate this as a percentage - using the guidance in the Green Book - and apply it through the variances as holiday pay when you record the additional hours.

If a TTO employee is working additional hours that are regular, it may be that either a temporary or a permanent increase to the employee's contracted hours is appropriate. Holiday pay would then be accounted for in the usual way through the equated pay calculation.

What is the definition of a genuine casual worker?

Please see our bulletin for further information, [Atypical Workers and Different Types of Employment Contracts](#).

Can you provide more information about the Harpur Trust vs Brazel case?

Please see our previous bulletin with further details, [The Harpur Trust v Brazel - Part-year and Casual Workers](#).

We pay an allowance to top up the holiday pay of TTO workers who were in receipt of less than 5.6 weeks statutory holiday entitlement - can we remove it now?

Not if they are contractually entitled to the allowance. You will need to continue paying the allowance in accordance with their contracts of employment. If you wish to consider changing your approach either for existing TTO employees or new TTO employees, please contact your EPM Adviser for further guidance on how to do this.

We are a local authority maintained school, what action should we take?

For maintained schools, we strongly recommend that you await advice from your local authority prior to seeking to consult on or make any changes to employee terms and conditions.

How should I calculate rolled up holiday pay for individuals working part rather than whole hours?

When paying casual workers who do not work whole hours, the following rules apply: If the part-hour is less than 30 minutes, it should be considered as zero; if the part-hour is 30 minutes or exceeds 30 minutes, it should be rounded up to one hour. For example, an individual working 3 hours and 15 minutes would be paid 12.07% on 3 hours worked, but an individual working 3 hours and 45 minutes would be paid 12.07% on 4 hours. EPM payroll customers will receive a reminder of this in the variance area of the portal.

When paying RHP to irregular hours or part year workers, how should I pay the holiday entitlement for part-hours worked?

The regulations state that:

"Where the amount of annual leave that has accrued in a particular case includes a fraction of an hour, the fraction is to be treated as zero if it is less than 30 minutes and one hour if it is 30 minutes or more than 30 minutes."