



Department for  
Business, Energy  
& Industrial Strategy

# Calculating holiday entitlement for part-year and irregular hours workers

Consultation

Closing date: 9 March 2023

January 2023



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Any enquiries regarding this publication should be sent to us at: [holidayentitlementconsultation@beis.gov.uk](mailto:holidayentitlementconsultation@beis.gov.uk)

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# Introduction

As part of the ambition for the UK to be the best place in the world to do business, the Government is removing barriers to growth by providing clarity on complex employment legislation so that it is simpler for employers to comply.

Over time, holiday pay and entitlement legislation has become complex and, in some cases, can be challenging for employers to follow due to changes in case law. There is a risk that in certain circumstances this legislation may not be fully achieving its original intention. The main pieces of legislation that govern holiday entitlement and pay for workers are the Working Time Regulations 1998 and the Employment Rights Act 1996. There is also a significant body of domestic and retained EU case law.

In July 2022, the Supreme Court handed down its judgment on [Harpur Trust v Brazel](#).<sup>1</sup> This case concerned the calculation of holiday pay and entitlement of a permanent part-year worker on a zero-hours contract. The judgment held that the correct interpretation of the Working Time Regulations 1998 is that holiday entitlement for part-year workers should not be pro-rated so that it is proportionate to the amount of work that they actually perform each year. Part-year workers are entitled to 5.6 weeks of statutory annual leave calculated using a holiday entitlement reference period to determine their average weekly pay, ignoring any weeks in which they did not work. As a result of this judgment, part-year workers are now entitled to a larger holiday entitlement than part-time workers who work the same total number of hours across the year.

The Government is keen to address this disparity to ensure that holiday pay and entitlement received by workers is proportionate to the time they spend working. The consultation seeks to understand the implications of the judgment on different sectors including agency workers who have complex contractual arrangements. The Government wants to ensure that any changes we consider do not have any adverse impacts on other parts of the legislation.

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<sup>1</sup> <https://www.supremecourt.uk/cases/uksc-2019-0209.html>

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# General information

## Why we are consulting

Following the Supreme Court judgment, the Government estimates that between 320,000 and 500,000 permanent term-time and zero-hours contract workers will receive more holiday entitlement. Approximately 37% of these are workers in the education sector, such as teaching assistants who are employed on part-year contracts.

Some agency workers may also be affected by this judgment if they have contracts of employment with employment businesses or umbrella companies. Government analysis estimates that there are between 80,000 and 200,000 agency workers who may receive more holiday entitlement under this judgment. We are looking to understand how entitlement is currently calculated for agency workers and how the consultation proposal of introducing a holiday entitlement reference period for part-year and irregular hours workers may be implemented.

The Government understands that for most employers of part-year workers, the increase in holiday pay following the judgment will not be a significant amount per worker, particularly for term-time workers in the education sector who are likely to work for over 60% of the year. Workers on permanent contracts who work for a few weeks each year will receive the largest increase in holiday pay disproportionate to their hours worked. However, we expect the numbers affected to be low, but would like to understand this better through the consultation.

Any legislative changes because of this consultation would extend to workers in Great Britain. Employment law is reserved to Westminster for Scotland and Wales through the Employment Rights Act 1996. Employment law is devolved to Northern Ireland.

## Key terms

This consultation focuses on how holiday entitlement is calculated for part-year workers and workers with irregular hours. These terms are defined for the purpose of this consultation as follows:

**Holiday Entitlement** – the 5.6 weeks of statutory paid holiday that workers are entitled to under the Working Time Regulations 1998. Holiday entitlement is also known as annual leave entitlement.

**Holiday Pay** – the pay that workers must receive when taking statutory holiday.

**Agency workers** – a worker who has a contract with an agency but works temporarily for a hirer. They could be a part-time or part-year worker or have a zero-hours contract; this will depend on each agency worker's individual contract with their agency or umbrella company.

**Part-year workers** – workers who only work for part of the year and are unpaid for the remainder of the year.

**Part-time workers** – workers who work fewer hours than a full-time worker.

**Workers with irregular hours** – workers who have a completely irregular, non-repeating working pattern.

**WTR** – the Working Time Regulations 1998.

## Consultation details

**Issued:** 12 January 2023

**Respond by:** 23:59 on 9 March 2023

**Enquiries to:** [holidayentitlementconsultation@beis.gov.uk](mailto:holidayentitlementconsultation@beis.gov.uk)

**Consultation reference:** Calculating holiday entitlement for part-year and irregular hours workers

**Audiences:** Employers and workers, business representative groups, unions and those representing the interests of groups in the labour market.

**Territorial extent:** This applies across Great Britain (England, Wales, and Scotland).

## How to respond

The Government is keen to gather views from as many stakeholders as possible. Although this consultation is technical in nature, the right to annual leave is one that applies to millions of workers across Great Britain.

**Respond online at:** <https://beisgovuk.citizenspace.com/lm/holiday-entitlement>

or

**Email to:** [holidayentitlementconsultation@beis.gov.uk](mailto:holidayentitlementconsultation@beis.gov.uk)

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. If you are sending in additional comments, please indicate which question(s) they are in reference to.

## Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

## Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: [beis.bru@beis.gov.uk](mailto:beis.bru@beis.gov.uk).

# About you

Answering these questions in advance of the rest of the consultation will help us to understand how the proposal may impact employers and workers.

**1. What is your name?**

**2. What is your email address?**

*If you enter your email address when responding online then you will automatically receive an acknowledgement email when you submit your response.*

**3. What is your organisation?**

**4. Are you happy for your response to be published?**

- Yes
- Yes, but without identifying information
- No, I want my response to be treated as confidential

**5. Are you (select the appropriate option):**

- An individual
- An employer
- Representing employers' or employees' interests
- Other (please specify)



**6. Are you (select the appropriate option):**

- An employer or someone who is responding on behalf of an employer
- Employed (you are an employee or a worker)
- Self-employed
- Unemployed – Looking for work
- Unemployed – Not looking for work
- Retired
- Not looking for work – Other (please specify)

**If you are an employer:**

**7. How would you classify your organisation?**

- Private sector organisation
- Public sector organisation
- Charity or voluntary sector organisation
- Other (please specify)

**8. How many people work for your organisation?**

- Micro business (<10 people)
- Small business (10-49 people)
- Medium business (50-249 people)
- Large business (250+ people)
- Don't know

**If you are employed:**

**9. What type of organisation do you work for?**

- Private sector organisation
- Public sector organisation
- Charity or voluntary sector organisation
- Other (please specify)

**10. How many people work for your organisation?**

- Micro business (<10 people)
- Small business (10-49 people)
- Medium business (50-249 people)
- Large business (250+ people)
- Don't know

**If you are an agency worker:**

**11. What are your contractual arrangements?**

- Contract for services with employment business
- Contract of service (employment) with employment business
- Contract for services with umbrella company
- Contract of service (employment) with umbrella company
- Limited company contractor / personal service company
- Other (please specify)
- Don't know

**12. How often do you receive holiday pay and entitlement?**

- During assignments
- At the end of assignments only
- Other (please specify)
- Don't know

**If you represent employers or employees:**

**13. Who do you represent?**

- A trade union
- An industry or employers' association
- Other (please specify)

# Background to Holiday Pay and Entitlement

## Holiday Entitlement

Almost all workers are entitled to 5.6 weeks of paid annual leave each year; this includes agency workers, workers with irregular hours and workers on zero-hours contracts. This leave entitlement is broadly granted under the Working Time Regulations 1998 (WTR), although workers in some sectors are covered by other regulations; for example, workers in civil aviation are covered by the Civil Aviation (Working Time) Regulations 2004.

Holiday entitlement in the WTR is split into two allocations:

- 4 weeks under regulation 13, which implemented the leave required by the EU's Working Time Directive; and
- 1.6 weeks under regulation 13A, which is additional leave above the EU minimum requirements.

Although regulation 13 leave was originally derived from European legislation, it currently remains part of domestic employment law following the UK's exit from the EU.

Holiday entitlements are split into leave years. This can be defined by an agreement between workers and employers, such as the employment contract, and could, for example, mirror the calendar year (1<sup>st</sup> January to 31<sup>st</sup> December) or the financial year (1<sup>st</sup> April to 31<sup>st</sup> March). If there is no relevant agreement between the worker and the employer, the WTR regulation 13(3) governs the date on which the worker's leave year starts.

There is a calculator on GOV.UK designed to help employers calculate statutory holiday entitlement for some of the different types of working patterns and different lengths of time in employment.<sup>2</sup> There are separate rules to govern how much holiday a worker is entitled to take when they first start a job, which are covered in more detailed guidance available online.<sup>3</sup>

Although employers have some discretion over when their staff take holiday, in order to ensure business continuity, they must not prevent workers from taking holiday altogether, and they must allow workers to take holiday before the entitlement to it expires.

The WTR set out which holiday can be carried into the next leave year, and which cannot:

- Regulation 13 grants 4 weeks of holiday that cannot be carried forward under usual circumstances.
- Regulation 13A grants a further 1.6 weeks that may be carried into the next leave year if a relevant agreement between a worker and their employer provides for it to do so.

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<sup>2</sup> <https://www.gov.uk/calculate-your-holiday-entitlement>

<sup>3</sup> <https://www.gov.uk/holiday-entitlement-rights/calculate-leave-entitlement>

If a worker clearly chooses not to use their entitlement to annual leave prior to it expiring, they lose the entitlement – otherwise known as ‘use it or lose it’.

## Holiday Pay

The Working Time Regulations and sections 221-224 of the Employment Rights Act 1996 set out how to calculate a worker’s holiday pay. The overarching principle is that holiday pay should reflect a worker’s usual rate of pay for periods of actual work.

Where a worker has a constant rate of pay, they should receive the same pay they would have received if they had been at work. If a worker has variable pay, their holiday pay is calculated based on an average from their earnings in a 52-week reference period. This reference period was increased from 12-weeks on 6<sup>th</sup> April 2020 to make workers’ holiday pay fairer by better reflecting seasonal changes in pay and working hours. Whether a worker has normal working hours or not will dictate which weeks are included in the reference period. To aid employers and workers in calculating the correct holiday pay, the Government has produced detailed guidance available on GOV.UK.<sup>4</sup>

Recent case law has considered what must be included in holiday pay calculations. Where holiday pay had previously been calculated based on regular pay that workers received, it should include all components that form ‘usual pay’, including regular overtime, regular commission and regular bonuses. For example, in 2014 the Employment Appeal Tribunal ruled that regular overtime that employees were required to work by their employer should be factored into a worker’s holiday pay.<sup>5</sup> This case law reaffirms the principle that, for the regulation 13 leave derived from EU law at least, holiday pay should be reflective of the pay that would have been earned if the worker was at work and working.

Workers must also be given the opportunity to take their statutory holiday entitlement. Employers cannot generally buy it back or replace holiday with financial compensation if the worker remains in continuing employment. This is known as payment in lieu and is only lawful when a worker leaves their employment. When a worker leaves employment, they must be paid for any untaken statutory holiday that they have accrued. This is currently the only situation in which payment in lieu of statutory holiday is permitted.

## Current position on calculating holiday entitlement

Workers who are in employment for a full leave year are entitled to 5.6 weeks of paid annual leave. The WTR do not expressly set out how to calculate holiday entitlement for part-year workers on permanent contracts. This is the subject of a recent case, Harpur Trust v Brazel, which was heard by the Supreme Court in November 2021.<sup>6</sup> In the 2019 judgment on this

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<sup>4</sup> <https://www.gov.uk/Government/publications/calculating-holiday-pay-for-workers-without-fixed-hours-or-pay>

<sup>5</sup> Bear Scotland Ltd and Others v Mr David Fulton and Others [2014] UKEATS 0047/13/0411

<sup>6</sup> Harpur Trust v Brazel [2022] UKSC 21. The Supreme Court judgment was handed down on 20 July 2022: <https://www.supremecourt.uk/cases/uksc-2019-0209.html>

case, the Court of Appeal defined part-year workers as permanent workers who only work for part of the year and are unpaid for the remainder of the year. In July 2022, the Supreme Court held that under the WTR, holiday entitlement for part-year workers should not be pro-rated so that it is proportionate to the amount of work they actually perform each year. Instead, the Court held that part-year workers on permanent contracts should receive 5.6 weeks of annual leave and that their holiday entitlement should be calculated using a 52-week holiday entitlement reference period. The judgment noted that in calculating entitlement the WTR “adopt a time-apportionment basis, not an apportionment on the basis of work actually done”, as reflected in the arrangements for apportioning entitlement for workers joining part way through a leave year.<sup>7</sup>

Following the Supreme Court judgment, part-year workers are entitled to a larger annual paid holiday entitlement than part-time workers who work the same number of hours across the year but work fewer hours each week consistently across the year. This is demonstrated further on in Box 2.

The WTR also do not set out how to convert this into entitlement in days or hours for workers with irregular hours. Current Government guidance suggests that employers may wish to calculate average days or hours worked each week based on a representative reference period, although the WTR do not expressly provide for this.<sup>8</sup> In all cases, employers must ensure that each worker receives at least 5.6 weeks’ annual leave per year.

The Government also recognises that the existing legislation on calculating holiday entitlement is complicated to apply to agency workers due to their complex contractual arrangements.

**14. For employers: If you employ workers with irregular hours, how do you calculate their holiday entitlement?**

**15. For workers: If you work irregular hours, how is your holiday entitlement calculated?**

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<sup>7</sup> Ibid [50].

<sup>8</sup> <https://www.gov.uk/government/publications/calculating-holiday-entitlement-for-workers/how-to-calculate-holiday-entitlement-for-workers-on-different-types-of-contract>

## Introducing a 52-week holiday entitlement reference period

The Government is keen to ensure that part-year workers and workers with irregular hours receive the holiday entitlement and pay which reflects the hours that they have worked. The Government is considering introducing legislation to resolve this anomaly by allowing employers to pro-rate holiday entitlement for part-year workers so that they receive leave in proportion with the total annual hours they work. The simplest way to do this would be to introduce a 52-week holiday entitlement reference period for part-year workers and workers with irregular hours, based on the proportion of time spent working over the previous 52-week period.

This would bring the holiday pay and entitlement of part-year workers in line with the entitlements received by part-time workers who work the same number of hours across the year. Legislating would provide clarity to workers, who would be assured that their entitlement would be calculated according to steps clearly set out in regulations. It would also provide employers with a clearly defined method to use, rather than having to spend time interpreting complex case law, and will ensure holiday entitlement is calculated consistently for workers with irregular hours.

Holiday pay for workers with irregular hours is already calculated using a 52-week reference period, although weeks without work are excluded from the reference period in order to calculate the average pay per working week. The Government proposes that **the length of the holiday entitlement reference period should mirror the length of the current holiday pay reference period** for consistency. Employers would be required to hold records of time spent working by such workers, similar to the data already required to calculate holiday pay and to comply with the National Minimum Wage Regulations 2015.

This would not necessarily mean that an employer would have to use the exact same 52 weeks' worth of pay data to calculate holiday pay and entitlement for a worker with irregular hours or part-year worker. The holiday pay reference period uses the last 52 weeks in which a worker actually works, which is likely to stretch beyond the preceding 52 weeks for workers with irregular hours and part-year workers. In comparison, the proposed holiday entitlement reference period would use the most recent 52 weeks, including those weeks without work.

**16. For employers: Would you agree that the information you currently collect to calculate holiday pay would be sufficient to calculate holiday entitlement using a reference period?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

*Please explain your answer.*

## How to treat weeks without work in the reference period

Currently in the holiday pay reference period, weeks in which no work is performed are generally excluded, and earlier weeks are brought in to make up the full 52 weeks. This method could be used for a holiday entitlement reference period to align with the holiday pay reference period, but it would cause workers who have weeks where they did not work to have a higher amount of holiday relative to the hours that they work each year. The Supreme Court held that this “Calendar Week Method” was the correct interpretation of the WTR in *Harpur Trust v Brazel*.<sup>9</sup>

The treatment of weeks without work in the holiday entitlement reference period is particularly relevant for irregular hours workers and part-year workers as they are more likely to have weeks where they perform no work; for example, a worker on a zero-hours contract may have weeks where they are not offered shifts and so perform no work. Similarly, permanent part-year workers on term-time contracts have regular periods where they perform no work, such as teaching assistants who only work during school term-time.

The Government proposes that **the weeks in which workers perform no work are included in the holiday entitlement reference period**. This would cause the pay and entitlement reference periods to diverge slightly in their operation, but it would more closely align workers' holiday entitlement with the actual time they spend working. This is the Government's preferred method.

Excluding unworked weeks could create an incentive for employers to give workers only a small number of hours in a week, instead of no hours. Giving a worker a single hour of work would mean the week counted towards the holiday entitlement calculation, reducing the worker's total holiday entitlement. It would also cause the week to count towards a worker's holiday pay, meaning that both a worker's holiday pay and entitlement would be reduced.

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<sup>9</sup> Ibid [13].

However, it is a more equitable approach to calculating holiday entitlement as workers will receive entitlement which is directly proportionate to the hours that they have worked. This approach is simpler for employers, requiring them to use a standard 52-week period rather than having to exclude different weeks for each worker.

### Calculation of holiday entitlement using the 52-week reference period

The Calendar Week Method divided the total hours worked over the 52-week reference period (excluding the weeks not worked) by 46.4 to find the average length of a working week. This would then be multiplied by 5.6 to give the worker's total annual statutory holiday entitlement expressed in hours.

The Government's proposed method of calculation differs from the Calendar Week Method in two ways:

- the 52-week reference period would be based on the preceding 52 weeks in which a worker was in employment, including any weeks without work; and
- rather than dividing the total hours worked by 46.4 and multiplying by 5.6, the Government proposes to allow employers to simply multiply the total hours worked by 12.07%.<sup>10</sup> This is equivalent to 5.6/46.4 expressed as a percentage.

The Government proposes that statutory annual leave entitlement for part-year workers and workers with irregular hours should be calculated by employers using following two steps:

- Calculate the total hours a worker has worked in the previous 52 weeks (the reference period), including those weeks without work;
- Multiply the total hours worked by 12.07% to give the worker's total annual statutory holiday entitlement in hours.<sup>11</sup>

This can be expressed as a simple calculation:

Hours worked in previous 52 weeks x 12.07% = annual statutory entitlement in hours

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<sup>10</sup> Due to rounding up, using 12.07% will result in an entitlement that is 0.002% over the statutory minimum, which may help to mitigate the risks to business of underpayment of holiday pay.

<sup>11</sup> Employers would need to adjust the percentage to account for additional contractual leave.



**Box 1** provides an example of two workers on irregular hours who are both in employment for 26 weeks (half of a year) and work a different total number of hours over that period. It illustrates the difference in annual leave entitlement when it is calculated based on a reference period including weeks worked, in comparison to when weeks without work are excluded which leads to a disproportionate amount of leave for the worker who worked fewer hours. For the purpose of this example, neither worker is assumed to have taken annual leave during their time in employment.

**Box 1 – Comparison of holiday entitlements using a reference period that includes / excludes unworked weeks**

|   | Andy  | Beckie  |
|---|---|---|
| Weeks in Employment   | 26 weeks  | 26 weeks  |
| Statutory Holiday:  | 2.8 weeks   | 2.8 weeks   |
| Weeks Worked:   | 26 weeks  | 18 weeks  |
| Hours Worked:   | 1,040 hours   | 720 hours   |
| <b>Only weeks worked included in entitlement reference period</b> |   |   |
| Average Length of Week (only weeks worked)                        | $1,040 \text{ hours} \div 26 \text{ weeks} = 40 \text{ hours}$  | $720 \text{ hours} \div 18 \text{ weeks} = 40 \text{ hours}$        |
| Holiday Entitlement   | $2.8 \text{ weeks} \times 40 \text{ hours} = 112 \text{ hours}$ | $2.8 \text{ weeks} \times 40 \text{ hours} = 112 \text{ hours}$     |
| <b>All weeks included in entitlement reference period</b>         |   |   |
| Average Length of Week (all weeks including non-working)          | $1,040 \text{ hours} \div 26 \text{ weeks} = 40 \text{ hours}$  | $720 \text{ hours} \div 26 \text{ weeks} = 27.7 \text{ hours}$      |
| <b>Proposed approach</b>  |   |   |
| Holiday Entitlement:  | $2.8 \text{ weeks} \times 40 \text{ hours} = 112 \text{ hours}$ | $2.8 \text{ weeks} \times 27.7 \text{ hours} = 77.56 \text{ hours}$ |

*Andy and Beckie are each in employment for 26 weeks. Both work variable hours and neither take any holiday in this time. Andy works all 26 weeks, whilst Beckie works for 18 weeks, with the other 8 as non-working weeks. Whilst working, both work an average of 40 hours a week.*

*When Beckie's holiday is calculated based solely on the 18 weeks that she worked, her holiday entitlement is 112 hours, which is the same as Andy's. When it is calculated based on all of the weeks that she is in employment, it is 77.56 hours, reflecting the fact that she worked fewer hours than Andy during the previous 26 weeks in question.*

**Box 2** compares an example of a part-time worker and a part-year worker who work the same total number of hours over a 52-week period.

**Box 2 – Comparison of holiday entitlements for part-year and part-time workers**

|  | <b>Chad</b><br><b>Part-time worker</b>      | <b>Danica</b><br><b>Part-year worker</b> |
|--|---|--|
| Weeks in Employment  | 52 weeks                                    | 52 weeks                                 |
| Statutory Holiday:   | 5.6 weeks                                   | 5.6 weeks                                |
| Weeks Worked:  | 46.4 weeks                                  | 30 weeks                                 |
| Hours Worked:  | 696 hours                                   | 696 hours                                |
| <b>Average Length of Week</b>                                  |   |  |
| Average Length of Week (all weeks including non-working)       | 696 hours ÷ 52 weeks = 13.38 hours          | 696 hours ÷ 52 weeks = 13.38 hours       |
| Average Length of Week (only weeks worked)                     | 696 hours ÷ 46.4 weeks = 15 hours           | 696 hours ÷ 30 weeks = 23.2 hours        |
| <b>Holiday Entitlement</b>                                     |   |  |
| Holiday Entitlement ( <i>only weeks worked</i> )               | (696 hours ÷ 46.4) x 5.6 = 84 hours holiday | (696 ÷ 30) x 5.6 = 130 hours holiday     |
| Holiday Entitlement ( <i>all weeks including non-working</i> ) | 696 x 12.07% = <b>84 hours holiday</b>      | 696 x 12.07% = <b>84 hours holiday</b>   |
| <b>Proposed approach</b>                                       |   |  |

*Chad is a part-time worker who has been employed for a year. His employer wants to calculate his holiday entitlement for the upcoming leave year using a 52-week reference period, based on what he worked in the previous leave year. He receives 5.6 weeks of statutory annual leave and works an average of 15 hours a week, excluding holidays. Over the past leave year, he worked 696 hours. Using a holiday entitlement reference period, he is entitled to 84 hours of holiday, equivalent to 5.6 weeks, each 15 hours in length.*

*Danica is a part-year worker who has been employed for a year. Over the past leave year she also worked a total of 696 hours, although she only worked in 30 weeks of the year for an average of 23.2 hours each week. Under Harpur Trust v Brazel [2022], her annual leave entitlement in hours would be calculated using a 52-week reference period based an average of how much she worked, excluding the weeks where she performed no work. Although she worked the same number of hours in the year as Chad, she would receive a larger annual leave entitlement and holiday pay of 130 hours, equivalent to 5.6 weeks, 23.2 hours in length.*

*If Danica’s holiday entitlement was calculated using a 52-week reference period including the weeks in which she didn’t work, she would be entitled to 84 hours of holiday, the same as*

*Chad, as they both worked the same number of hours over the year. She would still receive 5.6 weeks of paid statutory annual leave, each 15 hours in length. The Government proposes that this approach is fairer for workers and business, as it removes the disparity in annual leave entitlement between part-time and part-year workers who work the same number of hours.*

**17. Do you agree that including weeks without work in a holiday entitlement reference period would be the fairest way to calculate holiday entitlement for a worker with irregular hours and part-year workers?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

*Please explain your answer.*

## Using a fixed or rolling reference period

There are two options for defining a holiday entitlement reference period.

The first option is to use a **rolling reference period**. This mirrors the holiday pay reference period; each time a new week is complete, the oldest of the 52 weeks is pushed out of the reference period by the new week of data. This causes slight variations in holiday pay on a week-by-week basis.

For holiday entitlement, this may cause issues. Having a varying holiday entitlement during the year risks workers not understanding exactly how much holiday they can take at any particular time. It also potentially makes planning how much holiday to take and when, complicated, because the total entitlement varies over the year. It would mark a deviation from the current system where holiday entitlement is known up front at the start of a leave year.

For these reasons, the Government proposes to use the second option, a **fixed reference period**, to calculate holiday entitlement. At the beginning of a new leave year, the worker's holiday entitlement would be calculated based on previous 52 weeks. This would give a worker a fixed pot of annual leave that they would then be able to draw from throughout the leave year, in line with how the legislation works for workers with regular hours.

A significant benefit of this method is the clarity it would provide to workers on irregular hours and their employers on holiday entitlement. Although this entitlement would be based in part on their working pattern almost two years prior, this is the simplest approach for employers and workers as entitlement would be agreed at the beginning of each leave year.

**18. Would you agree that a fixed holiday entitlement reference period would make it easier to calculate holiday entitlement for workers with irregular hours?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

*Please explain your answer.*

## Calculation of holiday entitlement using a reference period in the first year of employment

The 52-week holiday entitlement reference period assumes that a worker has been in employment for at least 52 weeks. There would need to be a system for workers in the first 12 months of a job whilst their reference period builds up. Under regulation 15A of the WTR, workers in the first 12 months of a job effectively receive 1/12<sup>th</sup> of their annual holiday entitlement at the start of each month. This is easy to calculate for workers with fixed hours or working patterns, as their annual holiday entitlement is usually expressed in weeks or days.

A similar approach could be used for workers with irregular hours, although holiday entitlement would need to be calculated at the end of each month based on the actual hours worked in that month to be proportionate to the time worked. This accrual-based system would only be required for the first year of employment until the 52-week entitlement reference period could be used.

This can be expressed as a simple calculation:

Hours worked in previous month x 12.07% = monthly statutory entitlement in hours

Employers could use their discretion to allow a worker to take more annual leave than they had accrued in advance.

**19. Do you agree that accruing holiday entitlement at the end of each month based on the hours worked during that month would be the fairest way to calculate holiday entitlement for workers on irregular hours in their first year of employment?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

*Please explain your answer.*

## Calculation of how much holiday is used by taking a particular day off

If a holiday entitlement reference period is introduced, there must be a way to calculate how much holiday a worker with irregular hours would use to take a particular day off. This would only be required for workers who work irregular hours, as it is easier for employers of shift workers or workers on annualised hours to calculate how much holiday they should take for each day off.

There are two methods to calculate this:

The first method is to use the reference period to calculate a **flat average working day**. When a worker took a day off, they would take off the number of hours calculated from this average working day. This could potentially create incentives for workers to take particular days off as holiday, to maximise their holiday pay whilst minimising their time off work. By requesting to take leave on days where they would have worked below the average number of hours, workers could potentially be paid more for a day than if they have worked it. For similar reasons it could also create incentives for employers to prevent workers taking leave on such days. **This is the Government's preferred method.**

The second method is to use the reference period to calculate the **average hours worked for specific days**. For example, to work out the amount of holiday it would take to have a Monday off from work, employers would calculate the average hours that a worker worked each Monday in the reference period. It would avoid the incentives to take or not take leave on certain days and would make it more likely that workers would get holiday entitlement that more accurately reflects 5.6 weeks off work. However, this would be expected to be more burdensome for business than using a simple flat average.

**20. Would you agree that using a flat average working day would make it easier to calculate how much holiday a worker with irregular hours uses when they take a day off?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

*Please explain your answer.*

## Calculating holiday entitlement for agency workers

The Government recognises that holiday entitlement is particularly difficult to calculate for agency workers due to their complex contractual arrangements.

Agency workers may have a contract for services with an **employment business**, which finds temporary roles for agency workers, supplies them to work for and under the control of an end client and pays them their wages including holiday pay. They can also be known as **agencies**.

Agency workers may have a contract for services with an **umbrella company**, which employs agency workers with a view to them being supplied to work for and under the control of an end-client. Umbrella companies receive a total gross payment, including amounts to cover employer overheads, from employment businesses. They make the necessary deductions and pay the worker the remaining sum as their net pay for the work they undertake for the end client.

We are keen to consider whether calculating statutory holiday entitlement at the end of each month as a percentage of hours worked would allow umbrella companies and employment businesses to consistently calculate both holiday entitlement and holiday pay for agency workers.

When workers with a contract for services are on assignment, the Government proposes that their holiday entitlement would be calculated in the same way as for other irregular hours workers who are in their first year of work: the employment business or umbrella company would calculate their entitlement as 12.07% of the hours that they had worked over the previous month. As agency workers have the right to take annual leave whilst on assignment, they could take their accrued annual leave and be paid for it, rather than receiving holiday pay as payment in lieu at the end of their assignment. For shorter assignments, agency workers may prefer to take their annual leave at the end of their assignment or receive holiday pay in lieu when their assignment comes to an end. In either case, they would receive holiday

entitlement and the respective holiday pay which is directly proportionate to the hours they have worked.

When workers with a contract for services are not on assignment, the Government proposes that they would not accrue holiday entitlement as they are not working. These weeks would not be considered when calculating holiday entitlement for any subsequent assignments. This mirrors the existing approach taken to the calculation of holiday pay, which is calculated discretely using each individual assignment as the reference period, rather than averaging pay over a 52-week period.

It would be impossible to attempt to include different assignments – each with potentially different end clients, employment businesses or umbrella companies, contractual arrangements and terms – into one reference period. The Government's proposed approach to calculate statutory holiday entitlement as 12.07% of hours worked at the end of each month of an assignment, or at the end of an assignment (if shorter than a month), is the simplest way to ensure that agency workers receive the paid annual leave they are entitled to.

A 52-week holiday entitlement reference period for agency workers would prove impractical in most cases due to the nature of agency work. Workers may not have a consistent contractual relationship with an employment business or umbrella company. However, where agency workers have a contract for employment with an umbrella company that is longer than a year or are on one assignment that lasts longer than a year, their statutory holiday entitlement would be calculated by using the 52-week reference period set out earlier in this consultation.

**21. Would you agree that calculating agency workers' holiday entitlement as 12.07% of their hours worked at the end of each month whilst on assignment would make it easier to calculate their holiday entitlement and holiday pay?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

*Please explain your answer.*

**22. Do you have any further comments about calculating holiday entitlement for agency workers?**

*Please explain your answer.*

# Consultation questions

**1. What is your name?**

**2. What is your email address?**

*If you enter your email address when responding online then you will automatically receive an acknowledgement email when you submit your response.*

**3. What is your organisation?**

**4. Are you happy for your response to be published?**

- Yes
- Yes, but without identifying information
- No, I want my response to be treated as confidential

**5. Are you (select the appropriate option):**

- An individual
- An employer
- Representing employers' or employees' interests
- Other (please specify)

**6. Are you (select the appropriate option):**

- An employer or someone who is responding on behalf of an employer
- Employed (you are an employee or a worker)
- Self-employed
- Unemployed – Looking for work
- Unemployed – Not looking for work
- Retired
- Not looking for work – Other (please specify)



**If you are an employer:**

**7. How would you classify your organisation?**

- Private sector organisation
- Public sector organisation
- Charity or voluntary sector organisation
- Other (please specify)

**8. How many people work for your organisation?**

- Micro business (<10 people)
- Small business (10-49 people)
- Medium business (50-249 people)
- Large business (250+ people)
- Don't know

**If you are employed:**

**9. What type of organisation do you work for?**

- Private sector organisation
- Public sector organisation
- Charity or voluntary sector organisation
- Other (please specify)

**10. How many people work for your organisation?**

- Micro business (<10 people)
- Small business (10-49 people)
- Medium business (50-249 people)
- Large business (250+ people)
- Don't know

**If you are an agency worker:**

**11. What are your contractual arrangements?**

- Contract for services with employment business
- Contract of service (employment) with employment business
- Contract for services with umbrella company
- Contract of service (employment) with umbrella company
- Limited company contractor / personal service company
- Other (please specify)
- Don't know

**12. How often do you receive holiday pay and entitlement?**

- During assignments
- At the end of assignments only
- Other (please specify)
- Don't know

**If you represent employers or employees:**

**13. Who do you represent?**

- A trade union
- An industry or employers' association
- Other (please specify)

**14. For employers: If you employ workers with irregular hours, how do you calculate their holiday entitlement?**

**15. For workers: If you work irregular hours, how is your holiday entitlement calculated?**

**16. For employers: Would you agree that the information you currently collect to calculate holiday pay would be sufficient to calculate holiday entitlement using a reference period?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

*Please explain your answer.*

**17. Do you agree that including weeks without work in a holiday entitlement reference period would be the fairest way to calculate holiday entitlement for a worker with irregular hours and part-year workers?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

*Please explain your answer.*

**18. Would you agree that a fixed holiday entitlement reference period would make it easier to calculate holiday entitlement for workers with irregular hours?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

*Please explain your answer.*

**19. Do you agree that accruing holiday entitlement at the end of each month based on the hours worked during that month would be the fairest way to calculate holiday entitlement for workers on irregular hours in their first year of employment?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

*Please explain your answer.*

**20. Would you agree that using a flat average working day would make it easier to calculate how much holiday a worker with irregular hours uses when they take a day off?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

*Please explain your answer.*

**21. Would you agree that calculating agency workers' holiday entitlement as 12.07% of their hours worked at the end of each month whilst on assignment would make it easier to calculate their holiday entitlement and holiday pay?**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

*Please explain your answer.*

**22. Do you have any further comments about calculating holiday entitlement for agency workers?**

*Please explain your answer.*

## Next steps

Responses to this consultation will be used to inform government thinking on the proposal outlined in this document.

The government response to this consultation will be published in due course after the consultation closes.

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This consultation is available from: [www.gov.uk/government/consultations/calculating-holiday-entitlement-for-part-year-and-irregular-hours-workers](https://www.gov.uk/government/consultations/calculating-holiday-entitlement-for-part-year-and-irregular-hours-workers)

If you need a version of this document in a more accessible format, please email [holidayentitlementconsultation@beis.gov.uk](mailto:holidayentitlementconsultation@beis.gov.uk). Please tell us what format you need. It will help us if you say what assistive technology you use.