

workSMART

Know Your Rights

www.worksmart.org.uk

Thanks to trade union campaigning, legal holiday rights and rules on rest breaks are getting better. This booklet explains how.

Paid holidays and rest breaks at work

TUC 



Holiday rights are getting better.

Thanks to European rules, we have enjoyed guaranteed paid holidays since 1998.

Now trade union arguments have convinced the Government to do even better than the European minimum.

This is a real gain for millions of people, who are not lucky enough to have an employer that provides more than the legal minimum.

Because employers can count public holidays (like Christmas Day) as part of someone's paid holiday some workers were left with as little as 12 days' leave. The new rules will stop workers losing out.

In future, full-time workers will enjoy the European minimum of four weeks' paid holiday and also get days off equal to the number of public holidays – a further eight days.

The new rules come in two stages adding four days from 1 October 2007, with a further four days added on 1 April 2009.

It is important to understand that this is not an automatic right to take public holidays as paid leave. If you had to work on Christmas Day before, you probably will still have to. But it does mean that you will get an extra day off on top of the previous minimum to make up for working on a public holiday.

Those who work less than the traditional five full days a week enjoy these rights in proportion. The new rules are best understood in the following way:

- From 1 October 2007 the legal minimum paid leave entitlement will increase to 4.8 weeks per year.
- On 1 April 2009 there will be a further increase to 5.6 weeks.



Who is entitled to paid annual leave?

The minimum leave entitlement applies to employees (including part-time and temporary workers), most agency workers and freelancers and some self-employed people who are not really running a business, such as those who become self-employed for tax purposes. Although this is the vast majority of people at work, if you have any doubts about your status then you should seek further advice. Places where you can get help are listed at the end of this booklet.

Scottish agricultural workers are covered by separate rules and must already get at least five weeks' paid leave per year.

How many days leave will workers get?

You can work out how many days off you should get from 1 October 2007 by multiplying the number of days you work each week by 4.8.

So workers who are contracted to work five days a week must get at least 24 days off a year (5×4.8) including public holidays.

If you are contracted to work three days a week then your new leave entitlement will be 14.4 days off a year (3×4.8).

From 1 April 2009, you multiply your working week by 5.6, so five-day-a-week workers will then enjoy 28 days.

If you currently work six days a week you should already be entitled to 24 days. This however will remain a maximum entitlement until 1 April 2009, so you will not get an increase in your time off until then, when the maximum rises to 28 days.



Working out your leave entitlement

Working out the leave entitlement is a very simple calculation for those whose leave year starts on 1 October.

But not everyone has their leave calculated from October to October. If the new rules come into force during your leave year, you will still get a boost to your minimum entitlement.

Your extra leave will depend on how much of your leave year falls after the change date. If you have an April to April leave year, for example, half your leave year falls after 1 October and therefore you will get half of your full extra entitlement. For a five-day-a-week worker this would be an extra two days.

Those whose leave years start on 1 January will get one quarter of the extra entitlement in the leave year that ends on 31 December 2007, which gives them 4.2 weeks, which is 21 days for a five-day-a-week worker (see ready-reckoner below).

There are no rules on how employers should deal with part days, so they could insist that a worker takes, say 0.73 of a day's leave.

However, the TUC's strong advice is that it would be more sensible for an employer simply to round up entitlements to the nearest half-day. A cost of the small extra increase in entitlements is likely to be outweighed by the benefit of having a simple system that is easy to understand and to monitor.

Ready-reckoner for new leave rights (inclusive of public holidays)

| Leave year start | 2006-07 | 2007-08 | 2008-09 | 2009-10 |
|------------------|------------|------------|------------|-----------|
| 1 November | 4.07 weeks | 4.8 weeks | 5.27 weeks | 5.6 weeks |
| 1 December | 4.13 weeks | 4.8 weeks | 5.33 weeks | 5.6 weeks |
| | 2007 | 2008 | 2009 | 2010 |
| 1 January | 4.2 weeks | 4.8 weeks | 5.4 weeks | 5.6 weeks |
| | 2007-08 | 2008-09 | 2009-10 | 2010 |
| 1 February | 4.27 weeks | 4.8 weeks | 5.47 weeks | 5.6 weeks |
| 1 March | 4.33 weeks | 4.8 weeks | 5.53 weeks | 5.6 weeks |
| 1 April | 4.4 weeks | 4.8 weeks | 5.6 weeks | 5.6 weeks |
| 1 May | 4.47 weeks | 4.87 weeks | 5.6 weeks | 5.6 weeks |
| 1 June | 4.53 weeks | 4.93 weeks | 5.6 weeks | 5.6 weeks |
| 1 July | 4.6 weeks | 5 weeks | 5.6 weeks | 5.6 weeks |
| 1 August | 4.67 weeks | 5.07 weeks | 5.6 weeks | 5.6 weeks |
| 1 September | 4.73 weeks | 5.13 weeks | 5.6 weeks | 5.6 weeks |
| 1 October | 4.8 weeks | 5.2 weeks | 5.6 weeks | 5.6 weeks |



Jobs with irregular work patterns

If you have a job without a regular work pattern, your entitlement is based on your average contracted hours. This will include shift workers, term-time only workers, casual workers and zero-hours contract workers, plus those on annualised hours, four-and-a-half-day weeks and nine-day fortnights.

It will probably be easier in these cases to work out your entitlement in hours. This means once you have worked out the average hours you work each week, you multiply this by 4.8 and get an answer in hours.

Can you carry any unused leave days over into the next year?

The existing four weeks' entitlement must be taken during the leave year.

However, workers will be allowed to carry over just their increased leave entitlement (for example, the extra four

days for a full-time worker) into the next leave year, provided that there is a "relevant agreement" to that effect.

A "relevant agreement" must be a collective bargaining agreement in workplaces where there are unions. However, in non-union workplaces, it can be a formal agreement with representatives elected by the workforce.

Can employers 'buy back' the new leave days?

Employers are not allowed to buy back the existing four weeks' entitlement.

However, you can agree to give up your extra holiday in return for some extra pay, but only until April 2009. After that, everyone must get their full entitlement.

Employers who offer more than the legal minimum will still be able to offer to buy back this extra leave.

Some useful facts about holiday entitlements

- Your holiday rights start on the first day of your job. You do not have to wait before you build up holiday rights.
- Public holidays can still count towards your minimum entitlement (unless your contract of employment says otherwise). What has changed is that your minimum entitlement has gone up.
- The new rules do not create a right to take public holidays as time off, or to be paid a premium rate for working on public holidays. However, most of us do actually get public holidays off because it is specified in our contracts.
- Holiday pay must be your normal rate of pay, excluding most overtime payments. Irregular overtime does not count, but if your contract stipulates that you must work a set amount of overtime each week then this is included.
- Your employer can tell you when to take your leave or can rule out holidays during certain times of year (unless your contract of employment says otherwise.)
- Unless your contract says otherwise, you should give your employer notice of your intention to take leave. This should be at least twice as long as the holiday that you want to take. For example, you should give at least two weeks' notice for a one-week holiday.
- Employers must answer leave requests at least as far in advance as the length of leave requested. For example, they must answer a request for one week's leave at least one week before the leave is due to start.
- When you finish your job during the holiday year your employer must settle up your holiday entitlements. For example, if you leave half way through the year you will have been entitled to half of your normal holiday entitlement. You should get extra pay for any holiday you have not taken, but if you have taken more than your entitlement then the employer may deduct this overpayment from your pay when you leave.
- As the result of cases brought by trade unions, it is no longer legal for an employer to 'roll up' holiday pay by paying a little bit extra throughout the year. Holiday pay must be paid when the holiday is actually taken.
- If you are on statutory maternity or paternity leave you are still entitled to paid annual leave as well.
- However, it is not clear if you still earn paid holidays while you are on sick leave. A trade union case has been referred to the European Courts to decide.

Rest breaks

Thanks to Europe, we have had minimum standards for rest breaks since 1998. Most people are entitled to:

- a break where the working day is longer than six hours
- a rest period of 11 hours every working day
- a rest period of 24 hours once in every seven days.

Following a successful legal case brought by a trade union, employers now have a duty to make sure that you can take your breaks.

Who is entitled to rest breaks?

The minimum rest break entitlements apply to employees (including part-time and temporary workers), most agency workers and freelancers and some self-employed people who are not really running a business, such as those who become self-employed for tax purposes.

However, there are different entitlements for young workers aged 16 and 17, and for some transport workers - see below.





In-work rest breaks

If a worker is required to work for more than six hours at a stretch, they are entitled to a rest break of 20 minutes.

The break should be taken during the work period and not at the beginning or end of it.

"Compensatory rest" for missed breaks

There are also some important jobs where rest breaks can be delayed:

- where continuous service is essential, such as hospitals, prisons, docks, airports, post and telecoms, civil protection, agriculture and utilities
- where there are seasonal peaks, such as tourism, postal services or agriculture
- security and surveillance work to protect people or property
- where the worksite is a long way from home
- mobile workers on trains
- when there is an accident or the risk of an accident.

However, employers must allow missed rest breaks to be taken within a reasonable time period.

Special rules for young workers

Different rules apply to young workers aged 16 and 17. If a young worker is required to work for more than four-and-a-half hours at a stretch, they are entitled to a rest break of 30 minutes.

Special rules for mobile transport workers

Mobile workers who are covered by the Working Time Regulations (such as light goods vehicle and minibus drivers) are excluded from the usual rest break entitlements. Instead, these workers are entitled to 'adequate rest'.

"Adequate rest" means that workers have regular rest periods. These should be sufficiently long and continuous to ensure that fatigue or other irregular working patterns do not cause workers to injure themselves, fellow workers or others, and that they do not damage their health.

Separate regulations that cover both

driving hours and general working time apply to heavier vehicles such as coaches and articulated lorries that are fitted with tachographs.

A 45-minute break must be taken after 4.5 hours driving. No driver must work more than six hours without a break. Those working between six hours and nine hours per day must break for at least 30 minutes, and those working more than nine hours must take at least 45 minutes' break.

Daily rest breaks

Most people are entitled to a rest period of 11 uninterrupted hours between each working day.

Special rules for young workers

A young worker aged 16 or 17 is entitled to a rest period of 12 uninterrupted hours in each 24-hour period in which they work.

Compensatory rest for missed breaks

In certain circumstances breaks can be delayed, as long as compensatory rest is given (see In-Work Rest Breaks section for more details).

Special rules for mobile workers

These workers are entitled to 'adequate rest' (see definition in section on In-Work Rest Breaks).

Special rules for the drivers of large vehicles

These drivers must get at least 11 consecutive hours rest within the 24 hour period in question, calculated from the moment the driver commences work. This may be reduced to nine consecutive hours up to three times a week. Alternatively a split daily rest period can be taken in two periods. The first period must be at least three hours, and the second at least nine hours.



Weekly rest breaks

Most people are entitled to one whole day off a week.

This can be averaged over a two-week period, meaning that workers can take two days off a fortnight.

Special rules for young workers

Young workers aged 16 or 17 are entitled to two days off each week. This cannot be averaged over a two-week period, and should normally be two consecutive days.

If the nature of the job makes it unavoidable, a young worker's weekly time off can be reduced to 36 hours, subject to them receiving compensatory rest.

Compensatory rest for missed breaks

In certain circumstances breaks can be delayed as long as compensatory rest is given (see section on In-Work Rest Breaks for more details).

Special rules for mobile transport workers

These workers are entitled to 'adequate rest' (see section on In-Work Rest Breaks for more details).

Drivers of large vehicles

The weekly rest period is usually at least 45 consecutive hours. However, this can be reduced to a minimum of 36 consecutive hours if taken either where the vehicle is normally based or where the driver is based. If it is taken elsewhere it can be reduced to a minimum of 24 consecutive hours.

If weekly rest breaks are reduced, they must be made up for by an equal period of rest taken in one continuous period before the end of the third week.

More help needed?

Trade unions have worked hard to improve your working time rights. The best way to ensure that you get all your rights at work is to join a union. For example, the average trade union member gets six more days' holiday entitlement than a non-member.

To find out more about joining a union, call the TUC know your rights line 0870 600 4882 or use the union finder at www.worksmart.org.uk

Other useful contacts

- Department for Business Enterprise and Regulatory Reform website: www.berr.gov.uk/employment/holidays/index.html
- ACAS (the Advice, conciliation and Arbitration service) helpline: Monday to Friday 8 am–6 pm: 08457 47 47 47
- Citizens Advice – Your local Citizens Advice Bureau is listed in your phone book, or visit www.citizensadvice.org.uk



Unions today – your friend at work

The rights described in this leaflet – and many others, such as the minimum wage – have been won by union campaigning. Without union help and assistance many workers won't get the full benefit of new rights to work.

Every day unions help thousands of people at work. For example, every year unions win on average over £300m compensation for their members through legal action.

And of course unions help negotiate better pay and conditions, including far better

provisions for family-friendly employment than the legal minimums.

To find out more about joining a union call the TUC *Know Your Rights* line on **0870 800 4 882**.

www.worksmart.org.uk is the one-stop site for everyone at work. The website provides a range of information about working life and your rights at work – whether you are a union member or not. The full text of this leaflet, plus the whole range of rights materials, is on the site – just a click away.



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