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Make Work Pay: holiday pay compliance and enforcement

**Response to Department for Business,
Innovation, Science and Trade
consultation**

About Us

The Trades Union Congress (TUC) is the voice of Britain at work. We represent more than 5.3 million working people in 47 unions across the economy. We campaign for more and better jobs and a better working life for everyone, and we support trade unions to grow and thrive.

Summary

The TUC welcomes this opportunity to respond to the Department for Business, Innovation, Science and Trade consultation on holiday pay compliance and enforcement.

Holiday pay is a fundamental employment right, but too many workers do not get the holiday pay they are entitled to. TUC analysis shows that 1.1 million employees (one in 25 employees) do not receive any holiday pay at all shows that 1.1 million employees (one in 25 employees) do not receive any holiday pay at all.¹ This adds up to £2 billion in lost holiday pay a year. Black and minoritised workers are hardest hit, with 6 per cent of BME employees do not get any paid holiday, compared to 4 per cent of white employees.

The TUC welcomes the introduction of state enforcement of holiday pay through the Fair Work Agency. The current system, which relies on individual tribunal claims, has failed to prevent widespread non-compliance. Enforcement by the Fair Work Agency should remove some of the barriers workers face when seeking redress, improve access to justice and prevent unscrupulous employers undercutting those who comply with the law.

Combining holiday pay enforcement with enforcement of the minimum wage and other employment rights is important because workers at risk of holiday pay underpayment are often low-paid and vulnerable to other exploitation. State enforcement of holiday pay will also serve to bring the UK more in line with international practice.

Effective enforcement will, however, depend on the Fair Work Agency having sufficient resources, staffing and a visible presence across the country. The new measures will mean the Fair Work Agency will be investigating statutory breaches only. Any further targeting due to lack of resources carries risks. For effective deterrence, all employers must believe that they could be investigated and penalised. Similarly, all workers must have confidence that the Fair Work Agency can enforce their statutory rights.

The Fair Work Agency should use the full range of its powers, from supporting compliance to more punitive enforcement action. Guidance and employer education can help prevent and correct genuine mistakes, but the overall approach must also

¹ TUC (2024). "Workers cheated out of £2bn of holiday pay". www.tuc.org.uk/news/workers-cheated-out-ps2bn-holiday-pay-last-year-under-tories

create a strong deterrent. This is especially important as the Fair Work Agency won't have the resources to investigate every employer.

The TUC welcomes the proposal to set penalties at 200 per cent of the underpayment. This approach reduces the risk that employers will treat fines as an acceptable cost of doing business and brings holiday pay enforcement into line with the minimum wage regime. Calculating the penalty as a percentage of the underpayment also means that its value rises automatically as pay rates in the labour market increase over time.

A minimum penalty is important because it ensures that even small underpayments carry meaningful consequences. These underpayments can still cause real harm to low-paid workers, and a substantial minimum penalty signals that the government takes all non-compliance seriously.

We support aligning the minimum penalty with the minimum wage regime, but the flat £100 amount should be reviewed in both systems. When introduced in 2009, £100 was equivalent to more than 17 hours' pay at the minimum wage. Today, it represents just over eight hours. This erosion has significantly weakened the punitive and deterrent effect of the penalty for smaller underpayments. Uprating the minimum fine by inflation alone would take it to around £160.

Setting the maximum penalty at £20,000 per worker would further align holiday pay enforcement with the minimum wage regime. However, there is a strong case for reviewing the limit in both systems. The £20,000 maximum has applied to minimum wage cases since 2014 and has been substantially eroded by inflation. Had it been uprated in line with inflation, as many benefits are, it would have approached £30,000 by April 2026. The government should therefore monitor whether the maximum remains sufficient to deter large employers.

Both the minimum and maximum penalties should be uprated regularly using a transparent methodology. Leaving them unchanged for long periods steadily erodes their real value and weakens their punitive and deterrent effect.

The Fair Work Agency should also name and shame employers who breach holiday pay laws as this increases the deterrent factor and is consistent with minimum wage enforcement. The naming and shaming policy regularly gets media coverage, draws attention to enforcement, and ensures that non-compliance carries reputational as well as financial consequences.

The claim reference periods should be no shorter than six years. This is in line with minimum wage enforcement, and consistent with record-keeping requirements. Workers might only uncover underpayments years later, and investigations of employers could uncover historic underpayments affecting many workers. The period should be kept under review to ensure that it does not unduly restrict the arrears workers can recover.

Enforcement must ensure that holiday pay reflects workers' normal remuneration, not merely basic pay, so that no worker is financially worse off for taking annual leave. Unions report that some employers still calculate average holiday pay incorrectly.

The Fair Work Agency's approach to holiday pay should proactively cover seafarers' holiday pay. Given the enforcement challenges for seafarers, it should work with the Maritime and Coastguard Agency to ensure seafarers can assert their rights.

Finally, trade unions will play an important role in reporting suspected breaches and sharing intelligence. They have a presence in workplaces across the country. To encourage effective third-party complaints, the Fair Work Agency should provide unions and other complainants with appropriate updates on the progress and outcome of cases, helping to build confidence in the enforcement system. As the Low Pay Commission has recently emphasised, an effective and widely trusted third-party complaints system is essential.²

PART 1: Approach to holiday pay compliance and enforcement

The TUC welcomes the introduction of state enforcement of holiday pay through the Fair Work Agency. The current model relies too heavily on individual workers identifying underpayments and challenging their employer through lengthy and costly employment tribunals. For many workers, especially those in insecure work, the costs and risks associated with this enforcement route make it impractical to pursue a claim.

This has led to widespread non-compliance. TUC analysis³ shows that 1.1 million employees (1 in 25 employees) do not get any of the paid holiday they are entitled. This adds up to £2 billion in lost holiday pay. Black and minoritised workers are hardest hit – 6 per cent of BME employees do not get any paid holiday, compared to 4 per cent of white employees.

Enforcement by the Fair Work Agency should remove some of the barriers workers face when seeking redress and improve access to justice. Unlike individual tribunal claims, the Fair Work Agency will be able to investigate underpayment across an employer's whole workforce and secure arrears for all breaches. This will help to tackle systematic non-compliance while reducing the burden on individual workers. It will also allow breaches to be investigated over a longer period than the narrow window available for many tribunal claims. It is welcome that holiday pay enforcement will be combined with enforcement of minimum wage and other statutory employment rights, enabling

² Low Pay Commission (2021). *Non-compliance and enforcement of the National Minimum Wage*. <https://www.gov.uk/government/publications/minimum-wage-underpayment-in-2021/non-compliance-and-enforcement-of-the-national-minimum-wage-a-report-by-the-low-pay-commission>

³ TUC (2024) "Workers cheated out of £2bn of holiday pay". www.tuc.org.uk/news/workers-cheated-out-ps2bn-holiday-pay-last-year-under-tories

workers to more easily seek redress for multiple employment law breaches. Improvements in compliance should also help prevent unscrupulous employers undercutting those who comply with the law.

All these benefits will depend, however, on resourcing. Employers must feel there is a credible enforcement regime that has the capacity to investigate them and others. TUC analysis has previously shown that the number of labour market inspectors in the UK falls significantly short of ILO benchmarks. This has contributed to the culture of non-compliance which exists in some parts of the labour market. The success of these new enforcement powers will be directly linked to the level of resourcing and staffing available to the Fair Work Agency.

The TUC supports the Fair Work Agency using the full range of its powers, from supporting compliance to more punitive action. Guidance and employer education can help prevent and correct genuine mistakes, but the overall approach must also create a strong deterrent. The consultation emphasises the benefits of encouraging employers to self-correct before formal investigations begin, which would allow them to avoid any penalties. The TUC is concerned that employers may choose not to comply if they know they only have to pay up when asked and would still avoid penalties. This should not become a mechanism to avoid scrutiny and to make non-compliance effectively penalty-free.

The Fair Work Agency's enforcement should also cover whether statutory holiday pay has been calculated correctly. Workers should receive their normal remuneration during annual leave, rather than basic pay alone, where this would leave them financially worse off for taking leave. Unions report that some employers continue to get holiday pay calculations wrong.

Seafarers face particular barriers to enforcing paid annual leave rights, including work on internationally registered vessels and employment through offshore agencies, with holiday pay often rolled into an overall rate. The Fair Work Agency should cover seafarers' statutory holiday pay and establish joint working arrangements with the Maritime and Coastguard Agency so that the two regulators can coordinate intelligence, investigations and enforcement.

Guidance and information tools are welcome, including calculators, self-assessment tools, worked examples, chat bots, webinars, and online guidance. Government should seek to promote these in all workplaces, working with unions where possible.

PART 2: Policy settings for holiday pay compliance and enforcement

Claim Period

The claim period for holiday pay enforcement should be set no shorter than six years. This is the maximum set out in the Employment Rights Act 2025. It aligns with

minimum wage enforcement and with record keeping requirements. It also allows workers to get redress for underpayments if they are discovered beyond the tribunal claim window, and it allows the Fair Work Agency to enforce payments where it finds evidence of historic non-compliance. The claim period should be kept under review to ensure it isn't unreasonably limiting the holiday pay workers can recover.

Penalties

Penalties are essential for deterrence. If they are set too low or not applied at all, unscrupulous employers will be incentivised to avoid their legal obligations to workers. Employers should not be able to routinely avoid penalties by simply complying when investigated. The Fair Work Agency should take a punitive approach wherever there is a risk of continued non-compliance.

Penalties set at 200 per cent of the underpayment are welcome. This approach reduces the risk that employers will treat fines as an acceptable cost of doing business and brings holiday pay enforcement into line with the minimum wage regime. Calculating the penalty as a percentage of the underpayment also means that its value rises automatically as pay increases.

Maximum penalty

Setting the maximum penalty at £20,000 per worker would align holiday pay enforcement with the minimum wage regime. However, there is a strong case for reviewing the limit in both systems. The £20,000 maximum has applied to minimum wage cases since 2014 and has been substantially eroded by inflation. Had it been uprated in line with inflation, as many benefits are, it would have approached £30,000 by April 2026. The government should therefore monitor whether the maximum remains sufficient to deter large employers.

Minimum penalty

Aligning the minimum penalty with the minimum wage regime is sensible, but the flat £100 amount should also be reviewed in both systems. When introduced in 2009, £100 was equivalent to more than 17 hours' pay at the minimum wage. Today, it represents just over eight hours. This erosion has significantly weakened the penalty's ability to punish and deter smaller underpayments. Uprating the minimum fine by inflation alone would take it to around £160.

Uprating

Both the minimum and maximum penalties should be uprated regularly using a transparent methodology. Leaving them unchanged for long periods steadily erodes their real value and weakens their punitive and deterrent effect.

Targeting

Although some targeting will be necessary, the Fair Work Agency must maintain a credible enforcement presence across the labour market. Its approach should combine

intelligence-led investigations in sectors with a high risk of non-compliance with a reasonable prospect of enforcement for workers in every industry and region. Targeting should help the Fair Work Agency use its resources effectively, but it must not create gaps in which employers believe that breaches are unlikely to be investigated.

The approach outlined in this consultation already limits enforcement to statutory holiday pay. This will exclude many trade union members and other workers who have contractual holiday pay exceeding the minimum. These workers will instead have to rely on tribunals for enforcing their holiday pay.

Further targeting arising from inadequate resources, narrow eligibility criteria or rigid triage processes would risk excluding workers from effective enforcement and allow existing non-compliance to continue. Employers may take advantage if some workers, sectors or types of case are perceived to fall outside the Fair Work Agency's practical reach.

The Fair Work Agency should therefore retain the flexibility to respond to individual complaints, intelligence from trade unions and other third parties, and evidence of wider or repeated breaches. Enforcement should take the form of proactive, targeted investigations alongside reactive investigations based on complaints. All employers must believe that they could be investigated and penalised, while all workers must have confidence that the Fair Work Agency can enforce their statutory rights. This will require sufficient staffing, and a visible national and regional presence.

Trade unions will play an important role in identifying suspected breaches and sharing intelligence with the Fair Work Agency. When a union or another third party submits a complaint, the Agency should provide appropriate updates on the progress and outcome of the case. The lack of feedback under the minimum wage enforcement regime has discouraged third-party complaints and made it difficult for complainants to assess whether their intelligence has led to effective action. As the Low Pay Commission has recently emphasised, an accessible, transparent and widely trusted third-party complaints system is essential to effective enforcement. The complaints process should explain what constitutes actionable intelligence, provide prompt and regular feedback, and allow workers to nominate a third-party representative. This must be accessible to all workers working in the UK, including foreign seafarers working in UK waters.

Cap on arrears

There are significant risks with placing a maximum cap on arrears recoverable through Fair Work Agency enforcement. This would prevent workers who have faced the biggest underpayments from being able to recover the full value of unpaid holiday pay through state enforcement. Rather than push those with larger arrears to tribunal, it may lead to workers abandoning claims. This could create a two-tier system where those who have been underpaid the most are not able to secure what they are owed.

Triage

Any attempts to triage complaints to focus on the lower-paid should be monitored closely. If it becomes clear that some workers cannot secure enforcement through the Fair Work Agency, they will be left in the same position as before, and employers may take advantage of this. There is a risk that non-compliance will continue for those identified as out of scope of the Fair Work Agency. Some level of triage is already baked in as the Fair Work Agency will only focus on statutory holiday pay. This already focuses resources on those likely to be lowest paid.

Geographic targeting

Some level of intelligence-led geographic targeting is welcome, as long as a base level of coverage is maintained everywhere. The Fair Work Agency must be visible and supporting compliance in all parts of the country. The Fair Work Agency should proactively seek intelligence from trade unions in deciding where to target. Proactive targeting of specific areas and industries is necessary to uncover non-compliance, but this should complement reactive investigations based on complaints.

Rolled-up holiday pay

The TUC is concerned about the impact of allowing rolled-up holiday pay for some workers.

Holiday pay is intended to protect workers' health and safety by ensuring they receive adequate rest, relaxation, and recuperation from the demands of work.

The use of rolled-up holiday pay undermines this purpose and there are considerable problems with its use.

Unions report that in sectors such as the creative industries, some employers apply such rolled-up holiday to regular-hours workers.

Others use inconsistent percentages when calculating holiday pay for those workers. Some employers apply 12.07 per cent while others continue to use 10.77 per cent for some workers.

The TUC is concerned that this is leading to underpayment of workers.

On top of this, there are significant risks that rolled-up holiday pay prevents workers taking time off.

Rolled-up holiday pay is received when it is accrued rather than during time off.

This inflates headline pay rates and is easily absorbed into workers' everyday budgeting.

This can lead to workers being unable to afford time off, increasing the risk of fatigue, stress and ill-health.

We would like the FWA to carry out targeted audits of employers using rolled-up holiday pay arrangements. This should examine whether it is being applied to the wages of eligible workers, whether the correct rates are being applied, whether it is

itemised on payslips, whether payments have been calculated on the basis of normal remuneration, including regular overtime and other recurring payments, and whether workers are able to take time off work.