

ANNUAL LEAVE
AND
PUBLIC HOLIDAY
ENTITLEMENTS



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1. Introduction

This document sets out guidelines for health service employers on the granting of annual leave and public holiday entitlements, based on the provisions of the Organisation of Working Time Act, 1997¹ and arrangements which apply generally in the health service.

The Organisation of Working Time Act, 1997 repeals the Holiday (Employees) Act, 1973 and Section 4 of the Worker Protection (Regular Part-Time Employees) Act, 1991. The annual leave and public holiday provisions of the Act came into operation on **30th September, 1997**.

All health service employees are covered by the Act. In the case of agency workers, the party who pays the wages is deemed to be the employer for the purposes of the Act and is responsible for providing the annual leave/public holiday entitlement.

The Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997 define the appropriate rate of remuneration to be granted to various categories of employees for the purposes of annual leave and public holidays. These Regulations came into operation on **8th December, 1997**.

¹ Any reference in this document to the Organisation of Working Time Act, 1997 should not be construed as a definitive interpretation of the legislation.

2. Annual Leave Entitlement

The Organisation of Working Time Act provides for an increase in the statutory annual leave entitlement on a phased basis from the leave year 1997/98 to the leave year 1999/2000. The minimum holiday entitlements for employees who work at least 1,365 hours per year will be increased **from three weeks to four weeks** with pro rata increases for other employees.

Part-time workers start to accrue an entitlement to annual leave on commencement of employment. The transitional arrangements for part-time workers are as follows:

1997 6.4% of hours worked

1998 7.2% of hours worked

1999 8% of hours worked

The majority of full-time health service employees currently receive an annual leave entitlement equal to or in excess of the statutory entitlement. However, there are many part-time staff whose annual leave entitlements will have to be reviewed by reason of this provision.

2.1 Qualifying conditions for the accrual of annual leave

Entitlement to annual leave is based on the number of hours worked in the leave year. When calculating an employee's annual leave entitlement, employers should include overtime hours², time spent on maternity leave or adoptive leave, parental leave, carer's leave, and annual leave and public holidays taken during the calculation period.

² Overtime hours should only be counted where the number of hours worked by the employee falls short of the minimum number of hours specified in the mechanisms set out in section 2.2, and the inclusion of overtime would allow the employee to satisfy the threshold for the appropriate mechanism.

There is no longer a qualifying period nor an hourly threshold for entitlement to annual leave. This means that all part-time employees, regardless of the number of hours they work a week, start to accrue an entitlement to annual leave from the commencement date of their employment.

2.2 Calculating Annual Leave Entitlement

The Act sets out the three mechanisms for calculating statutory annual leave entitlement, which will come into operation on 1st April 1999³.

- 1. Employees who work at least 1,365 hours in the leave year are entitled to the full statutory leave entitlement of four working weeks (unless it is a leave year in which s/he changes employment).**
- 2. If an employee does not work at least 1,365 hours in the leave year, s/he is entitled to one-third of a working week per calendar month that s/he works at least 117 hours.**
- 3. If an employee works less than 117 hours, s/he is entitled to 8% of the hours worked in the leave year, subject to a maximum of four working weeks. (This is the mechanism used for calculating the annual leave entitlement for part-time staff).**

The 'working week' refers to the number of days or hours that the employee normally works in a week. For example, if an employee works four days a week, then his/her entitlement to four weeks' leave is equivalent to 16 days' leave. If an employee works five days a week, then his/her entitlement to four weeks' leave is equivalent to 20 days' leave.

2.3 Computation of a Day's Annual Leave

³ The mechanisms for calculating statutory annual leave entitlement for 1997 and 1998 are different due to the transitional arrangements.

In the case of employees who have varying weekly hours of attendance or who work shifts of varying lengths, annual leave entitlement should be converted into hours. This is calculated by dividing the normal weekly working hours for the grade by 5, and multiplying this figure by the annual leave entitlement for the grade.

e.g. an employee who works a 39 hour week is entitled to 156 hours per annum, i.e. 20 (days) × 7.8 (hours) = 156 hours.

Each time an employee takes annual leave, the number of hours s/he would normally have been rostered to work on the day(s) taken should be aggregated to determine the amount of annual leave taken.

2.4 Accrual of Annual Leave while on Sick Leave

The legislation does not provide for the accrual of annual leave during periods of sick leave (paid or unpaid). However, practice with regard to the accrual of annual leave during paid sick leave varies among health service employers.

It should be noted that an employee who had accrued an entitlement to annual leave prior to going on sick leave is entitled to avail of his/her outstanding leave subsequent to his / her return to work, i.e. annual leave earned should not be forfeited by reason of absence on sick leave.

2.4 (i) Employees ill during annual leave

A day of sickness during holidays which is covered by a medical certificate is not counted as annual leave.

2.5 Annual Leave while on Maternity Leave

Absence on statutory maternity leave cannot be treated as part of an employee's annual leave entitlement. It should also be noted that employees on maternity leave continue to accrue an entitlement to annual leave. However, if an employee avails of the optional eight weeks additional maternity leave, an entitlement to annual leave does not accrue during this period.

2.6 Timing of Annual Leave

The Act stipulates that the onus is on the employer to ensure that employees can avail of their annual leave entitlement in the leave year to which it relates. In exceptional circumstances, annual leave may be carried forward into the first six months of the next annual leave year, provided the employee agrees to defer his/her leave.

It is good practice for line managers to regularly review employees' annual leave records and make every effort to ensure that employees can avail of their outstanding leave in the current leave year. Where an employee cannot take his/her outstanding leave due to service requirements or other exceptional circumstances, s/he may carry this leave over to the following leave year.

The time at which annual leave is taken is at the discretion of the employer, having regard to service requirements and subject to the employee's needs to reconcile work and family responsibilities, and his/her opportunities for rest and recreation. The employer must consult with the employee or his/her representative at least one month before leave is due to commence.

An employee who has worked eight or more months in a leave year is entitled to an unbroken period of two weeks' leave, which may include one or more public holidays.

2.7 Payment in lieu of Annual Leave

Payment in lieu of annual leave is prohibited unless the employment relationship is terminated.

2.8 When must payment for annual leave be made?

Payment in respect of annual leave should be paid in advance of the employee taking leave.

2.9 Payment for Annual Leave

The Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997 provide for payment for annual leave as follows:

Payment for annual leave includes any regular bonus or allowance normally paid to the employee but excludes payment for overtime.

2.9 (i) Employees with fixed weekly remuneration

An employee is entitled to the sum that is paid in respect of the normal weekly working hours last worked by him or her prior to the commencement of annual leave or, as the case may be, the termination of employment.

2.9 (ii) Employees with varying weekly remuneration

An employee is entitled to the sum that is equal to the average weekly pay (*excluding payment for overtime*) of the employee calculated over

the 13 week period ending immediately before annual leave commences or, as the case may be, the contract of employment is terminated,

or

if no time was worked by the employee during that period, the 13 week period ending on the day on which time was last worked by the

employee before the annual leave commences or, as the case may be, the contract of employment is terminated.

Note: The majority of health service employers calculate unsocial hours premium payments for holiday pay purposes for nursing and non-nursing staff in accordance with an arrangement which was agreed by health service employers and unions representing nursing and non-nursing staff, to provide for equity in the calculation of holiday pay. Under this arrangement, premium payments for holiday pay purposes are based on an average of premium earnings (exclusive of overtime), calculated over the 12 month period preceding the annual leave year in which annual leave is being granted. This payment is normally made on an agreed date every year.

c.f. Department of Health Circular S100/412

3. Public Holidays

In respect of each public holiday, an employee's entitlement is as follows:

- a paid day off on the public holiday; or
- a paid day off within a month; or
- an extra day's annual leave; or
- an extra day's pay

as the employer may decide.

Health service employees who work a '5 over 7' roster usually receive nine additional days annual leave in lieu of their liability to work on public holidays.

An employee may, not later than 21 days before a public holiday, request his/her employer to decide on which of the above options will apply in respect of a particular public holiday. The employer must notify the employee accordingly within 14 days of that public holiday. If an employer fails to comply with such a request, the entitlement shall be deemed to be a paid day off on the holiday concerned.

3.1 Qualifying Conditions

Employees, other than those employed on a part-time/casual basis, have an immediate entitlement to public holiday benefits. Part-time/casual employees must have worked at least 40 hours in the 5 weeks ending on the day before the public holiday to qualify for public holiday benefit.

3.2 Payment for a Public Holiday

Payment for public holidays is governed by the Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997⁴. Additionally many employees in the health service receive premium payments in excess of the statutory requirements. The following is a guideline on how the entitlement to public holidays

⁴ The Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997 are extremely complex. This guideline may have to be revised in light of case law or other definitive interpretations which may issue in the future.

may be implemented in the health service in light of both statutory and contractual provisions:

Payment in respect of a public holiday includes any regular bonus or allowance normally paid to the employee but excludes payment for overtime.

3.2 (i) Employees who work or who are normally required to work on the day on which the public holiday falls

- An employee who works a '5 over 7' roster and is scheduled to work on the day on which the public holiday falls is entitled to payment for hours worked plus single time extra for each of those hours. S/he is also entitled to a additional day's annual leave **or** an additional day's pay based on 1/5 of his/her standard working week in respect of his/her statutory entitlement for the public holiday⁵.
- An employee who works a '5 over 7' roster and whose scheduled day off is the day on which the public holiday falls is entitled to his/her pay for the day plus an additional day's annual leave in respect of his/her statutory entitlement to a public holiday.
- An employee who normally works on the day on which the public falls but has the day off by virtue of the fact that it is a public holiday is entitled to his/her normal day's pay.

3.2 (ii) Employees not normally required to work on the day on which the public holiday falls

- An employee who is not normally required to work on the day on which the public holiday falls, (e.g. locum/relief staff and part-time employees who are only rostered to work on particular days), is entitled one-fifth of his/her normal weekly pay. (Such employees must however have worked 40 hours in the 5 weeks ending on the day before the public holiday to qualify for this entitlement.)

3.2 (iii) *Job-Sharers*

In the case of job-sharers who do not work or are not normally required to work on the day on which the public holiday falls, the appropriate rate in respect of the public holiday is the sum that is equal to one-tenth of the sum that is paid in respect of the last 2 weeks of normal working hours worked by the employee before that public holiday.

3.3 *Employees whose contract of employment is terminated prior to the public holiday*

If the employee ceases to be employed during the week ending on the day before a public holiday, having worked during the four weeks preceding that week, s/he is entitled to receive pay for the public holiday on the same basis as set out above.

3.4 *Employees Absent from Work Prior to a Public Holiday*

An employee is not entitled to a public holiday if s/he is absent from work immediately before the holiday for one of the following reasons:

- absence in excess of 52 consecutive weeks by reason of an occupational injury;
- absence in excess of 26 consecutive weeks by reason of an illness or injury (not referred to above);
- absence in excess of 13 consecutive weeks caused by a reason not referred to above but being an absence authorised by the employer, including lay-off;

⁵ Part-time employees who are not covered by the Part-Time Workers Agreements are only entitled to payment for hours worked plus single time extra for each of those hours.

- absence by reason of a strike in the business or industry in which the employee is employed.

An employee who is absent on statutory maternity leave or adoptive leave continues to accrue an entitlement to public holidays.

An employee who is absent from work on sick leave on a public holiday and receives sick pay is not entitled to a day off in lieu of the public holiday.

4. Enforcement Procedures

Any dispute between an employer and an employee on holidays or public holidays can be referred to the Rights Commissioner whose decision can be appealed to the Labour Court for legally binding determination.

5. Records

Employers are obliged to keep records of holidays and public holidays for a minimum period of 3 years. These records must be available for inspection by Labour Inspectors of the Department of Enterprise, Trade and Employment. Records should also be maintained to show as evidence in the event of a Rights Commissioner or Labour Court investigation of an employee's complaint.