

# Average Holiday Pay

## Calculating Holiday Pay - Are you paying the correct amount?

Working Time Regulations refers to the ERA 1996 for the calculation of a week's pay.

Case law has expanded upon the elements of pay which must be included when calculating 'basic pay'. Statutory holiday should be paid at the same rate as a normal working day.

So, what about overtime payments? If it is normal working practice for an employee to work extra hours and receive additional pay, then this must be reflected in their holiday pay.

It is the employer's responsibility to ensure that the employee does not lose out.

**Contractual/Guaranteed Overtime:** If an employee is contracted to 35 hours normal rate plus 10 hours overtime per week, their holiday pay should include these 10 hours.

**Non-Contractual Overtime:** If an employee works extra hours on a regular basis but is not stated in their contract, this should be reflected in the holiday pay too.

If the overtime hours vary from week to week then the procedure to calculate an average week using the previous 12 weeks' pay should be implemented.

Total monetary value of 12 weeks / 12 = Average weekly pay.

**NB. Other intrinsically linked payments such as shift allowance, travel allowance & commission should also be included in the average pay calculation.**

## Recent Holiday pay case

See Willetts V Dudley 2017 Metropolitan Borough Council. The employees usual pay was made up of on call payments and voluntary overtime. It was intrinsically linked even though it was voluntary. If this happens regularly over a long period of time, it supports the case for 'normal pay', for further information please visit <https://www.personneltoday.com/hr/holiday-pay-regular-voluntary-overtime-included-confirms-eat/>

ACAS have revised their guidance and now state:

All types of overtime, including voluntary overtime, must be included when calculating a worker's statutory holiday pay entitlement. Only overtime that is worked on a genuinely occasional and infrequent basis is exempt.


## Points for consideration by the employer

- Office Closure: If an employee is required to take some of their statutory leave during a Christmas shut down for example, it must be stated in their contract of employment.

Continued overleaf

We welcome the opportunity to help you find solutions to your challenges and explore business opportunities.

 [mooreandsmalley.co.uk](http://mooreandsmalley.co.uk)

 @MooreandSmalley

 Offices in: Preston, Blackpool, East Midlands, Kendal, Kirkby Lonsdale, Lancaster, Liverpool, Manchester and Southport

 An independent member of  
**bakertilly**  
INTERNATIONAL



If you would like to discuss this in further detail, please get in touch with our friendly advisor below.

## Contact Us

Tracey Simpson  
Payroll Services Director



T: 01772 821 021

E: [tracey.simpson@mooreandsmalley.co.uk](mailto:tracey.simpson@mooreandsmalley.co.uk)

[mooreandsmalley.co.uk](http://mooreandsmalley.co.uk)

- Time off: Employees must have taken at least 4 weeks break, away from work, throughout the year.
- Payments: Statutory leave must be taken; an employee must not be paid in lieu of statutory leave.
- Termination: Only when employment ends can the employee receive the cash value. If an employee has taken too many holidays the employer may recover those days. It is only legal to do this if the employer has sufficient evidence and it must be stated in the employee's contract.
- Employment Status: Self-employed, or are they? Be aware that if a self-employed worker has been turning up to work for the same company, using the same desk for three years, they may be classed as a worker and therefore become entitled to take statutory leave. For more information on employment status please visit: <https://www.gov.uk/employment-status>
- Absent Workers: (i.e. Sick leave, maternity leave) If an employee has built up a considerable amount of holiday entitlement due to being on statutory leave, they must be allowed to be carried over to the next holiday year. These must be taken within 18 months of the holiday year end date.

To avoid employees building up high amounts of holiday entitlement encourage them to take these holidays at either the beginning or the end of the leave.

Moore and Smalley LLP is a limited liability partnership that is registered in England and Wales under registration number OC313896 whose registered office is Richard House, 9 Winckley Square, Preston, Lancashire, PR1 3HP. The term "partner" indicates a member of the LLP who is not in partnership for the purposes of the Partnership Act 1890 and a list of members is available from the registered office. The LLP trades as MHA Moore and Smalley and is registered to carry on audit work in the UK by The Institute of Chartered Accountants in England and Wales and is authorised and regulated by the Financial Conduct Authority. Moore and Smalley LLP trading as MHA Moore and Smalley is a member of MHA, an independent member of Baker Tilly International Limited, the members of which are separate and independent legal entities. Baker Tilly International Limited is an English company. Baker Tilly International provides no professional services to clients. Each member firm is a separate and independent legal entity, and each describes itself as such. Moore and Smalley LLP is not Baker Tilly International's agent and does not have the authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, Moore and Smalley LLP, nor any of the other member firms of Baker Tilly International has any liability for each other's acts or omissions. Arrandco Investments Limited is the registered owner of the UK trade mark for the name Baker Tilly. The associated logo is used under licence from Baker Tilly International Limited. Moore and Smalley C.A. Limited is a limited company that is registered in England and Wales under company number 5373155. Its directors are Deborah Wood FCA and Christine Wilson FCA and its registered office is Richard House, 9 Winckley Square, Preston, Lancashire, PR1 3HP. Moore and Smalley C.A. Limited is a wholly owned subsidiary of Moore and Smalley LLP and trades as MHA Moore and Smalley. Moore and Smalley LLP (Black-pool) is a member of AISMA, Association of Independent Specialist Medical Accountants. Moore and Smalley C.A. Limited (Nottingham) is a member of AISMA, Association of Independent Specialist Medical Accountants.