

HOW TO GUIDE

ANNUAL LEAVE





INTRODUCTION

This document is a guide for employers to explain some rules in relation to annual leave. It also explains how to calculate annual leave for part time employees or for part of the year.



Please note the content of this How To Guide does not constitute legal advice. It is only a guide. Should you require legal advice, please contact us via email or telephone and we will respond to you personally with the most suitable and robust advice for you and your business.

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✉ E-mail: enquiries@elslegal.co.uk

☎ Telephone: 01270 781006

IF YOU SEE...

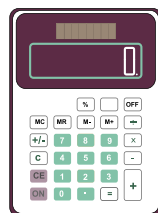
RED FLAG

! We have identified specific areas of concern for you so **please take our advice at that stage.**

TOP TIP



On top of the advice set out within this document, additional 'Top Tips' have been added.



Calculating annual leave can be complex, we have developed a calculator and tracking system to help you with this. **Contact us to receive our tracker.**

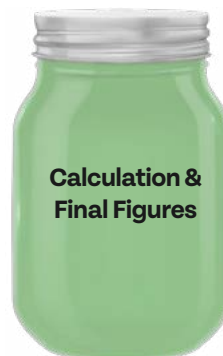
These pots indicate



Contracted Annual Leave



Annual Leave in Days



Calculation & Final Figures



STAFF ENTITLEMENTS

01



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Employees and workers are entitled to the statutory minimum amount of annual leave. The minimum is 5.6 weeks annual leave.

For full time staff who work 5 days a week their minimum entitlement is 28 days inclusive of the 8 usual public holidays.

You can offer an enhanced amount of leave and this can be a good way of attracting the right candidates, particularly for more senior positions.

TOP TIP



Additional leave can be a useful way of rewarding long term staff for their dedication and loyalty. Please seek advice as you will need to have properly drafted terms and conditions relating to this.

ANNUAL LEAVE RULES



1 | Timing

When requesting time off, employees must give the same amount of notice as the duration of leave.

You can refuse a request if it does not suit business needs.

You can cancel an approved annual leave request but you must provide the same amount of cancellation notice as the duration of leave. Be aware that if you cancel annual leave there can be a detrimental impact on staff morale.

RED FLAG

! You can prohibit annual leave from being taken at certain parts of the year but this may carry a risk of indirect discrimination. **Seek advice** to ensure that you could defend any potential indirect discrimination claim.



2 | Time away from work

The purpose of annual leave is for the employee to have an uninterrupted rest period away from work. They should not be contacted when on annual leave and are entitled to use their time at their own leisure.

3 | Rolled-up holiday pay

Making a payment to an employee for annual leave that they did not take was deemed unlawful in 2006.

RED FLAG

! If you roll up annual leave pay into your worker's normal pay **please seek advice** to rectify this.





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4 | Ordering it to be taken

You can instruct your staff to use annual leave. In order to do so you must provide double the amount of notice as the duration of leave. You should only really instruct staff to take leave if an employee has accrued a backlog of leave.

5 | Payment in lieu

Where a worker's contract is terminated (by either part) any untaken accrued annual leave should be paid in lieu in the final pay. It may be that some or all of the remaining leave can be taken in the notice period so it is worth checking the contractual terms.

6 | Carrying over annual leave

The general principle with annual leave is **"use it or lose it"**!

Untaken annual leave is lost at the end of the holiday year unless:

i) Long Term Sickness has prevented the leave from being taken.

RED FLAG

! This only applies to 4 weeks annual leave per year not 5.6 weeks.

ii) Maternity, Shared Parental Leave or Adoption Leave has prevented the leave from being taken.

iii) Furlough leave meant that it was not practicable for all the annual leave to be taken in 2020.

RED FLAG

! This only applies to 4 weeks annual leave per year not 5.6 weeks.

iv) Agreement between the parties enables leave to be carried over into the following year.

RED FLAG

! There may be potential issues if you agree to carry over a large amount of leave, so **please contact us.**



CALCULATIONS

- FULL ANNUAL LEAVE YEAR WORKED

TOP TIP



All annual leave calculations should be in weeks and then converted to days. Calculations should not be calculated in hours. Please call us for a more detailed explanation if necessary.

TOP TIP



All public holidays should be included in the calculations. Do not split them off from the full 'pot' of annual leave. Once you have completed the calculations you can determine which days are pre-assigned to public holidays if you are closed and it is a normal working day for that employee.



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FULL TIME STAFF

Where a full time staff member is due to work the full year, they will be entitled to their full pot of annual leave. Unless their contract of employment entitles them to more, it will be 5.6 weeks per annum.

Sadie



For example, Sadie is contracted to 5.6 weeks annual leave per annum. She works 5 days a week on: Monday, Tuesday, Thursday, Friday, Saturday.

Sadie's Contracted Annual Leave Pot:

5.6 weeks
annual leave
'in the pot'

The Total Annual Leave Pot in Days:

$5.6 \times 5 =$
28 days
annual leave
'in the pot'

5.6 weeks can be substituted with your contractual entitlement if you offer more than statutory minimum

EQUATION

This converts to **28 days:**
 $5.6 \text{ (weeks)} \times 5 \text{ (days worked per week)}$

If your contract of employment states an entitlement in days you can start with the red pot. Substitute this number for the contractual entitlement.



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You then need to consider how many of the 28 days are preassigned to the usual public holidays that year. Remember, that Sadie works: Monday, Tuesday, Thursday, Friday, Saturday.

Public Holidays in 2021:

- Friday 1 January
- Friday 2 April
- Monday 5 April
- Monday 3 May
- Monday 31 May
- Monday 30 August
- Monday 27 December
- Tuesday 28 December

If you are closed on these days and they are Sadie's normal work days, she will take them as annual leave. So 8 public holidays can be preassigned as annual leave.

28 days annual leave 'in the pot'

minus 8 days preassigned to public holidays

=

20 days for Sadie to book when she wants

Or if you are open and want her to work some public holidays such as

28 days annual leave 'in the pot'

minus 3 days preassigned to public holidays

=

25 days for Sadie to book when she wants

Public Holidays on her working days in 2021:

- Friday 1 January CLOSED
- **Friday 2 April OPEN, Sadie working**
- **Monday 5 April OPEN, Sadie working**
- **Monday 3 May OPEN, Sadie working**
- **Monday 31 May OPEN, Sadie working**
- **Monday 30 August OPEN, Sadie working**
- Monday 27 December CLOSED
- Tuesday 28 December CLOSED

Required to work on 5 public holidays, closed for 3. 3 days preassigned to public holidays

These calculations can be converted through future years using the same methods displayed in this guide.

PART TIME STAFF

Part time employees are entitled to the pro-rata equivalent as full-time employees in the same position. There should be no less favourable treatment because they are part time.

Sharma



For example, Sharma is contracted to 5.6 weeks leave per annum. She works 3 days a week on: Monday, Tuesday, Wednesday

Sharma's Contracted Annual Leave Pot:

5.6 weeks annual leave 'in the pot'

The Total Annual Leave Pot in Days:

$5.6 \times 3 =$
17 days annual leave 'in the pot'

5.6 weeks can be substituted with your contractual entitlement if you offer more than statutory minimum

RED FLAG

! Always round up to the nearest half day

EQUATION

This converts to **17 days:**
 $5.6 \text{ (weeks)} \times 3 \text{ (days worked per week)}$

If your contract of employment states an entitlement in days you can start with the red pot. Substitute this number for the contractual entitlement.



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You then need to consider how many of the 17 days are preassigned to the usual public holidays that year. Remember, that Sharma works: Monday, Tuesday, Wednesday

Public Holidays in 2021:

- Monday 5 April
- Monday 3 May
- Monday 31 May
- Monday 30 August
- Monday 27 December
- Tuesday 28 December

If you are closed on these days and they are Sharma's normal work days, she will take them as annual leave. So 6 public holidays can be preassigned as annual leave.

17 days annual leave 'in the pot'

minus 6 days preassigned to public holidays

=

11 days for Sharma to book when she wants

Or if you are open and want her to work some public holidays such as

17 days annual leave 'in the pot'

minus 2 days preassigned to public holidays

=

15 days for Sharma to book when she wants

Public Holidays on her working days in 2021:

- Monday 5 April OPEN, Sharma working
- Monday 3 May OPEN, Sharma working
- Monday 31 May OPEN, Sharma working
- Monday 30 August OPEN, Sharma working
- Monday 27 December CLOSED
- Tuesday 28 December CLOSED

Required to work on 4 public holidays, closed for 2. 2 days preassigned to public holidays

These calculations can be converted through future years using the same methods displayed in this guide.

CALCULATIONS

- PART ANNUAL LEAVE YEAR WORKED



Calculate the 'annual pot' for a full year indicated by the red pot, considering if they are full time or part time staff.



Using the example from the previous page: **Sharma is entitled to 17 days annual leave**



Calculate how much of the annual leave year has passed.

Count the number of days either:

For new starters

- between the start of employment and the last day of the annual leave year

For Leavers

- between the start of the annual leave year and the last day of employment

Using the same example, Sharma.

Your annual leave year runs from 1 January – 31 December.
Sharma is leaving employment on 8 July.



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Work out the accrued leave for that proportion of the year.

As worked out in step 2



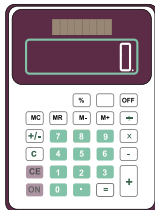
DIVIDED BY

Always stays the same but use 366 for a leap year



X

As per the red pots throughout this guide



6.9 DAYS ANNUAL LEAVE IN THE POT FOR THE PART OF THE YEAR WORKED 1 JANUARY - 8 JULY.

RED FLAG

! Always round up to the nearest half day

7 DAYS ANNUAL LEAVE IN THE POT FOR THE PART OF THE YEAR WORKED

From the 7 days, you need to deduct any annual leave days already taken or bank holidays when closed which fell on her normal working day.

RED FLAG

! If your employee is changing hours/days part way through year.



ZERO OR VARIABLE HOURS WORKERS



VARIABLE OR ZERO HOURS

Where a worker has irregular or variable hours you should calculate the number of hours worked and multiply them by 12.07%.

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You can use hours in this instance.

Case Study – Sally

Sally works irregular hours, her working pattern for weeks 1 – 4 was

Week 1 – 8 hours worked
Week 2 – 4 hours worked
Week 3 – 0 hours worked
Week 4 – 2 hours worked

The total number of hours worked is 14.

14 x 12.07% = 1.6 hours annual leave.

When the worker has used their entitlement the calculation starts again. If Sally has taken her 1.6 hours annual leave, the calculation starts again.

In weeks 5 – 8 Sally worked the following hours

Week 5 – 3 hours worked
Week 6 – 13 hours worked
Week 7 – 12 hours worked
Week 8 – 4 hours worked

Total hours worked for weeks 5 – 8 was 32 hours.

32 x 12.07% = 3.86 hours.

RED FLAG

- ⚠ Please be careful with zero hours contracts where a pattern of regular work emerges. **We'd love to chat this through and help protect you.**

NOTES



EMPLOYMENT LAW
SOLUTIONS

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