

Royal College of Nursing consultation response: Calculating holiday entitlement for part-year and irregular hours workers.

With a membership of around half a million registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

Summary

The RCN appreciates the opportunity to respond to the Department for Business, Energy and Industrial Strategy consultation on calculating holiday entitlement for part-year and irregular hours workers. The RCN welcomes the Supreme Court judgement on Harpur Trust v Brazel and the government's proposed responses.

Consultation response

- 1. Do you agree that including weeks without work in a holiday entitlement reference period would be the fairest way to calculate holiday entitlement for a worker with irregular hours and part-year workers?**
 - 1.1. The RCN is concerned that including weeks without work will in practice reduce the paid holiday entitlement for term time workers and employees who work flexibly by having some weeks in the year without work. This will impact families disproportionately as this working arrangement will appeal more to people who have families and is likely to have a disproportionate impact on women who are more likely to do part year working to fit in with caring responsibilities.
 - 1.2. There may be other "weeks without work" which could impact on all workers (not just those who work part of the year). This could be due to sickness absence, suspension, maternity, paternity and adoption leave, industrial action, lay-offs, unpaid parental leave and other unpaid leave. If a straight 52 week reference period is used the loss of earnings for people who have unplanned periods of unpaid leave would further exacerbate their financial loss. This would have a disproportionate impact on people with families, carers, and people with disabilities.
 - 1.3. Although superficially straightforward, to avoid the impacts set out in 1.2 (above), the reference period for holiday entitlement will have to have a more detailed definition than just a set period of time thereby replacing the current method of calculating holiday entitlement based on working weeks with something more complicated.

- 2. Would you agree that a fixed holiday entitlement reference period would make it easier to calculate holiday entitlement for workers with irregular hours?**
- 2.1. The RCN agrees that a fixed holiday entitlement reference period would make it easier for employees and employers to calculate holiday entitlement for workers with irregular hours.
 - 2.2. Whilst having a fixed 'pot' of holiday entitlement facilitates better planning and can help in holiday time being taken at times which maximise genuine rest and recuperation, this could cause problems if hours are significantly increased or reduced.
 - 2.3. Using the previous 52 weeks as the holiday reference period will mean in some cases an employee may find themselves being expected to work longer hours one year and not have the proportionate annual leave until the following year.
 - 2.4. Equally this may disincentivise an employer from agreeing an employee's request to reduce hours, knowing that they will still be entitled to annual leave based on the longer hours they worked the previous year.
 - 2.5. Unless there is provision in the worker's final pay for some financial adjustments to reflect this a worker will be at a detriment if their employment ends after a year when their hours increased but they weren't given the corresponding annual leave as their employment ended before they got the benefit of it.
 - 2.6. This approach also presents clear issues for workers in the first year of employment. Additional measures are therefore required, see section 3.
- 3. Do you agree that accruing holiday entitlement at the end of each month based on the hours worked during that month would be the fairest way to calculate holiday entitlement for workers on irregular hours in their first year of employment?**
- 3.1. The RCN agrees that that accruing holiday entitlement at the end of each month based on the hours worked during that month would be the fairest way to calculate holiday entitlement for workers on irregular hours in their first year of employment.
 - 3.2. The RCN disagrees that giving employers discretion to allow workers more holiday than they have accrued does not solve the problem. Many employers would not exercise discretion in a manner that facilitates rest and recuperation of their worker. This RCN believes there should be a mechanism whereby workers on irregular hours should be able to plan annual leave in their first year of employment to ensure the health, safety and wellbeing of workers at work.
 - 3.3. Similarly, provision should be made available for workers who are predicted to work significantly greater hours for limited set periods. For example, a worker's hours could be irregular for 10 months of the year. However, for 2 months of the year, the worker's hours are predicted to increase significantly. The ability to

access more holiday than has been accrued in such circumstances is necessary to maintain the health, safety and wellbeing of workers at work.

3.4. A solution to this could be a statutory right for workers to carry forward untaken annual leave from the first to the second year of employment.

4. Would you agree that using a flat average working day would make it easier to calculate how much holiday a worker with irregular hours uses when they take a day off?

4.1. The RCN agrees that using a flat average working day would make it easier to calculate how much holiday a worker with irregular hours uses when they take a day off.

4.2. This approach provides for a clear and standard approach to the calculation of holiday pay. Such an approach removes the financial incentive to request particular days which offer a financial incentive as opposed to allowing time for rest and recuperation.

5. Would you agree that calculating agency workers' holiday entitlement as 12.07% of their hours worked at the end of each month whilst on assignment would make it easier to calculate their holiday entitlement and holiday pay?

5.1. Yes

The RCN is the voice of nursing across the UK and the largest professional union of nursing staff in the world. For further information, please contact:

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