

Consultation on holiday entitlement – part-year and irregular workers

13 January 2023  Sarah Hooton

Last year's Supreme Court decision in *Harpur Trust v Brazel* in respect of holiday pay for workers who are employed for all of a year but who only work for part of it (part-year workers) highlighted the discrepancies (and potential unfairness) that can arise as a result of the current statutory method for calculating holiday entitlement and pay.

The Government has now issued a consultation, not directly on reforms to holiday pay calculations but rather in respect of holiday entitlement. The Government is seeking views on whether the 5.6 weeks' statutory entitlement should remain for part-year and irregular workers, or whether there should be the ability to pro-rate this entitlement to reflect the number of weeks actually worked. This would then bring part-year workers in line with the approach taken for full-year part-time workers.

The Government is proposing that holiday entitlement for part-year and irregular workers be calculated by adding up all hours worked over the previous 52 weeks (including any weeks where no work is undertaken) and then multiplying this by 12.07% to give a pro-rated holiday entitlement, expressed as a number of hours. It is proposed that this exercise would be carried out once at the start of each holiday year (rather than every time holiday is taken), save for the first year of employment where holiday would accrue each month. For those who work irregular hours, there are also proposals for how to calculate how much holiday is used every time a day off is taken.

The proposals would not, however, remove the need to carry out the averaging calculations required to calculate holiday pay for those with irregular hours nor those with normal hours where remuneration varies according to the time of work each time holiday is taken.

The consultation will close on 9 March 2023. If you would like to respond to this consultation, a link to it can be found [here](#). This includes details for how to respond at page 6.

Holiday pay (and entitlement) is still in scope to be affected by the sunseting of EU-retained law if the Retained EU Law (Revocation and Reform) Bill is passed. Whilst it seems highly unlikely that there would be a wholesale removal of these rights, this consultation may well be the first step in enabling "tweaks" to be made to simplify or streamline holiday rights and pay.

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