
**ORGANISATION OF WORKING
TIME ACT, 1997**



**Explanatory Booklet on Holidays and Public Holidays
for Employers and Employees**

Web: www.entemp.ie

Issued by
Department of Enterprise, Trade and Employment

Organisation of Working Time Act, 1997
(Holidays and Public Holidays)
Explanatory Booklet for Employers and Employees

This booklet gives general guidance to employers and employees on the holidays and public holidays provisions of the Act and is not a legal interpretation. Its purpose is to present in non-legal language an outline of the rights and obligations under the Act.

In the case of doubt of where further information is required please refer to the Act or contact:

The National Employment Rights Authority (NERA).
Locall 1890 80 80 90
www.employmentrights.ie

Copies of this booklet and other information on the Act may be obtained from the Information Unit.

Other useful telephone numbers:

Rights Commissioner Service	01 - 6136700, Lo-Call 1890 220 227
Labour Court	01 - 6136666, Lo-Call 1890 220 228
Labour Relations Commission	01 - 6136700, Lo-Call 1890 220 227
Employment Appeals Tribunal	01 - 6312121, Lo-Call 1890 220 222

Note: The Lo-Call numbers may be used by callers from outside the 01 area.

Web: www.entemp.ie

Department of Enterprise, Trade and Employment, Dublin 2.

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ORGANISATION OF WORKING TIME ACT, 1997

1. INTRODUCTION AND SCOPE

- 1.1 The Organisation of Working Time Act, 1997 sets out statutory rights for employees in respect of rest, maximum working time and holidays. It repeals the Holidays (Employees) Act, 1973 and Section 4 of the Worker Protection (Regular Part-Time Employees) Act, 1991. The Organisation of Working Time Act now provides minimum legally enforceable entitlements for all employees to holidays and public holidays.
- 1.2 The new holidays and public holidays provisions came into operation on 30th September, 1997.

Who has holiday and public holiday entitlements under the Act?

- 1.3 In general, the Act applies to any person
- working under a contract of employment or apprenticeship
 - employed through an employment agency or
 - in the service of the State (excluding members of the Garda Síochána and the Defence Forces but including civil servants and employees of any local authority, health board, harbour authority or vocational education committee).
- 1.4 In the case of agency workers, the party who pays the wages (employment agency or client company) is the employer for the purposes of this Act and is responsible for providing the holidays/public holiday entitlement.

2. HOLIDAYS

Qualifying Conditions

- 2.1 There is now no qualifying period for holidays and all employees, regardless of status or service, qualify for paid holidays. All time worked qualifies for paid holiday time.

Holiday Entitlements

- 2.2 Depending on time worked, employees' holiday entitlements should be calculated by one of the following methods:-
- a) 4 working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which he or she changes employment).
 - b) $\frac{1}{3}$ of a working week per calendar month that the employee works at least 117 hours.
 - c) 8% of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks).

If more than one of the preceding methods at (a), (b) or (c) above is applicable, the employee shall be entitled to whichever method provides the greater entitlement. However the maximum statutory annual leave entitlement of an employee in a leave year is four of his/her normal working weeks.

Examples:

- (a) *4 working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which he or she changes employment).*

An employee works **five days** per week at 40 hours per week. At the end of the ninth month of the leave year the employer calculates that the employee has worked 1440 hours. Since the employee has worked at least 1365 hours in that leave year, the employer is aware that the employee has accrued four working weeks of paid annual leave for that leave year, which in this case is 20 days paid annual leave i.e. **five days x 4 = 20** days paid annual leave.

An employee is absent from work due to sick leave for a period of two months. The employee's normal working week is **six days per week** – this does not include overtime. The employee worked a total of 1600 hours in the remaining ten months of the leave year. Since the employee worked at least 1365 hours in the leave year, he/she will be entitled to four working weeks of paid annual leave for that leave year, which in this case is 24 days of paid annual leave i.e. **6 days x 4 = 24** days paid annual leave. However, if it is a leave year in which the employee changed employment, he/she will only be entitled to the amount of annual leave that he/she accrued during the months worked (one third of a working week per month worked or 8% of all hours worked, whichever is greater).

- (b) *One third of a working week per calendar month that the employee works at least 117 hours.*

An employee works **five days** per week at 39 hours per week. This employee works more than 117 hours per month. Therefore this employee accrues paid annual leave at the rate of one and two third

days (or 1.67 days) per month worked i.e. **one third of 5 days = 1.67**. Over twelve months the employee will accrue twenty days of paid annual leave or four of his/her working weeks of paid annual leave in each leave year.

An employee's normal working week is **four days** per week at 40 hours per week. This employee works more than 117 hours per month. Therefore this employee accrues paid annual leave at the rate of one day and one third (or 1.34 days) per month worked i.e. **one third of four days = 1.34**. Over twelve months the employee will accrue sixteen days of paid annual leave or four of his/her working weeks of paid annual leave in each leave year.

- (c) *8% of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks in the leave year).*

An employee works 20 hours per week at five days per week. To calculate this employee's paid annual leave entitlement over any given period, the employer adds up the total hours worked by the employee and gets 8% of that figure. For example, an employer calculates that at the end of April in a particular leave year, the employee has worked a total of 320 hours. $8\% \text{ of } 320 = 25.6$, therefore this employee has earned 25.6 hours of paid annual leave at the end of April.

An employee worked for 8 weeks with an employer and then left the employment. The employer calculates that the employee worked a total of 245 hours over the 8 weeks employment. Since $8\% \text{ of } 245 \text{ hours} = 19.6$, the employee has earned 19.6 hours of paid annual leave during the employment, and is entitled to be compensated for this entitlement at the end of the employment (if the employee has not already used up the annual leave entitlement during the employment).

How to calculate an employee's holiday pay

2.3 The method of calculating the weekly rate of holiday pay is as follows:

- (i) If the employee's pay is calculated wholly by reference to a time rate or a fixed rate or salary, the amount paid to the employee for one week of paid annual leave is equal to the amount paid to him/her in respect of the normal weekly working hours last worked by the employee before the annual leave commences. This payment includes any regular bonus or allowance that does not vary in relation to work done, but excludes any pay for overtime.
- (ii) If the employee's pay is not calculated wholly by reference to the matters referred to above, (e.g. employees who earn commission or who work on piece or productivity rates), the amount paid to him/her for one week of paid annual leave is equal to the average weekly pay of the employee (excluding any pay for overtime) calculated over the period of 13 weeks ending immediately before the annual leave commences. If no time was worked by the employee during that period, the average weekly pay is calculated over the period of 13 weeks ending on the day on which time was last worked by the employee before the annual leave commences.

The method to be used in calculating the appropriate daily rate is set out in the public holidays section of this booklet.

The Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997 (S.I. No.475 of 1997) is available from the Government Publications Sales Office in Molesworth Street.

What to include when calculating an entitlement to holidays

- 2.4 In calculating how many days' holidays to which an employee may be entitled, employers should include all hours worked including time spent on annual leave, time spent on maternity leave, parental leave, force majeure leave, or adoptive leave, and time spent on the first 13 weeks of carers leave. Employees do not accrue annual leave while on sick leave, occupational injury, temporary lay-off, or career break.

QUESTIONS

What if an employee is sick during his/her holidays?

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

Who decides when holidays should be taken?

The employer decides when holidays are to be taken having regard to work requirements and subject to his/her taking into account the need for the employee to reconcile work and any family responsibilities and the opportunities for rest and recreation available to the employee. The employer must consult with the employee or his/her trade union at least one month before the holidays are due to commence.

What if an employee does not take holidays within the leave year?

The holidays must be given to the employee within the leave year or, with the employee's consent, within 6 months of the following leave year. It is the responsibility of the employer to ensure that the employee takes

his/her full statutory leave allocation within the appropriate period. Employees may, with the consent of the employer, carry over holidays in excess of statutory minimum leave to a following leave year.

Must an employee be compensated for holidays at the end of employment?

The employer must compensate the employee for any unused annual leave that was accrued during the leave year in which the employee's employment ceases. If the employment ceases in the first half of the leave year, the employee must be compensated for any annual leave accrued in that leave year and the previous leave year.

Can an employer pay an employee in lieu of holidays?

It is illegal to pay an allowance in lieu of the minimum statutory holiday entitlement of an employee unless the employment relationship is terminated.

What if the employer's leave year is January to December?

While the statutory leave year is 1st April to 31st March, there is no restriction on employers using different 12 month periods provided that the same leave year is used consistently.

When must payment for holidays be made?

Pay in respect of holidays is paid in advance at the normal weekly rate.

Must an employee take an unbroken 2 week's holidays?

Following 8 months work, the employee is entitled to an unbroken period of 2 weeks which may include one or more public holidays. An employment regulation order, registered employment agreement, collective agreement or any other agreement between the employer and employee may stipulate an arrangement which varies this provision.

3. PUBLIC HOLIDAYS

3.1 There are nine public holidays as follows:

- 1) New Years Day (January 1),
- 2) St. Patrick's Day (March 17),
- 3) Easter Monday,
- 4) The first Monday in May,
- 5) The first Monday in June,
- 6) The first Monday in August,
- 7) The last Monday in October,
- 8) Christmas Day (25th December),
- f) St. Stephen's Day (December 26).

Conditions for qualifying for Public Holiday benefit

- 3.2 Employees, other than part-time, have an immediate entitlement to public holiday benefits. Part-time 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.

Entitlements of employees in respect of a public holiday

- 3.3 In respect of a public holiday the employee is entitled to whichever of the following his/her employer determines:
- a) a paid day off on that day
 - b) a paid day off within a month of that day
 - c) an additional day of annual leave
 - d) an additional day's pay.

If, following a request from an employee, no later than 21 days before the public holiday, an employer does not nominate one of the options above, the employee will automatically be entitled to a paid day off on the day of the public holiday.

Employees absent from work prior to a public holiday

- 3.4 Employees absent from work immediately before the public holiday will not be entitled to benefit from the public holiday in the following circumstances:
- i. an absence in excess of 52 weeks by reason of an occupational injury,
 - ii. an absence in excess of 26 weeks by reason of illness or injury,

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- iii. an absence in excess of 13 weeks by reason not referred to above but being an absence authorised by the employer, including lay off,
 - iv. an absence by reason of a strike.
 - v. an absence on carer's leave in excess of the first 13 weeks of the 65 week entitlement for each person being cared for.

Employees on maternity leave, additional maternity leave, parental leave, force majeure leave, or adoptive leave maintain their public holiday entitlement for the duration of their absence.

Pay for a Public Holiday

3.5 Where the public holiday falls on a day on which the employee normally works, the employee is entitled to a day's pay for the public holiday.

Where the public holiday falls on a day on which the employee does not normally work, the employee is entitled to one fifth of his/her normal weekly wage for the public holiday.

Where the employee is required to work on the public holiday, the employee is entitled to an additional day's pay for the public holiday (or to a paid day off within a month of the public holiday or to an additional day of annual leave).

If the employee ceases to be employed during the week ending on the day before a public holiday, having worked during the 4 weeks preceding that week, he/she is entitled to receive pay for the public holiday.

How to calculate an employee's public holiday pay

Public Holiday Pay for employees (other than certain categories of job sharer) –

Employees normally required to work on the day on which the public holiday falls

- (1) If the employee works or is normally required to work during any part of the day which is a public holiday, then –
 - (a) If the employee's pay is calculated wholly by reference to a time rate or a fixed rate or salary, the amount paid to the employee for the public holiday is equal to the amount paid to him/her in respect of the normal daily hours last worked by the employee before the public holiday. This payment includes any regular bonus or allowance that does not vary in relation to work done, but excludes any pay for overtime.
 - (b) If the employee's pay is not calculated by reference to the matters referred to above, (e.g. employees who earn commission or who work on piece or productivity rates), the amount paid to him/her for the public holiday is equal to the average daily pay of the employee (excluding any pay for overtime) calculated over the period of 13 weeks ending immediately before the public holiday.

If no time was worked by the employee during that period, the average daily pay is calculated over the 13 weeks ending on the day on which time was last worked by the employee before the public holiday

Employees not normally required to work on the day on which the public holiday falls

- (2) If the employee (not being a jobsharer) does not work on a day which is a public holiday, then –
- (a) If the employee's pay is calculated wholly by reference to a time rate or a fixed rate or salary, the amount paid to the employee for the public holiday is equal to one-fifth of the amount paid to him/her in respect of the normal weekly hours last worked by the employee before the public holiday. This payment includes any regular bonus or allowance that does not vary in relation to work done, but excludes any pay for overtime.
 - (b) If the employee's pay is not calculated by reference to the matters referred to above, (e.g. employees who earn commission or who work on piece or productivity rates) the amount paid to the employee for the public holiday is equal to one-fifth of the average weekly pay (excluding any pay for overtime) of the employee calculated over the period of 13 weeks ending immediately before that public holiday.
If not time was worked by the employee during that period, the average weekly pay is calculated over the period of 13 weeks ending on the day on which time was last worked by the employee before that public holiday:

Provided that the relevant rate to which the employee concerned shall be entitled under this paragraph in respect of a public holiday shall not exceed the relevant rate to which he or she would be entitled in respect of that holiday if subparagraph (a) or (b), as the case may be, of paragraph (1) above were to apply to him or her.

Public Holiday Pay for certain categories of job sharer

3.6 If -

- (a) the employee concerned does not work or is not normally required to work on a day which is a public holiday,

and
- (b) he or she is required to work half the time required to be worked by a wholetime employee of the employer, being an employee employed to do work that is identical or similar to that which the employee concerned is employed to do,

and
- (c) the pay of the employee concerned is calculated wholly by reference to a time rate or a fixed rate or salary, then the amount paid to the employee for that public holiday is equal to one tenth of the amount that is paid to him/her in respect of the last 2 weeks of normal working hours worked by the employee before that public holiday:

Provided that the relevant rate to which the employee concerned shall not be entitled to more than he/she would have received for working that day.

The Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997 (S.I. No.475 of 1997) is available from the Government Publications Sales Office in Molesworth Street.

Is an employee who is not normally required to work on a public holiday entitled to compensation for the day?

Yes, even though an employee may never be rostered to work on a public holiday he/she will be entitled to one fifth of the normal weekly rate (averaged over a fortnight in respect of jobsharers).

4. RECORDS

- 4.1 Employers are obliged to keep records of holidays and public holidays for a period of 3 years. The manner in which records must be kept is prescribed by the Organisation of Working Time (Records)(Prescribed Form and Exemptions) Regulations, 2001. (S.I. 473 of 2001). Copies are available from Employment Rights Information Unit. 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.

5. ENFORCEMENT PROCEDURES

- 5.1 Any dispute between an employer and employee on holidays or public holidays can be dealt with by means of a complaint to the Rights Commissioner whose decision can be appealed to the Labour Court for legally binding determination.*

Referral of complaints

- 5.2 An employee may present a complaint to a Rights Commissioner if it appears that the employer has failed to provide the correct holiday or public holiday entitlements to which the employee is entitled under the Act.
- 5.3 Written notice of complaint must be made **within 6 months of the date of the alleged contravention**. The **time limit** for submitting a complaint for redress of the alleged contravention may be extended by a further **12 months** if the Rights Commissioner is

satisfied that the failure to present the complaint within the normal 6 month period was due to reasonable cause.

- 5.4 The Rights Commissioner, on receipt of a complaint, will send a copy of the notice of complaint to the employer. The Rights Commissioner will then give the parties an opportunity to be heard by him/her and to present any evidence relevant to the complaint. After hearing the parties, the Rights Commissioner will issue a written recommendation. Proceedings before a Rights Commissioner will be held in private.

Rights Commissioner's Recommendation

- 5.5 The recommendation of the Rights Commissioner shall do one or more of the following:-
- ◁ declare that the complaint was or was not well founded
 - ◁ require the employer to pay the employee compensation not exceeding 2 years' remuneration

Appeal of Rights Commissioner's recommendations

- 5.6 The employer or employee may appeal the Rights Commissioner's recommendation to the Labour Court within 6 weeks from the date it was communicated to the parties. The Labour Court shall copy the notice of appeal to the other party and hear the parties according to its own procedures.
- 5.7 A complaint by an employee that a Rights Commissioner's decision has not been implemented may be made by the employee concerned to the Labour Court **no earlier than 6 weeks** after the date on which the decision was communicated to the employee.

The Court will issue a determination to the like effect of the Rights Commissioner's decision. The Act precludes the Court from hearing the employer concerned or other evidence in this case.

Appeals to the High Court

- 5.8 A party to proceedings before the Labour Court may appeal to the High Court on a point of law from a determination of the Labour Court.

Referrals by the Minister to the High Court

- 5.9 The Minister for Enterprise, Trade and Employment, at the request of the Labour Court, may refer a question of law arising in proceedings before the Court to the High Court.

Enforcement of Labour Court determinations

- 5.10 Following the hearing of the appeal, the Labour Court shall issue a determination. If the Court's determination is not implemented **within 6 weeks** from the date on which the determination is communicated to the parties, the Circuit Court, on application by the employee concerned, by a trade union of which the employee is a member if it has the employee's consent or by the Minister, if the Minister considers it appropriate and without further hearing, shall make an Order directing the employer to carry out the determination in accordance with its terms.

Referring Holidays and Public Holiday entitlements to the Employment Appeals Tribunal

5.11 Holiday and Public Holiday entitlements may be claimed at the Employment Appeals Tribunal where, on occasions, the employee may also have a claim under the following Acts, “Minimum Notice, Unfair Dismissal, Adoptive and Maternity Leave, Payment of Wages, Insolvency, Redundancy, Protection of Young Persons, Employment Information, Worker Protection (Regular Part-Time)”.

Complaint forms relating to holiday and/or public holiday entitlements may be obtained from the National Employment Rights Authority (NERA). Local 1890 80 80 90 www.employmentrights.ie

