

COUNCIL NEWSLETTER

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Calculating Holiday Pay for Casual Staff

Many Councils employ “Summer Casuals” to carry out work such as grass cutting and landscaping work. Usually such people are Employees who are engaged by the Council for a short fixed term period of typically 4 to 6 months, with variable hours depending on demand.

During this period the Casual accrues holiday entitlement, but the puzzle for the Council is calculating what that entitlement is.

Historically such people don’t take paid leave during the fixed term period when they are working, but receive a payment in lieu for their untaken holiday entitlement at the end of the contract. Many Councils and payroll providers have traditionally calculated that payment based on 12.07% of the total pay earned by the Employee over the period of their contract.

The figure of 12.07% is derived from 5.6 weeks of the total working year of 46.4 weeks (52 weeks – 5.6 weeks holiday = 46.4; $5.6/46.4 = 0.1207$ or 12.07%)

This method has been challenged at the Supreme Court (*Harper Trust v Brazel*) and judged to be illegal, as it undervalues holiday the worker’s holiday pay entitlement.

Instead a Council needs to calculate a Fixed Term workers’ holiday entitlement on a pro-rata basis of 5.6 weeks per annum.

For example, if the fixed term period is for 6 months, the pro-rata entitlement would be 2.8 weeks (50% of 5.6). The Council would then need to check on what the workers’ average weekly wage had been during the fixed term period, and multiply that by 2.8 to calculate the unused leave entitlement.

Other HR considerations for fixed term casual staff:

- 1 They need to be issued with an Employment Contract from day one; typically a zero hours, fixed term contract for the summer period.
- 2 They must be given a full health and safety induction, which needs to be documented and signed by the Employee to confirm that they have received this training.
- 3 They cannot bring their own tools to work with them, unless they have been properly checked, and are properly tested, such as PAT tests.
- 4 The Council still needs to check their entitlement to work in the UK, as with all Employees, and keep a record of the evidence.

- 5 Part of their induction can include a health and fitness check to ensure that they have the capability to do the work they have been employed to do. If this reveals long term health problems that affect the Employee's capability, the Council cannot simply dismiss them, as this could risk claims for Disability Discrimination.
- 6 If the Employee is sacked part way through their fixed term period, they may be entitled to payment for the whole expected term of that contract, unless the contract contains early termination clause.

PROFILE

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