



Make Work Pay: Holiday Pay Compliance and Enforcement

Submission to the Department for Business, Innovation, Science and Trade



About CIPD

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years.

It has 160,000 members across all sectors and sizes of organisation and provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers. It also seeks to promote and improve best practice in people management and development and to represent the interests of our members.



Our response

We are responding to this consultation because the HR profession plays an important role in ensuring that their organisations pay the right employees, the right amount, in the right way, and at the right time, including holiday pay.

Not only is it important to pay the correct amount of statutory holiday pay entitlement because of the law, but it also supports both employee financial wellbeing and performance, and it can help reduce pay inequality.

In addition, those employers that give their employees the correct amount of holiday pay will be at a competitive disadvantage to those who do not, either by accident or design.

The CIPD is pleased that the government is aware that statutory holiday pay entitlement can be hard to calculate correctly for certain staff and we welcome its commitment in this consultation to produce practical guidance and support to help employers pay the correct amount, rather than relying just on legal or technical explanations.

We recognise that many small- and medium-sized employers (SMEs), which often lack dedicated HR and payroll support, face challenges in calculating holiday pay. So, we recommend that this group of organisations are supported by appropriate information, guidance, and advice.

We also acknowledge that many SMEs outsource their payroll function. So, we recommend that these advisers, providers, and administrators also receive practical support so that they can make the right calculations on behalf of their clients.

While HR professionals in larger organisations are more likely to recognise potential issues with how systems calculate holiday pay. Even then, correcting those issues requires considerable time and resource, such as manual adjustments.

The CIPD through its extensive consultant member network would be happy to help in the development of this clear and practical guidance on statutory holiday pay entitlement. Of course, in addition to guidance, the Fair Work Agency (FWA) will need sufficient resources to ensure compliance across business sectors, employer size, and UK regions and nations, we will welcome more information about this over time.

Given the complexity around statutory holiday pay entitlement, the CIPD believes that it is important that the FWA initially adopts a light touch approach while employers get to grips with the new enforcement mechanism, a similar approach that was adopted when the changes around IR35 were first introduced in the private sector.

Our response

Our response focuses on those questions that are most relevant to our role.

Question 12: What are your views on the proposed approach for the Fair Work Agency to support holiday pay compliance? [Free text]

The CIPD has consistently argued that the UK enforcement regime has relied too heavily on individuals enforcing their employment rights; therefore, we welcome the new approach to state-based enforcement of statutory holiday pay.

We also welcome the intention of the FWA to provide a *‘key educational role in supporting businesses through providing upskilling activities and advice on compliance with the legislation’* is vital. This is obviously a new area of enforcement for the FWA, and holiday pay and calculations for different groups of workers can be a highly complex area for employers to navigate, as it can also be for enforcement officers.



We agree there is a significant evidence gap in fully understanding the extent and patterns of non-compliance in relation to holiday pay and therefore understand the FWA's intention to use the first months of implementation to collect data to improve the evidence base and monitor and evaluate the impact of interventions. We would recommend that the FWA uses this time as an opportunity to see how the holiday-pay rules could be simplified to make compliance and enforcement both easier and less costly for it and employers.

The lack of clarity on their statutory obligations in relation to holiday pay means that many employers don't comply due to ignorance or confusion rather than deliberate avoidance. Because the law and case judgments are so complicated in this area, interpretation of the law can vary.

Therefore, we believe that the law on holiday pay needs clarifying, as well as enforcing. As well as those working in small businesses with no ready access to expert HR, legal, or trade union advice and support, there are key occupations and sectors where workers are most at risk of not receiving holiday pay entitlement. These include those working in the hospitality and care sectors, and so a targeted, risk-based approach to enforcement is important.

Therefore, the CIPD supports:

- that the FWA approach will only enforce statutory holiday pay entitlement, and not any additional contractual /non-statutory holiday entitlement an employee might have.
- that the FWA can also look at an employer's compliance with multiple aspects of employment law. The CIPD is concerned about new risks of non-compliance arising from new employment protections. These include recent increases to the national minimum wage but also the far-reaching statutory changes that will be enacted through the Employment Rights Act 2025 and associated secondary legislation. These reforms mark the biggest shift in employment rights in a generation. As a result, there will be an increased compliance and administrative burden on employers in several areas and a real need for clear communication of the new laws, enhanced support for employers to support compliance and better resourced enforcement. Therefore, it's essential that these new statutory rights are supported by effective information, advice, and guidance, particularly for small businesses, to ensure they understand the changes and avoid non-compliance.
- the supportive and collaborative approach envisaged by the FWA to help ensure employers understand their obligations and provide them with opportunities to correct any underpayment, rather than moving immediately to punitive enforcement action. However, we also concur with the FWA's intended proportionate approach that will take strong enforcement action against employers where there is deliberate non-compliance. This approach is important to develop a wider culture of awareness among employers that non-compliance has consequences.
- the role of the FWA in raising awareness and offering guidance and support to employers in terms of compliance is key, the FWA should ensure that clear and accessible information, advice, and guidance is targeted at those employers most at risk of falling foul of the law in this area. As well as those working in small businesses with no ready access to expert HR, legal or trade union advice and support, there are key occupations and sectors where workers are most at risk of not receiving holiday pay entitlement. These include those working in the hospitality and care sectors, and so a targeted, risk-based approach to enforcement is vital.
- the FWA's commitment to promoting compliance by nudging employers and encouraging them to check their records and voluntarily pay any arrears that may be owed, and that a penalty would not ordinarily be issued where an employer has correctly repaid all holiday pay arrears that are owing to the workers before the FWA investigated.

Question 13: Are there any other compliance activities you think the Fair Work Agency should do to support employers to comply with holiday pay law? [Free text]

Ideally, we would like the FWA to work with the CIPD so that we can disseminate to the HR profession about how to correctly calculate statutory holiday pay entitlement and what the compliance process will look like.



As well as developing an effective programme to inform and advise employers of their compliance obligations in relation to holiday pay, it's important that there is ongoing communication to ensure workers are aware. The CIPD has consistently urged the Government, working with organisations such as ACAS, Citizens Advice, trade unions, and professional bodies, to run a high-profile 'know your rights' campaign, setting out information on employment rights, including holiday pay.

Question 15: Do you think the policy of naming businesses for underpayment of the minimum wage should also be extended to naming for underpayment of holiday pay?
[Not sure]

Question 15.a: Please explain your answer. [Free text]

We are unaware if naming and shaming has had an impact on compliance with the national minimum wage.

While we can see the justification of naming an employer that has deliberately flouted the law, we are not convinced what purpose is served by naming and shaming those organisations that have accidentally underpaid their employees. What would be more worthwhile is highlighting how these mistakes occurred, so that other employers can learn from these experiences and so reduce the risk that statutory holiday pay entitlement is incorrectly calculated.

Question 18: In addition to the existing guidance, is there any specific support and guidance the Fair Work Agency can provide to better support you to understand your rights and obligations?

Yes.

18.a: If yes, what additional support and guidance, specifically, would you find useful? Please select all that apply.

Given the complexity of calculating holiday pay, particularly for many employers, the FWA should consider developing and testing clear, accessible and practical information, advice, and guidance.

All the suggested forms of support have merit, including:

- A more detailed calculator or self-assessment tool to work out holiday entitlement and pay
- Specific scenarios and worked examples to help understand how holiday pay law could apply in specific circumstances
- A chatbot to provide user support when interacting with the Fair Work Agency in relation to holiday pay
- Webinars provided by the Fair Work Agency
- More consolidated and centralised guidance on the Fair Work Agency and/or the Advisory, Conciliation and Arbitration Service websites.

Summary

The CIPD broadly supports the FWA's approach to pay compliance and enforcement. However, while we recognise that this consultation does not revisit the rules on holiday pay, we have concerns that their complexity will make compliance and enforcement difficult. So, we would recommend a review to see how holiday-pay calculations can be simplified to make holiday pay compliance and enforcement easier and less costly for both the FWA and employers. Without such a review, we are concerned that the FWA may not have sufficient resources to deliver this effectively alongside its other responsibilities. We are also not convinced that naming and shaming employers that have made mistakes in calculating holiday pay would serve a useful purpose.

The CIPD is also happy to work with the FWA to help raise awareness of correctly calculating statutory holiday pay entitlement among the HR profession, as well as how the compliance and



enforcement process will work. The CIPD has 160,000 members represented across all sectors and sizes of business across the UK and is well placed to highlight the work of the new agency. As well as HR practitioners working in organisations, the CIPD also has around 16,000 self-employed HR consultants in membership who work with over 100,000 SMEs to help improve their HR and people management capability. They are well positioned to communicate messages on holiday pay compliance and the role of the FWA to the owner managers they work with.