### Annual Leave

The Organisation of Working Time Act, 1997 sets out statutory entitlements for employees in respect of annual leave and public holidays. All health service employees are covered by the Act. In the case of agency workers, the party who pays the wages is deemed to be the employer for the purposes of the Act and is responsible for providing the annual leave and public holiday entitlements.

#### Qualifying Conditions for the Accrual of Annual Leave

There is no qualifying period or hourly threshold for entitlement to annual leave. This means that all employees, regardless of the number of hours they work a week, start to accrue an entitlement to annual leave from the commencement date of their employment.

Entitlement to annual leave is based on the number of hours worked in the leave year. The Act defines ‘working time’ as any time an employee is:
- At his or her place of work or at his or her employer’s disposal, and
- Carrying on or performing the activities or duties of his or her work.

When calculating an employee’s annual leave entitlement, employers should include time spent on maternity leave, additional maternity leave, adoptive leave, additional adoptive leave, parental leave, the first 13 weeks of carer’s leave, and annual leave and public holidays taken during the calculation period.

#### Calculating Annual Leave Entitlement

The Act sets out three mechanisms for earning a statutory entitlement to annual leave. Employees are entitled to whichever one of the following is the greater:

Employees who work at least 1,365 hours in the leave year are entitled to the full statutory leave entitlement of four working weeks (unless it is a leave year in which s/he changes employment).

If an employee does not work at least 1,365 hours in the leave year, s/he is entitled to one-third of a working week per calendar month that s/he works at least 117 hours.

If an employee works less than 117 hours, s/he is entitled to 8% of the hours worked in the leave year, subject to a maximum of four working weeks. (This is the mechanism normally used for calculating the annual leave entitlement for part-time employees).

The ‘working week’ refers to the number of days or hours that the employee normally works in a week. For example, if an employee works four days a week (and exceeds the 1,365 hours threshold), then his/her holiday entitlement to four weeks’ leave is equivalent to 16 days’ leave i.e. (4x 4 days). If an employee works five days a week, then his/her entitlement to four weeks’ leave is equivalent to 20 days’ leave.

#### Note

The majority of health service employees have annual leave entitlements that are greater than the statutory minimum provided for under the Organisation of Working Time Act.

Where an employee commences employment or terminates his/her employment during the leave year, annual leave entitlement is calculated on a pro rata basis.
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Accrual of Annual Leave for Part-Time Employees
Part-time employees accrue an entitlement to annual leave on a pro rata basis to their whole-time-equivalent.

Table 1
Formula for calculating pro-rata Annual Leave Entitlements of part-time employees who work fixed working hours e.g. participants in the Flexible Working Scheme

| Example: Employee who works 20 hours per week where WTE works 35 hours per week and receives 24 days annual leave per annum |
|---|---|
| **Hours worked by Part-Time Employee** | **X** | **Annual Leave of WTE in hours** |
| **Hours worked by WTE** | **20** | **24 (AL days) x 7 (daily hours) = 168** |
| **Annual Leave hours per annum** | **0.57** | **X** | **168** |
| = 96 | \(\Rightarrow\) Employee is eligible for 96 hours annual leave per annum |

Table 2
Formula for calculating pro-rata Annual Leave Entitlements of part-time employees who work varying hours on an “if and when required” basis

| Example: Part-time employee who works varying hours on an ‘if and when required’ basis where Whole Time Equivalent (WTE) works 39 hours per week and receives 24 days annual leave per annum, will receive pro-rata entitlement to the WTE based on a percentage figure which is calculated using the formula below |
|---|---|
| **Number of Annual Leave Days of the WTE Expressed in Hours** | **x 100** |
| **Number of standard weekly working hours of the WTE x 52 weeks** | \(187.2 (24 \text{ AL days}) \times 7.8 \text{ hours} (1/5 \text{ of standard working week})\) | **x 100** |
| \(2028 (39 \text{ (standard WTE weekly working hours)} \times 52 \text{ weeks})\) | | \(= 9.2\%\) |
| \(\Rightarrow\) annual leave entitlement of part-time employee is 9.2% of the hours which s/he works. |

Computation of a Day’s Annual Leave
In the case of employees who have varying weekly hours of attendance or who work shifts of varying lengths, annual leave entitlement should be converted into hours. This is calculated by dividing the normal weekly working hours for the grade by 5, and multiplying this figure by the annual leave entitlement for the grade.

e.g. an employee who works a 39 hour week is entitled to 156 hours per annum, i.e. 20 (days) \(\times 7.8\) (hours) = 156 hours.

Each time an employee takes annual leave, the number of hours s/he would normally have been rostered to work on the day(s) taken should be aggregated to determine the amount of annual leave taken.

e.g. an employee who takes annual leave on a day he/she would normally have been rostered to work a 12 hour shift should be deducted 12 hours from his/her annual leave entitlement.
Overtime
Hours worked on an overtime basis and additional hours worked beyond the employees contracted hours should not be reckoned in the calculation of the annual leave entitlement or the payment for annual leave except in cases where the employee falls short of the minimum entitlement as set out by the Organisation of Working Time Act 1997 (see section)

In situations where part-time employees are required to work beyond their contracted hours on a regular rostered basis over a significant period of time it may be more appropriate to review the employee’s contracted hours if this requirement is likely to continue.

Timing of Annual Leave
The onus is on the employer to ensure that employees can avail of their annual leave entitlement in the leave year to which it relates. In exceptional circumstances due to service requirements, annual leave may be carried forward into the first six months of the next annual leave year, provided the employee agrees to defer his/her leave.

It is good practice for line managers to regularly review employees’ annual leave records and make every effort to ensure that employees can avail of their outstanding leave in the current leave year. Where an employee cannot take his/her outstanding leave due to service requirements or other exceptional circumstances, s/he may carry this leave forward into the first six months of the following leave year.

The time at which annual leave is taken is at the discretion of the employer, having regard to service requirements and subject to the employee’s needs to reconcile work and family responsibilities, and his/her opportunities for rest and recreation.

An employee who has worked eight or more months in a leave year is entitled to an unbroken period of two weeks’ leave, which may include one or more public holidays.

Illness during Annual Leave
Where an employee falls ill during annual leave and submits a medical certificate from a registered medical practitioner, the period covered by the certificate is regarded as sick leave and annual leave entitlement is restored.

Accrual of Annual Leave during Sick Leave
While the Organisation of Working Time Act does not provide for the accrual of annual leave during sick leave, the most usual arrangement in the health service is to allow employees to continue to accrue annual leave during periods of paid sick leave (at full and half pay). However, an employee who accrues annual leave during paid sick leave cannot carry forward this leave into the following leave year as the employee has no statutory entitlement to this leave.

However, an employee who accrues annual leave by reason of time worked as defined by the Organisation of Working Time Act 1997 will retain this entitlement and will be entitled to carry forward that annual leave to the following leave year if s/he is unable, for whatever reason, to avail of this annual leave in the current leave year, i.e. this annual leave will not be forfeited by reason of absence on sick leave.

Annual Leave Records
Annual leave records should be retained for at least three years as evidence that the employer is complying with the legislation.

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1 This includes time spent on maternity leave, additional maternity leave, adoptive leave, additional adoptive leave, parental leave, the first 13 weeks of carer’s leave, and annual leave and public holidays
Holiday Pay
Payment for annual leave includes any regular bonus or allowance normally paid to the employee but excludes payment for overtime. Premiums currently included are Saturday, Sunday, night duty, twilight hours and public holidays.

Note
The majority of health service employers calculate unsocial hours premium payments for holiday pay purposes for nursing and non-nursing employees in accordance with an arrangement which was agreed by health service employers and unions representing nursing and non-nursing employees, to provide for equity in the calculation of holiday pay. Under this arrangement, premium payments for holiday pay purposes are based on an average of premium earnings (exclusive of overtime), calculated over the 12 month period preceding the annual leave year in which annual leave is being granted. This payment is normally made on a designated date or dates as agreed at each location.

c.f. Department of Health Circular No. S100/412
‘I am directed by the Minister for Health to refer to claims on behalf of nursing personnel and non-nursing grades for inclusion of premium payments in pay during annual leave in accordance with the terms of the Holidays (Employees) Act, 1973. The Minister’s sanction may be assumed to implementation of these claims, effective from the commencement of the 1975 leave year, on the basis of including with basic pay during annual leave an average of premium payments (exclusive of overtime) earned during normal working hours. The average of premium earning for this purpose (i.e. average of premium earnings in respect of weekend, public holidays and night duty commitment) should be calculated on the 12 month period next preceding the annual leave year during which annual leave is being granted.’

Calculating Holiday Premium Pay
To calculate holiday premium the total premium pay received by the employee should be divided by the number of contracted hours worked by the employee in a year (this gives the average premium earnings per hour) and multiplied by the number of annual leave days in hours that the employee is entitled to.

For example, a health care assistant who is contracted to work 39 hours per week and has an annual leave entitlement of 23 days would be entitled to the following:

Total premium earnings: €7,500
Total annual contracted hours 2,028 (39 x 52)
Annual leave entitlement in hours 179.4 (23 x 7.8)

\[(7,500 / 2,028) \times 179.4 = €663.46\] premium pay

An exception to this arrangement is Non Consultant Hospital Doctors who have their annual leave paid on the basis of their average approved rostered overtime as appropriate (please refer to the 2000 NCHD Agreement for further details).