

## *Policy Circular*

**Document No 08/07**

**Owner:** Strategy & Communications Directorate

**Subject:** Holiday Entitlement For PAs

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**Next Review:** June 2012

**Please note: The ILF is now closed to new applications.**

### **1.0 Background**

From 1 April 2009 the Working Time Regulations (WTR) give almost all workers (The armed forces and police excluded) the right to 5.6 weeks (28 days where an employee is full time) paid holiday per year. This is an increase from the previous level of 4.8 weeks per year.

An individual employer may agree to an employee having additional days holiday under the terms of their contract.

Leave entitlement under the WTR is not in addition to Bank Holidays. The 5.6 weeks can include Bank holidays. An employer may allow Bank holidays to be taken in addition to annual leave under the terms of a contract. Where this is not the case a person who wishes to take time off during a bank holiday may take this as part of their annual leave entitlement.

An employer may choose to nominate particular dates when workers are expected to take annual leave.

#### **Independent Living Fund**

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It is not possible to contract out of the working time regulations.

## **2.0 Policy**

The ILF aims to support its Users in their role as employers and will therefore seek to ensure that a sum of money (Holiday pay) is made available to Users to enable them to give their PA's paid annual leave whilst engaging the services of a replacement carer.

### **2.1 Direct Payments**

Under circumstances where the ILF is matching a Direct Payment (DP) rate the ILF will assume that an inclusion has been made within the rate for holiday pay costs so a separate amount need not be added into the ILF offer.

### **2.2 Directly Employed PAs**

The ILF will ensure that Users are able to meet their statutory legal obligations in relation to holiday entitlement.

In order to do this the ILF will include, where appropriate, an amount equivalent to 5.6 weeks of care costs within the offer on an averaged basis. This is so the User has additional monies to set aside so replacement care can be purchased when the usual carer takes their paid leave.

In short ILF will actually pay for 57.6 weeks worth of care over a 52-week period.

The ILF will automatically include an amount of money for holiday costs within all offers made to Users who directly employ or are planning to directly employ PA's. The exception to this is where an amount has already been allocated for holiday costs within the package or hourly rate.

The ILF will not provide extra monies to Users to help them meet any contractual agreements that may have been made with their employees, as this is additional to the requirements of law.

Where a PA is to take maternity or sick leave for a period of time they will still accumulate annual leave as will any PA whose hours are

increased or who is recruited to cover the gap in the care. The ILF can consider helping to meet these extra annual leave costs providing that doing so will not breach the ILF maximum sum.

### **2.3 Self Employed**

Where a PA is self-employed ILF will assume that the requested hourly rate will already include an amount for holiday pay costs. ILF will not pay a separate amount of money for holiday pay costs where a PA is self-employed.

It is the ILF User's responsibility to determine the correct employment status of the PA. Guidance on this matter can be obtained from the HMRC website (Fact sheet ES/FS2). Advice on this matter can be sought from a local status inspector or status officer.

The ILF will accept on word that the PA is self-employed and calculate the offer accordingly.

### **2.4 Inclusive rates**

Where an offer has been made using an inclusive rate such as with self employed PA's or where the rate is to match direct payments ILF does not add on extra amounts for holiday costs.

## **3.0 Procedure**

When queries are received about the ILF policy regarding holiday costs the individuals should be informed of the above policy.

For more detailed information about holiday pay Users and interested parties should be advised to approach HMRC. ILF staff should not act as advisers where disagreements occur between the User and employee or on related legal matters.

### **3.1 Visit**

At the time of the visit where an ILFA identifies that care is to be provided by directly employed PA's the ILFA should inform the User that holiday costs will be automatically included as part of the recommended costs.

### 3.2 Offer Calculation

When calculating the amount of money that should be added to cover holiday pay costs the following method should be adopted in all cases:

- Total PA wages multiplied by 5.6 divided by 52.

#### **Example:**

- Wages = £100 per week
- £100 x 5.6 weeks = £560
- £560 divided by 52 = £10.76
- Therefore an extra £10.76 should be added into the offer calculation.

National Insurance contributions should then be added to the offer (see separate policy).

All letters should make a specific reference to the amount of money that has been included for holiday costs within the offer and will inform clients that this money needs setting aside.

Where the request is for the ILF to contribute towards a joint total care package, if an inclusion has been made for holiday costs for the whole package ILF will accept this and no further additions will need to be made, however a statement should be made within the offer letter to notify the User that an amount has been included within their package for holiday pay costs and they should contact their social worker to obtain this figure if they do not already have it.

If a breakdown has not been provided it will be necessary to clarify the following:

- Is there an amount included within the package for employer's holiday pay costs?
- Is the amount based on the whole of the package?

Where the answer is yes to both of these questions the ILF need not build an inclusion for holiday costs into the package.

Under circumstances where the ILF is matching a Direct Payment (DP) rate an assumption should be made that this is an inclusive rate and holiday costs have been included within this.

Where it is not appropriate to input the holiday pay costs separately within the actual offer (e.g. where ILF are matching DP rates) Users should be informed that they should contact the LA to obtain information about how much they should set aside from the hourly rate for holiday costs.

It is the Users responsibility to put the holiday pay cost component to one side so sufficient money is built up to pay for an alternative care provision when the usual PA takes their paid leave.

It is not possible for a User to opt out of his or her employer responsibilities if they choose to directly employ a PA.

### **3.3 Respite Periods**

In circumstances where a User attends a respite provision and requests retainer costs holiday pay should still be calculated as part of the offer as during periods when a retainer is being paid a PA is still viewed as being employed.

If however it becomes clear that the PA will be taking paid holiday during the respite period a retainer should not be paid as a replacement carer will not be required and to pay this would result in an overpayment of the grant to the User.

### **4.0 Above the Maximum that the ILF can pay**

When considering a case where the inclusion of Holiday pay costs would take the package costs over the ILF maximum the ILF can pay the package will need to be re-negotiated so the holiday pay costs can be accommodated.

This may mean that either the LA or a third party may need to contribute additional monies or that an element of the care is provided on a voluntary basis. These arrangements will need to be discussed between the ILF, social worker and User. Where the circumstances appear to be particularly complicated it may be advisable to instigate a re-visit to discuss the case in detail.

## **5.0 Source**

Trustees meeting and study day December 2004

Trustees meeting 13 December 2006

HMRC Website

BERR Website

ACAS Website

Trustees 9 June 2010

## **6.0 Cross References**

NI policy

SSP Policy

Tax contributions policy

## **7.0 History Date Reviewed**

19 September 2007

23 March 2009

10 June 2010

7 December 2011