RIGHT TO REST

Your right to holiday pay and how to calculate it

Equity

It's a common misunderstanding that because performers are self-employed for tax and National Insurance contributions, make a career out of multiple short term contracts and are rarely defined as employees, they are not entitled to holiday pay. But in most cases this isn't true. As performers, you are often defined as a 'worker' and therefore entitled to holiday pay.

THIS GUIDE TELLS YOU WHY AND HOW TO CALCULATE WHAT YOU CAN CLAIM.

Am I entitled to Holiday Pay?

You are entitled to holiday pay if you are defined under law as either a 'worker' or 'employee'.

People with worker status have access to statutory rights such as holiday pay, maximum working hours and the National Living Wage.

Could I be defined as a 'worker'?

If there is a contractual obligation for you to undertake work personally, you are defined under law as a worker.

You can test your worker status by thinking about these questions:

- **Could you provide a substitute to do the work?**
- **Can you control how and when the work is done?**
- **Does the job involve you taking on a financial or business risk?**
- **Are you responsible for your own expenses?**

If your answer is 'no' to at least three of these questions, you are most likely to be a worker and therefore entitled to holiday pay and other statutory rights.

It is the reality of the contract that you work under that determines your worker status, not the way you pay tax and National Insurance or the contract which an employer decides to issue. The majority of performers are self-employed for tax and National Insurance purposes, but are workers for the purpose of employment law.

What to do if you are not paid it

Paid holiday is a statutory right for workers and employees. This means it is enshrined in law and it is illegal for an employer not to pay it. As this is a statutory right, it doesn't matter if you are working on an Equity contract or not.

Even if you have signed a contract which states you will not receive holiday pay, if you are defined as a worker you are still entitled to it.

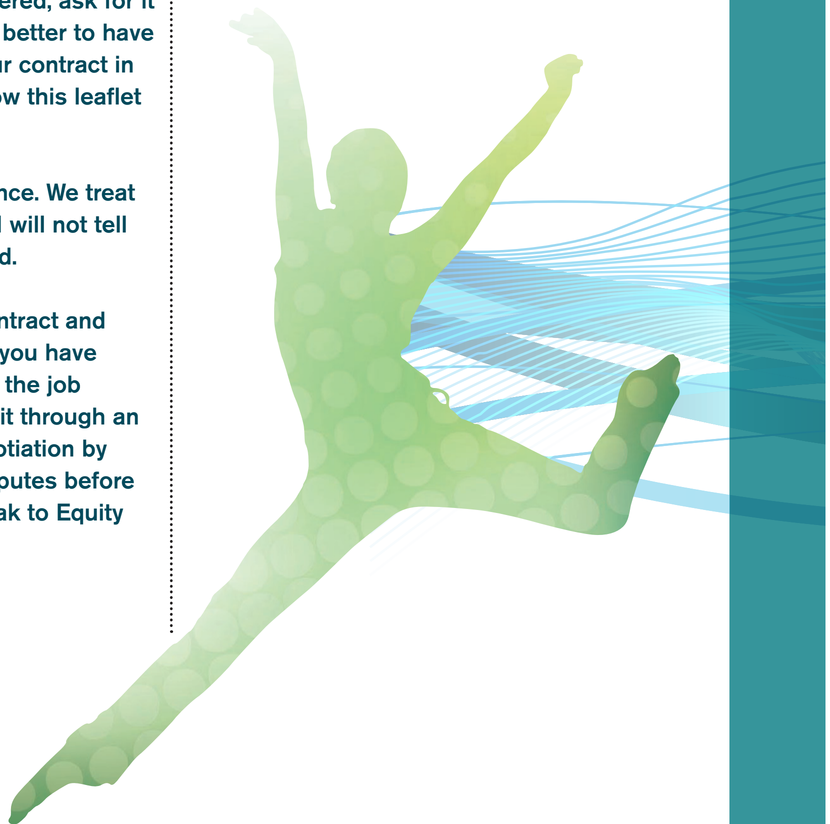
▶ **If paid holiday doesn't appear on a contract you have been offered, ask for it to be included. It is always better to have holiday pay included in your contract in the first place. You can show this leaflet to your employer.**

▶ **Contact Equity for guidance. We treat all calls as confidential and will not tell your employer you've called.**

▶ **If you start work on a contract and are not given paid holiday, you have up until three months after the job ended to make a claim for it through an Employment Tribunal. Negotiation by Equity usually resolves disputes before reaching this point, so speak to Equity for advice.**

'ROLLED UP' HOLIDAY PAY

It is against the law to allocate holiday pay as part of your fee. For example, it is illegal for an employer to offer you a weekly fee of £450 inclusive of holiday pay, unless days off within the contract are allocated as holiday. Otherwise, the employer has to separate the fee from any holiday pay entitlement.



HOW TO ALLOCATE AND CALCULATE HOLIDAY PAY

When paid holiday is given within a contract

STEP 1: Calculate entitlement

(7 X number of weeks worked) ÷13 = entitlement

Allocate the required amount of holiday within the contract without deducting from the weekly salary.

EXAMPLE

Contract length: 4 weeks

(7 X 4) ÷13 = 2.15

Entitlement: 2.15 days

When paid holiday is not given within a contract

If paid holiday is not allocated within the contract, you must be paid the equivalent amount for holiday not taken.

When employed in blocks of full weeks

STEP 1: Calculate entitlement

(7 X number of weeks worked) ÷13 = entitlement

STEP 2: Calculate Average Daily Pay

This is based on average daily pay over the preceding 12 weeks.

STEP 3: Entitlement X average daily pay = holiday pay.

EXAMPLE

Contract length: 4 weeks of 6 working days per week; Weekly pay: £450

Entitlement: (7 X 4) ÷13 = 2.15

Entitlement: 2.15 days

Average Daily Pay: £450 ÷ 6 = £75

Holiday Pay: 2.15 X £75 = £161.25

When employed for single days

Add 12.07% of the fee on top.

EXAMPLE

Daily fee: £150

12.07% of Daily Fee: £18.11

Holiday Pay: £18.11

HOLIDAY PAY: MYTHBUSTING

MYTH #1

"Performers on short term contracts are not entitled to holiday pay. Only permanent employees get this right."

This is false. You are entitled to holiday pay as long as you are defined as a 'worker'. It doesn't matter how long your contract is for.

MYTH #2

"I pay Tax and National Insurance on a self-employed basis. This means I'm not entitled to paid holiday."

This is incorrect. Performers are given a special tax status by HMRC, but this doesn't affect your right to be defined as a 'worker' and receive holiday pay.

MYTH #3

"My employer is allowed to include holiday pay in my fee."

This is only allowed if you are assigned holiday within a contract without having your fee reduced, or it's clearly and separately stated what your holiday pay is within your fee. Otherwise, this practice is known as 'rolling up' holiday pay. This is illegal.

MYTH #4

"My employer doesn't use an Equity contract. This means I'm not entitled to holiday pay."

This is not true. A worker's right to holiday pay is set in law and is not an optional extra

Equity. Guild House. Upper St Martin's Lane. London WC2H 9EG
Tel: 020 7379 6000 www.equity.org.uk