

# HR & OD POLICIES

human resources and organisational development



## Calculating Annual Leave Entitlement Following Long-Term Sickness Absence (Non-Teaching Staff)

### Procedure

## INDEX

INTRODUCTION	3
CALCULATING ENTITLEMENT	3
CALCULATING ENTITLEMENT FOR TERM-TIME WORKERS	10

## 1. INTRODUCTION

This guide provides information on the calculation of annual leave following long term sickness absence for non-teaching staff.

Where an employee is absent due to sickness for a period exceeding three calendar months, annual leave entitlement will be limited to an amount equal to the period actually worked during the contractual leave year. In accordance with the Working Time Regulations, this provision will not be applied so as to reduce the employee's annual leave entitlement below the statutory minimum. The statutory minimum holiday entitlement is 28 days and includes public holidays. This entitlement should be pro-rated for part-time/part year employees. Please go to the [Attendance Management Procedure](#) for further information.

Therefore, where an employee has been absent for a period exceeding three months, the Service should calculate the leave accrued by the employee during the period of actual work in the leave year. Where this is less than 28 days, then the employee will be entitled to the difference, up to the statutory minimum.

Where the absence extends across one leave year into the next, only outstanding accrued leave up to the statutory entitlement of 28 days can be carried forward. Any outstanding leave must be taken within 18 months of the leave year in which it is accrued or it will be lost.

If, following a long term absence, an employee is unable to return to work, entitlement in the current leave year should be pro-rated to the date of leaving. In most cases it will be the 28 day statutory minimum that is pro-rated.

**Please contact a member of [HR&OD](#) before undertaking this calculation if your employee has been absent due to a pregnancy related illness.**

## 2. CALCULATING ENTITLEMENT

The [Annual Leave Holiday Calculator](#) should be used to first calculate contractual entitlement for periods of actual work in order to establish whether the statutory requirement has been met. The variable calculator should be used regardless of working pattern.

## **EXAMPLE 1:**

### **Full Time Employee who returns to work following long-term absence**

An employee with more than 5 years continuous service, working 36.25 hours per week and 52 weeks per year, is off sick from 3<sup>rd</sup> March 2014 to 29<sup>th</sup> June 2014. Prior to the absence the employee has taken 3 days annual leave from the 10<sup>th</sup> to 12<sup>th</sup> February (3 days).

The employee must receive at least the statutory minimum of 28 days; however, where the contractual entitlement for the periods actually worked is greater, the contractual entitlement is given.

#### **Step 1: Calculate Contractual Entitlement**

Calculate the contractual leave entitlement for the periods actually worked by using the variable Holiday Calculator on Acadia. Only dates for periods of work should be entered with the period of absence being excluded.

For the period: 1<sup>st</sup> January to 2<sup>nd</sup> March

Annual Leave Calculator: 46.58 hours

For the period: 30<sup>th</sup> June to 31<sup>st</sup> December

Annual Leave Calculator: 144.08 hours

Annual leave entitlement:  $46.58 + 144.08 = 190.66 \text{ hours} / 7.25 = 26.30 \text{ days}$

**This is insufficient to meet the statutory requirement of 28 days.** The employee is therefore due 28 days.

#### **Step 2: Deduct leave already taken**

**Deduct** from the 28 day entitlement, any annual leave and public holidays already taken:

2 public holidays + 3 annual leave days taken = 5 days

Remaining **annual leave** and **public holiday** entitlement on return to work on the 1<sup>st</sup> July:

$28 - 5 = 23 \text{ days}$

#### **Step 3: Establish annual leave entitlement only**

From the 23 days, deduct any remaining public holidays that will fall within the employee's working pattern (eg: 25/26 December).

#### **Please Note**

If the return date from sick leave falls before 01 January 2014, the public holiday which had been allocated to 31 December in previous years will need to be taken into account.

Annual leave entitlement to year end:  $23 - 2 \text{ public holidays} = 21 \text{ days}$

**EXAMPLE 2:****Full Time Employee who does not return to work following a period of long term sickness absence. 18 month carry forward period NOT exceeded**

An employee with more than 5 years continuous service, working 36.25 hours per week and 52 weeks per year, is off sick from 5th November 2012, is unable to return to work and employment ends on 13th June 2014. Payment must be made for any accrued annual leave entitlement.

Prior to the absence the employee had taken 21 days annual leave + 5 public holidays in 2012 (one additional public holiday was given on 5th June due to the Golden Jubilee) totalling 26 days.

**Step 1: Calculate entitlement for year in which absence first occurred**

For 2012: only a maximum of 28 days statutory entitlement can be carried forward so entitlement:

28 days – 26 days already taken = 2 days to carry forward

Termination date is less than 18 months from the end of 2012 so days can be carried forward.

**Step 2: Calculate entitlement for any additional complete years of absence**

For 2013: 28 days statutory entitlement

**Step 3: Calculate pro rata entitlement to leaving date**

Statutory calculator:  $5.6 (28 \text{ days}) / 52 = 0.1077$

**(hours per week) x (number of weeks from 1 January to leaving date) x 0.1077 = entitlement in hours**

For 2014: Calculation to pro rate to 13th June 2014:

$36.25 \text{ (hours per week)} \times 23.6 \text{ (no. weeks from 1 January to leaving date)} \times 0.1077 = 92.14 \text{ hours (12.71 days)}$

**Step 4: Calculate total days/hours to be paid on leaving**

Actual entitlement for 2012, 2013, 2014 =  $2 + 28 + 12.7 = 42.7 \text{ days}$

**EXAMPLE 3:****Full Time Employee who does not return to work following a period of long term sickness absence. 18 month carry forward period IS exceeded**

An employee with more than 5 years continuous service, working 36.25 hours per week and 52 weeks per year, is off sick from 5th November 2012, is unable to return to work and employment ends on 13th July 2014. Payment must be made for any accrued annual leave entitlement.

Prior to the absence the employee had taken 21 days annual leave + 5 public holidays in 2012 (one additional public holiday was given on 5th June due to the Golden Jubilee) totalling 26 days.

**Step 1: Calculate entitlement for year in which absence first occurred**

For 2012: only a maximum of 28 days statutory entitlement can be carried forward so entitlement:

28 days – 26 days already taken = 2 days

Termination date is more than 18 months from the end of 2012, so days are lost

**Step 2: Calculate entitlement for any additional complete years of absence**

For 2013: 28 days statutory entitlement

**Step 3: Calculate pro rata entitlement to leaving date**

Statutory calculator:  $5.6 (28 \text{ days}) / 52 = 0.1077$

(hours per week) x (number of weeks from 1 January to leaving date) x 0.1077 = entitlement in hours

For 2014: Calculation to pro rate to 13th July 2014:

$36.25 (\text{hours per week}) \times 27.6 (\text{no. weeks from 1 January to leaving date}) \times 0.1077 = 107.75 \text{ hours } (14.86 \text{ days})$

**Step 4: Calculate total days/hours to be paid on leaving**

Actual entitlement for 2012, 2013, 2014 =  $0 + 28 + 14.86 = 42.86 \text{ days}$

All entitlements should also be pro-rated for part-time employees.

**EXAMPLE 4:****Part Time Employee who returns to work following long-term absence**

An employee with more than 5 years continuous service, working 20 hours per week, 4 hours per day and 52 weeks per year, is off sick from 3rd March to 29th June 2014. Prior to the absence the employee has taken 12 hrs annual leave from the 10th to 12th February (3 days).

**Step 1: Calculate the pro rata statutory entitlement for the employee's working pattern**

This gives the minimum amount of holidays that an employee must have off in the leave year.

**Statutory calculator:  $5.6 (28 \text{ days}) / 52 = 0.1077$**

**Pro rata statutory entitlement:  $(\text{hours per week}) \times (\text{weeks worked per year}) \times 0.1077 = \text{entitlement in hours}$**

Pro rata statutory entitlement for working pattern :  $(20 \text{ hrs p/w} \times 52) \times 0.1077 = 112 \text{ hrs}$

**Step 2: Calculate the contractual leave entitlement for the period of actual service**

Use the **variable** Holiday Calculator on Acadia to calculate contractual entitlement. Only dates for periods of work should be entered with the period of absence being excluded.

For the period: 1st January to 2nd March

Annual Leave Calculator: 25.70 hours

For the period: 30th June to 31st December

Annual Leave Calculator: 79.49 hours

Contractual Annual leave entitlement =  $25.70 + 79.49 = 105.19 \text{ hours}$

**In this case, this is insufficient to meet the statutory requirement of 112 hours.** The employee is therefore due 112 hours.

**Step 3: Deduct leave already taken**

Deduct from the 112 hours entitlement, any annual leave and public holidays already taken:

2 public holidays taken + 3 annual leave days taken = 5 days = 20 hours

Remaining **annual leave** and **public holiday** entitlement on return to work on the 1st July:

$112 \text{ hours} - 20 \text{ hours} = \mathbf{92 \text{ hours}}$

**Step 4: Establish annual leave entitlement only**

From the 92 hours, deduct any remaining public holidays that fall within the employees working pattern (eg: 25/26 December).

2 public holidays  $\times$  4 hours = 8 hours

$92 - 8 \text{ hours} = \mathbf{84 \text{ hours annual leave entitlement to year end}}$

**EXAMPLE 5:****Part Time Employee who does not return to work following a period of long term sickness absence**

An employee with more than 5 years continuous service, working 20 hours per week, 4 hours per day and 52 weeks per year, is off sick from 5th November 2012, is unable to return to work and employment ends on 13th June 2014. Payment must be made for any accrued annual leave entitlement. Prior to the absence the employee has taken 116 hrs annual leave.

**Step 1: Calculate the pro rata statutory entitlement for the employee's working pattern**

**Statutory calculator:  $5.6 \text{ (28 days)} / 52 = 0.1077$**

Pro rata statutory entitlement :  $(20 \text{ hrs p/w} \times 52 \text{ working weeks per year}) \times 0.1077 = 112 \text{ hrs}$

**Step 2: Calculate entitlement for year in which absence first occurred**

For 2012: 116 hours taken prior to absence so no further entitlement as more than statutory entitlement has been taken.

**Step 3: Calculate entitlement for any additional complete years of absence**

For 2013: 112 hours statutory entitlement

**Step 4: Calculate pro rata entitlement to leaving date**

For 2014: 112 hours pro-rated to leaving date:

**Statutory Calculator:  $5.6 \text{ (28 days)} / 52 = 0.1077$**

Pro Rate to leaving date:

$(20 \text{ (hours per week)} \times 23.6 \text{ (no. weeks to leaving date)}) \times 0.1077 = 50.83 \text{ hours}$

**Step 5: Calculate total days/hours to be paid on leaving**

Actual entitlement for leave years 2012, 2013, 2014 =  $0 + 112 + 50.83 = 162.83$  hours

Where an absence totals more than three months and extends across two leave years, entitlement should be pro-rated for the period actually worked in each of the leave years.

## **EXAMPLE 6:**

### **Absence extends across two leave years**

An employee with more than 5 years continuous service, working 36.25 hours per week and 52 weeks per year, is absent for a period from 11th November 2013 returning 24th February 2014. Twenty days leave have been taken prior to absence in 2013.

#### **Step 1: Calculate entitlement for year in which absence first occurred**

Total annual leave entitlement for 2013 must be at least statutory entitlement of 28 days (or pro rata for part time employees). *Where the contractual entitlement is calculated at more than 28 days, only outstanding accrued leave up to the statutory entitlement can be carried forward.*

Deduct from the statutory entitlement, the 20 days annual leave that has been taken and all public holidays that fell prior to absence:

28 days – (20 annual leave + 4 public holidays) = 4 days to carry forward from 2013

#### **Step 2: Calculate entitlement for year in which employee returns to work**

Calculate the leave entitlement for the period of actual service by using the variable Holiday Calculator on Acadia for the relevant year:

For the period: 24th February 2014 to 31st December 2014

2014 A/L Calculator: 241.58 hours / 7.25 = **33.32 days**

Ensure that the employee is getting at least the statutory minimum of 28 days for 2014. As 33.32 days exceeds the 28 days statutory minimum the employee will get the 33.32 days.

Total holiday entitlement (annual leave & public holidays) for 2013 and 2014:

4 + 33.32 = **37.32 days**

Note : If part-time the following calculation should be used:

**Statutory Calculator: 5.6 (28 days) / 52 = 0.1077**

**Pro Rata for time:**

**(hours per week) x (weeks per year worked) x 0.1077 = entitlement in hours**

When an employee returns to work following long term absence, any leave entitlement should be taken before the end of the current leave year where feasible. Where an employee is not able to return to work prior to the end of the leave year, or returns to work too late to clear all leave entitlement, any accrued leave up to the statutory 28 days, can be carried over to the following leave year.

Employees carrying forward accrued leave from a previous leave year will be expected to take this balance in a block prior to returning to work unless otherwise

agreed with their line manager. Any outstanding leave must be taken within 18 months of the leave year in which it is accrued or it will be lost.

Where line managers are designating the dates of leave, in order to best suit service provision, sufficient notice must be provided to the employee, equating to twice the period of the leave.

### **Example**

An employee returns to work following a period of long-term absence. The outstanding leave entitlement to be cleared by the end of the leave year = 5 days

In order to fit with service requirements, the line manager wishes to designate the leave to a specific period.

In this case the line manager must give at least 10 days notice prior to the first day of the leave period unless otherwise agreed with the employee.

## **3. CALCULATING ENTITLEMENT FOR TERM-TIME WORKERS**

The following process should be followed for any term time worker who is off sick for a period of 3 months or more, and therefore reduced to statutory entitlement in a leave year:

- Calculate the entitlement to annual leave using the [Term Time Calculator](#)

For term-time employees who are off for less than 3 months and request their holiday entitlement is reinstated:

- only periods of sickness absence covering designated days will be considered for reinstatement
- the period of absence must be covered by a sick line and the individual should have reported sickness to their line manager at the time in line with the attendance policy
- a request for reinstatement of annual leave should be made immediately at the end of the period of sickness absence.
- if the annual leave is to be reinstated - look at what remains of the leave year and establish if there are sufficient school holidays in addition to the designated days to cover the reinstatement. If so, the annual leave should be taken in the remaining school closure periods. Any outstanding days should be taken during term-time at times designated by or agreed with line manager.

**Example 6:**

**A catering assistant with 39 week contract and 3 years service reported sickness absence and submitted sick lines for the period:**

7th July 2014 to 3rd August 2014: the first 4 weeks of the summer holiday

The period of absence coincides with two weeks that are designated as annual leave so any claim should only consider these 10 days for reinstatement as leave during the Summer Holiday period.

Look at non designated days to come: 10 remaining days available in Summer holiday, 5 days are available in week 2 of the October holidays and 6 during the Christmas school closure period. There are, therefore, sufficient school holidays to cover re-designation of the 10 days.

For further advice and guidance on any of the above please contact [HR&OD](#).

# Calculating Annual Leave Entitlement Following Long Term Sickness Absence (Non-Teaching Staff)

## Index of Documents

### Procedure

Revision Date	Previous Revision Date	Summary of Changes
01-10-2013	-	Creation of Document
16-12-2013	01-10-2013	Update to Annual Leave and Public Holiday values
21-01-2014	16-12-2013	Update to Annual Leave and Public Holiday values
19-06-2015	21-01-2014	Format update
30-07-2015	19-06-2015	Update following case law on restriction to 18 month carry forward period
07-07-2016	30-07-2015	Wording added regarding pregnancy related illness