

Holiday entitlement and holiday requests

This factsheet gives guidance about holiday and leave entitlements, and summarises the statutory requirements for special leave.

Holidays

Employees are entitled to a minimum of 28 days (5.6 weeks) holiday in a year. This entitlement is calculated on a pro-rata basis for part-time employees.

You can count any days off for public or bank holidays towards a worker's statutory holiday entitlement - but only as long as you pay them for that day off. However, there is no statutory right that the holiday must be taken on public holidays; when leave is to be taken is, in the main, a contractual matter between the employer and employee.

The 5.6 weeks is a minimum entitlement - you can choose to offer more.

Carrying over unused paid holiday

Your nanny may wish to carry over unused holiday from the current leave year to the next.

Under European Union law, an employee must take at least four weeks' holiday per leave year. If they take less than this, they cannot carry it over. However, in the UK, the statutory entitlement is 5.6 weeks. What a worker may do with the additional 1.6 weeks depends on their contract of employment. You can either:

- Have an arrangement that workers must take their full statutory entitlement of 5.6 weeks in any leave year
- Allow your employee to carry over any of the additional 1.6 weeks that remains untaken into the next leave year

If an employee has an additional contractual entitlement over and above the 5.6 weeks, it again depends on their contract of employment whether or not they either can carry it over or will receive pay in lieu for any of the entitlement that remains untaken.

If an employee does carry over any additional statutory or contractual paid holiday, they must take it by the end of the next leave year.

Holiday entitlement and the contract of employment

You must set out your nanny's paid holiday entitlement in their written statement of employment. This should enable them to work out their entitlement and pay for any untaken holiday if they leave.

Taking holiday - notice periods, restrictions and sickness

Your nanny must give you notice that they wish to take leave and you can agree with them the amount of notice you require and should set this out in writing. If there is no agreement in place, they must give notice of at least twice the length of the intended leave period.

You must reply within the same length of time as the intended leave.

For example, if your nanny gives two days' notice for one day's leave, you must reply within one day. Even if your nanny gives sufficient notice, you may still refuse the request - but be as reasonable as you can.

Restricting when holiday may be taken

You may restrict the taking of leave. Restrictions could be stated in the employment contract. Examples include:

- Specifying periods when leave may or may not be taken
- Capping the amount of leave that can be taken at any one time
- Requiring your nanny to "save" holiday for certain periods, e.g. between Christmas and New Year or for two weeks in August

If you don't have an agreement for taking leave and you want your nanny to take all or part of their holiday entitlement on certain dates, you must give notice of at least twice as long as the leave period.

You should also note that it's unlawful to prevent your nanny taking their statutory paid holiday entitlement. Therefore you may have to allow a nanny's annual leave request right at the end of the leave year to ensure that they have taken their full entitlement of 5.6 weeks.

Sick leave and holiday entitlement

An employee continues to accrue their statutory minimum holiday entitlement as normal while absent from work due to sickness, however long the period of sickness lasts.

Depending on the terms of their employment contract, they may also accrue any additional contractual annual leave that they would normally be entitled to.

In light of recent European Court of Justice (ECJ) judgments, a worker on sick leave is entitled to take statutory annual leave at the same time, if they wish. If your nanny makes this choice, you would have to pay them their normal holiday pay rather than company sick pay for the days that they wish to treat as annual leave. If their sick pay period has ended, you should pay them their normal holiday pay rather than no pay. If the employee qualifies for statutory sick pay (SSP), you would carry on paying the worker SSP during their annual leave. The SSP would count towards any holiday pay you pay them. An employee is most likely to choose to take annual leave at the same time as sick leave in this way if they are:

- Not entitled to contractual sick pay
- On sick leave for a considerable period, and have run out of sick pay

An employee can choose to have annual leave changed into sick leave if they become sick:

- While on annual leave
- Just before they are due to take annual leave

They can then arrange to take the annual leave they missed at a later date.

In these situations, your nanny will then be on sick leave. You will want to consider requiring evidence of their sickness in line with your usual sickness-absence procedures and any eligibility criteria for company sick pay. For example, to qualify for full pay while sick, an employee could be required to inform you as soon as they reasonably can that they are sick and you could request medical evidence. If an employee is unable to take all of their statutory annual leave entitlement within a leave year because of illness, the ECJ judgments also mean they may be entitled to carry forward the unused statutory entitlement to the next leave year.

Sickness during holiday

If your nanny is sick or injured while on holiday, you should allow them to transfer to sick leave and take replacement holiday at a later date. This may be subject to requirements set out in the contract of employment – for example:

- Your nanny contacting you in person and by telephone (if possible) as soon as they know that their holiday will be affected by sickness or injury;
- informing the employer of the full period of their incapacity due to sickness or injury which must be certificated by a qualified medical practitioner, [where it exceeds seven days;]
- and within 5 days of their return to work, they must confirm in writing how much holiday was affected by sickness or injury and the amount of leave they wish to take at another time. This written notification must be sent to you.

Special leave

Employers are legally obliged to provide special leave to employees in particular circumstances, for example:

- Carrying out public duties
- Court service
- Trade union duties and activities
- Military training and service
- Parental leave
- Personal and domestic leave

There are also statutory rights to request flexible forms of working and to request time off for training which follows the right to request flexible working model.

Public duties

Employees who hold specified public positions have a statutory right under the Employee Rights Act 1996 to 'reasonable' time off work to carry out their duties. These include:

- Justices of the Peace
- Local authority members
- Members of health bodies
- School and college governors
- Members of police authorities.

Court service

Most court service is for jury service, but employees may also be called as witnesses. Employers are not legally required to provide time off for jury service, but could be found in contempt of court if they refuse to do so. Thus, in effect, employees' right to time off for jury service is protected by law.

Individuals summoned for jury service are expected to attend court unless they are ineligible, disqualified or excused by the court. Jury service can be deferred, but this is difficult to get agreed except in exceptional circumstances. Each application will be considered on its own merits, and applications must be made by those who have been summoned – employers cannot make them on employees' behalf.

Employers are not legally required to pay employees while they are undertaking jury service. However, jurors are entitled to claim for travel and subsistence and for loss of earnings, up to a maximum daily rate. Where employees wish to claim for loss of earnings, they must get their employers to complete the appropriate certificate which is issued to all jurors prior to attending

court. Employers are asked to provide information on net earnings and hours of work, and whether employees will be able to return to work on any full or half days when they are not required at court.

In many cases, the loss of earnings allowance may be below the juror's normal pay, and most employers provide paid time off for jury service, with the loss of earnings allowance being deducted from employees' normal salaries. There is no legal obligation on employers to pay employees attending court as witnesses, and arrangements vary considerably. For example, some apply the same payment procedures as for jury service; others require witnesses to use leave.

Military training and service

Members of the Volunteer Reserve Forces undertake training and may be required to serve alongside the regular forces. Training is typically one evening a week, plus around 30 full days a year, of which 15 days are at weekends, with the remainder in one continuous period of 15 days.

Most employers are under no legal obligation to provide time off for military training, but the majority of employers provide at least some paid time off, taking the view that the skills and abilities employees pick up during such training are valuable in the workplace.

It is unlawful for an employer to terminate an individual's employment solely or mainly because the employee is liable to be mobilised. However, an employer can seek exemption or deferral of call up if the relevant force adjudication officer can be satisfied that it would 'cause serious harm to the employer's business'.

Reservists do not suffer loss of earnings during military service – if their normal pay is higher than their military pay, they can claim the difference. Employers may claim for the costs of replacements or overtime if existing staff cover for reservists.

Family friendly leave

Please see separate Factsheets – Maternity, Paternity, Shared Parental and Adoption leave and benefits.

Personal and domestic leave

All reasonable employers will grant time off, paid or unpaid, for sudden personal reasons such as bereavement or illness, or domestic emergencies like fire, flooding or burglary. There is a statutory right to time off to make arrangements to care for dependants in certain emergencies and to make funeral arrangements for dependents and attend their funerals.

Under the 1996 Employment Relations Act, employees may take a reasonable amount of time off, for example:

- To help when a dependant falls ill, gives birth, is injured or assaulted
- To make arrangements to care for an ill or injured dependent
- Because of unexpected disruption to the care of a dependent
- As a result of the death of a dependant
- To deal with an incident involving an employee's child and occurring at the child's school.

A dependent includes:

- The employee's spouse or civil partner, child, parent or someone who lives in the same house (but not a lodger or tenant), or
- Any person who reasonably relies on the employee for assistance when they fall ill, are injured or assaulted, or to make arrangements for provision of care in the event of their illness or injury.

What is 'reasonable' is not specified in the legislation as it will depend on the circumstances, but one or two days will probably be sufficient for most typical emergencies such as having to make arrangements for a sick child.

When a dependent dies, an employee is entitled to take time off to make funeral arrangements and to attend the funeral.

There is no right to time off to attend medical or dental appointments, and employers' practices vary. Some may ask employees to make up the time or use annual leave. Others may grant unpaid leave.