



Holidays for Operatives

employed under the National Agreement for the Heating, Ventilating, Air Conditioning, Piping and Domestic Engineering Industry

ENGLAND AND WALES 2019

Building Engineering Services Association (BESA)

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IMPORTANT NOTE TO EMPLOYERS

In order to comply with the Working Time (Amendment) Regulations 2001, Employers are advised that they should copy:

- pages 1-2 of this leaflet to all Operatives in their employment; and
- all pages of this leaflet to new starters whose holiday pay is to be provided under the Welplan holiday pay scheme

This will ensure due notice is given as to when holidays may be taken and that new starters will be aware of the holiday arrangements as applied to them during the portion of the leave year in which they join.

Holiday period		Welplan Payment Code
Good Friday Bank Holiday Easter Monday Bank Holiday <i>Spring Holiday (Annual)</i>	19 April 22 April <i>Tuesday 23 April – Friday 26 April inclusive</i>	1
May Bank Holiday	Monday 6 May	2
Spring Bank Holiday	Monday 27 May	2
<i>Summer Holiday (Annual)</i>	<i>Twelve days to be taken where practicable between 1 June and 31 October</i>	3, 4 & 5
Late Summer Bank Holiday	Monday 26 August	6
<i>Winter Holiday (Annual)</i> 25 December 26 December 1 January, 2020	<i>Seven days to be taken in conjunction with the three recognised holidays. Period inclusive of annual and recognised holiday:</i> Monday 23 December, 2019 – Friday 3 January, 2020 inclusive	7

ENGLAND AND WALES

ANNUAL AND RECOGNISED HOLIDAYS 2019

NOTES

PAYMENT FOR HOLIDAYS UNDER THE WORKING TIME REGULATIONS, 1998

Whether holiday pay is paid through Welplan or through an Employer's own payroll arrangements, Employers will need to have regard to the requirements of the Working Time Regulations, 1998, which define the level of holiday pay that should be paid.

The Working Time Regulations (Statutory Instrument 1998 No. 1833), as amended, require holidays to be paid at the rate of a "week's pay" as defined in Sections 221-224 of the Employment Rights Act 1996. A week's pay is the amount of remuneration for the number of normal working hours in a week calculated at the average hourly rate of remuneration payable by the Employer during the 12 weeks before the holiday is taken.

In November 2014 the Employment Appeal Tribunal (EAT) cases of *Bear Scotland Ltd*, *Hertel (UK) Ltd* and *Amec Group Ltd* decided that the Working Time Regulations should now be interpreted such that payment for guaranteed and non-guaranteed (but not voluntary) overtime is to be regarded as part of normal remuneration and should be included as such in the calculation of holiday pay.

However, the 2017 EAT case of *Dudley Metropolitan Borough Council v Willetts and Others* ruled that voluntary overtime is now also to be regarded as part of normal remuneration for the purpose of calculating holiday pay, provided such overtime is worked over a *sufficiently regular and settled period* of time.

The EAT rulings apply only to the first 20 days' holiday derived from the European Working Time Directive.

The Parties to the BESA Operative National Agreement have agreed *Advisory Notes* on the effect of the EAT judgments to the terms of the National Agreement. These Notes are in JCC Letter 113 (dated 24 April 2015) and JCC Letter 121 (dated 02 July 2018).

Guidance on how to reflect the requirements of the Regulations in the case of Operatives commencing their employment part way through the holiday year is given in the form of Notes on the attached Ready Reckoner.

PAYMENT FOR HOLIDAYS WORKED

- (a) **Annual Holidays**
Normal hourly rate plus one day off in lieu paid in accordance with (c) below.
- (b) **Recognised holidays**
Double time rate subject to a minimum of two hours payment, plus one day off in lieu paid in accordance with (c) below.
- (c) The holiday pay received from **Welplan** constitutes the Operative's pay for actual day(s) of leave. If the Operative works on his annual or recognised holiday, he is entitled to the payment set out in (a) or (b) above and the money received from **Welplan** is payable for the day(s) off in lieu. But, the level of holiday pay that is paid for such days off in lieu will need to take account of the requirements of the Working Time Regulations summarised below.

HOLIDAY PAY SCHEME

Welplan provides a holiday pay service to Employers who wish to use it as a means of accumulating holiday pay for their Operatives. Employers opting to use Welplan may need to "top up" the level of holiday pay delivered by the Welplan scheme to comply with the requirements of the Working Time Regulations for the first 20 days' holiday per year (out of the 31 days provided under the National Agreement).

Once the first 20 days' holiday have been taken the remaining 11 days' holiday should be calculated in accordance with Clause 18(d) Recognised Holidays and Clause 21 (b) and (c) Annual Holiday of the National Agreement.

Employers who decide not to use this facility will need to devise appropriate payroll arrangements for accumulating holiday pay to fund the 31 days provided for under the National Agreement (including the first 20 days' required to be paid under the Working Time Regulations 1998 (as amended)).

WELFARE BENEFIT AND PENSION SCHEME ARRANGEMENTS

The Welplan Scheme additionally provides the welfare benefit and pension scheme arrangements required under the National Agreement and, for those employers who choose not to provide holiday pay through the scheme, weekly credit values will be reduced to cover promulgated welfare benefit and/or pension contributions only.

OPERATIVES JOINING PART-WAY THROUGH A LEAVE YEAR

Operatives joining a **Welplan** participating employer part-way through a leave year will be subject to different holiday pay arrangements. Their entitlement to Working Time Regulations paid annual leave will be *pro rata* to the proportion of the leave year that they are actually in employment. Further details on holiday pay arrangements for Operatives in these circumstances can be found in the "Ready Reckoner for New Starters" on pages 3-4 of this leaflet. This shows the *pro rata* holiday entitlement for a new starter commencing employment during each week of the holiday year. By reading across each line, you can establish:

- the *pro rata* amount of holiday which would need to be paid in line with the statutory requirements of the Regulations (column D);
- of which, the number of days to which **Welplan** would contribute some payment but which may need to be supplemented by the Employer in order to meet both its statutory obligations under the Working Time Regulations and its contractual obligations under the National Agreement (column G).

Rule **B7a** of the **Welplan** Supplement to the National Agreement states that Operatives must work their full contractual hours at normal hourly rates for the week concerned to be eligible for the purchase of a holiday credit.

In effect, this means, therefore, that, in order to be eligible for the purchase of a holiday credit for the week in which they commence employment, Operatives need to commence employment on a Monday.

SICKNESS PRIOR TO AND DURING AN ANNUAL HOLIDAY PERIOD

Guidance in relation to sickness absence prior to and during an annual holiday period is outlined at Rules C and E of the Welplan Supplement to the National Agreement. The up-to-date version of Rule E is in JCC Letter 107.

FOR OPERATIVES WHOSE EMPLOYER DOES NOT PARTICIPATE IN THE WELPLAN HOLIDAY SCHEME:

The basis for calculating holiday pay is as set out under the heading 'Payment for Holidays under the Working Time Regulations, 1998' shown above.

Once the first 20 days' holiday have been taken the remaining 11 days' holiday should be calculated in accordance with Clause 18(d) Recognised Holidays and Clause 21 (b) and (c) Annual Holiday of the National Agreement.

This leaflet is issued as a general guide for the convenience of employers. It should not be used as an authoritative statement of entitlement to holidays or holiday pay and the National Agreement or the Welplan Supplement to the National Agreement should be referred to for detailed interpretation.