CHANGES TO NAECI HOLIDAY PAY

Introduction

Developments in employment law in the last few years have meant that employers are required to make changes to the way that they calculate holiday pay.

What has changed?

Legal changes have meant that, in respect of some of the days of annual holiday entitlement, a different calculation needs to be made to deliver holiday pay at a level that complies with the revised legal position. The Working Time Directive says that for a NAECI in-scope employee who is contracted to work a five day week, 20 of the days of their annual holiday entitlement (provided that they work the whole leave year) must be calculated in a specific way which includes overtime and some other pay elements that have not traditionally featured in holiday pay. These 20 days are now being described as “Euroleave” days.

There is a need to differentiate between those 20 days of Euroleave holiday entitlement that require this prescribed level of holiday pay and any other days of holiday entitlement. In the case of a NAECI in-scope employee, who works 5 days a week for the whole leave year, they will have an entitlement to 20 Euroleave days as well as a further 13 days which will continue to be paid using the traditional NAECI holiday pay calculation arrangements.

Which days are the Euroleave days?

There is an entitlement to 20 days of Euroleave within each complete leave year. The first 20 days or the last 20 days, or indeed any other pattern of 20 within the leave year could be Euroleave days. The employer shall notify their employees which of the days of leave entitlement will be labelled as Euroleave days.

Accruing Annual Holiday Entitlement

The full annual holiday entitlement is only applicable where an employee works for the whole of that leave year, pro rata otherwise. This also applies to Euroleave days which will also accrue on the same basis. Accrual will operate at the rate of 1/52 of the full annual entitlement for each week of employment.

Example:

A new start employee commenced employment on Monday 3 July 2017. Provided that they work up until the end of the leave year their entitlement will be:

A = (B divided by 52) X 25

Where: A is the number of days of holiday accrued

B is the number of weeks employed during the leave year

A = (27 / 52) x 25

A= 12.98 days, rounded up to 13 days.

Some of the above days will also be Euroleave days. The Euroleave entitlement would be:

Example:

The Euroleave entitlement would be:

A = Euroleave entitlement

A = (27/52) X 20

A = 10.38 days.

So the total annual leave allowance is 13 days of which 10.38 will be Euroleave days and will attract a prescribed level of holiday pay.

The Euroleave holiday pay calculation

The underlying principle of Euroleave holiday pay is that when the individual is on holiday they should receive holiday pay broadly similar to what they would have expected to earn if they had come to work.

As of 6 April 2020, the law changed so that employers now have to use a 52 week holiday pay reference period (previously 12 weeks). Employers should establish "average normal pay" figures over a reference period of the 52 weeks immediately prior to when the leave is taken.

Which weeks make up the reference period for calculating Euroleave holiday pay?

It will be the 52 weeks immediately prior to the leave being taken. However, occasionally there will be circumstances that mean employers should discount one or more of those weeks and use a week immediately prior to the 52 weeks.

Section 223 of the Employment Rights Act confirms that employers should discount any week where no work was done and no remuneration linked to hours actually worked was paid e.g. a week of certified sickness or a week of annual leave.

Weeks where some hours have been worked and payment for those hours has been made, but less than 38 hours were worked e.g. as a result of unauthorised absence or industrial action, will count as part of the 52 week reference period.

From 6 April 2020, the law around holiday pay reference periods changed. If an employer has to discount certain weeks and use an earlier week, then the law prevents employers having to go back more than 2 years to reach a 52-week reference period. Any weeks prior to 104 weeks before the leave is to be taken should not be included. In these circumstances, the reference period is shortened to how many weeks are available to use in the 104-week period.

What elements of NAECI pay need to be included in the calculation for Euroleave holiday pay?

The Euroleave Holiday pay calculation needs to include the following pay elements:

- Hourly grade rate for all normal hours worked (up to 38 hours)
- Shift premium
- Overtime hours worked at the applicable overtime rate
- Applicable IBA payments for all hours worked
- Welding proficiency payments
- Periodic weekend leave travel time payments (not fares)
- The taxed element of Radius allowance
- Return to work/call-out payments
- Local standby arrangement payments

The following pay elements do not feature in the Euroleave calculation:

- Periodic weekend leave travel expenses
- Any tax free element of radius allowance
- Contractual Severance Pay / Statutory Redundancy Pay
- Accommodation Allowance

How is the calculation made?

Add up all of the applicable pay elements for the 52 weeks of the reference period. Then, in the case of an employee contracted to work a five day week, divide this figure by 260 to get a figure for a “normal day’s pay” figure.

What about the other 13 days of NAECI holiday entitlement?

There is no change to the way that holiday pay is calculated for the other 13 days of NAECI holiday entitlement. A week’s holiday pay, for holidays that are not designated as Euroleave, is calculated on the basis of normal working hours of 38 hours per week at normal grade rates with applicable IBA. Overtime hours/rates do not form part of the calculation.

What should happen when an employee’s contract of employment is terminated?

When the employment ends, the employer will need to undertake a calculation to ascertain:

a) the employee’s entitlement to Euroleave and other annual leave, based upon the proportion of the leave year that has been worked at the point of termination.

b) how many days of Euroleave with the appropriate level of holiday pay (and other annual leave) have already been taken.

The employer will then know whether the employee is owed outstanding holiday entitlement or whether more Euroleave or other leave than there is actually an entitlement to has already been taken/paid. In the circumstances of an employee having taken more leave than he/she has a pro rata entitlement to, or less leave than he / she are entitled to there will be an adjustment by the employer to the final wage payment.

Reference: NAECI 10