



The HR Edit

Series 1, Episode 6: Calculating part time leave – what you need to know

[Music]

0:00:01- **Helen:**

Welcome to The HR Edit, South East Employers' brand new podcast taking a look at those common and often tricky HR questions. This podcast is not just for HR experts, though it can be a useful refresher. We have created it with managers in mind as well, to help them navigate through some of the complexities of people management and reduce some of the potential pitfalls. Today, Michelle, our HR guru, Sarah, our tech-wizard and myself will be discussing calculating leave for part-time employees, which might sound simple enough, but I imagine you're going to prove me wrong, Michelle!

0:00:31- **Michelle:**

Probably I will. We get quite a few queries about it and people do get in a bit of a muddle.

0:00:37- **Helen:**

Okay, so should we jump right in, and can you tell us about the statutory leave entitlement for part-time employees?

0:00:43- **Michelle:**

Absolutely, so Currently, under European legislation, all employees are entitled to four weeks worth of annual leave, and it is expressed in weeks rather than days or hours. We tend to transfer across to days and hours because it's easier for us to manage in terms of booking, but in statutory terms it is referred to as weeks. On top of the European leave entitlement, the UK added a further 1.6 weeks of leave, and that equates to the normal eight bank holidays that would happen in a calendar year. The reason they added that 1.6 weeks was that under European law, the bank holidays were included in that four-week period. So, effectively, what the UK did is provide for four weeks annually and then the bank holidays on top. Now, at the moment, the government has announced its plans but not put any timelines to those. They are intending to simplify that leave entitlement so that we no longer have EU and UK leave entitlement. It becomes one statutory entitlement of 5.6 weeks, and this is being undertaken through the revocation of European law bill. But yes, as I said, there's no time scales for that.

0:02:05- **Sarah:**

Interesting Michelle. I think in the UK we are quite different, aren't we? I know just from a strange anecdote that when I was in Norway we were on a boat tour and they were talking about how Norwegians are not entitled to as much of the statutory pay as us. It's just a random little anecdote I'm throwing in. It actually made me realise how lucky we are in this country. I know that we don't have as many bank holidays, potentially as other places, but the fact that they kind of add it on as a statutory is fantastic. It's like the maternity leave and paternity leave that we're entitled to in this country.



0:02:40- **Michelle:**

It's far more generous than many, many countries. Absolutely, that is so true.

0:02:46- **Helen:**

On top of that, is there any additional leave part-time workers are entitled to?

0:02:51- **Michelle:**

Depends on the employer. So, there is the legal minimum leave entitlement that an employee is entitled to. But some employers will go above and beyond and provide for contractual leave entitlements. So, in local government we have the green book, the National Terms and Conditions, and that provides for 23 or 26 days of leave, depending on continuous service, plus two statutory days plus the bank holidays. So, we're looking at 25 or 28 days plus bank holidays, which is more than that statutory minimum. Within some councils they go even further than the green book. So, you might find entitlements to 30 days plus bank holidays, 35 days plus bank holidays, depending on seniority, length of service etc.

0:03:46- **Sarah:**

Yeah, I was going to say, because a lot of the places, like SEE actually, after sort of five year service, you get a couple of extra days, don't you? So it's nice to have that flexibility as well. But the green book which we always refer to our kind of the rulebook I suppose, for the local government, kind of has that statutory in there and then it's down to employers to add on or whatever, whatever they feel is for the benefit to the role.

0:04:10- **Michelle:**

Yeah, and I think that's the thing you know without leave entitlements being in excess of that statutory minimum. You know, it makes us quite a sort of attractive employer because we are giving people more time away from that work environment and that opportunity to relax and live outside of work.

0:04:32- **Sarah:**

Yeah, if that magic kind of work-life balance thing isn't it that we're all trying to achieve.

0:04:37- **Michelle:**

Yeah, absolutely. One of the questions we quite often get asked through our query line relates to the Green Book leave entitlement that has then been enhanced locally and where the pay deal includes additional annual leave. So, it's easier to think about a person's leave entitlement effectively broken into those four different types of leave soon to be three different types So the EU statutory leave, the UK statutory leave, the national terms and conditions leave and the local contractual leave entitlement. So, let's, for example, say you locally provide 30 days of annual leave plus bank holidays, that will be made up of the four weeks of EU, the 1.6 weeks of the UK statutory and then a bit of the Green Book entitlement and then the last either two or five days.

Doing my maths there are your local contractual leave entitlement. Now if, like in 2023, the Green Book entitlement was lifted from 22 to 23 days or 25 to 26 days, you can't just keep your 30-day leave entitlement locally because actually you have a local contractual agreement



to pay those extra days, the extra sort of two or five days. So, you're actually into a situation where you have to go through a local variation to contract or local collective agreement process to amend that contractual entitlement. So it's far easier, I would say, to just up your leave entitlement by the one day that is awarded through the Green Book pay negotiations, because I can't see very many unions agreeing to you reducing your local contractual entitlement to offset and compensate for that Green Book entitlement.

0:06:55- **Sarah:**

Yeah, that makes sense. Actually I hadn't thought about the repercussions if you were trying to lower it. Yeah. Yeah, it's much easier to just go with it.

0:07:06- **Michelle:**

Yes, unfortunately. Well, I say unfortunately, it is one of those things. The whole point of the Green Book leave entitlement being enhanced is to improve the conditions for the workforce. So, you know, just because you've already agreed to go beyond the Green Book entitlement, does that mean that those individuals shouldn't see a commensurate enhancement to their terms as well? The other thing to note is around the carry forward of leave entitlements. So, under EU law and the UK statutory entitlement there is no legal right to carry forward leave. The EU legislation was written specifically that employees must be allowed to take their leave in the leave year in which it falls due, unless there are extenuating circumstances, and we'll come on to that in a bit.

However, that doesn't prevent employers from putting a carry forward clause into their contract of employment and we quite often see in contracts and a carry forward entitlement of up to a week's worth of leave into the next leave year. And that can sometimes be caveated with. But that leave must be used within the first three months of the next leave year. So, you're not constantly accruing and rolling forward leave from leave year to leave year. It is very much a use it or lose it situation for statutory and as an employer, you should be making sure that your employees are taking their statutory entitlement in the leave year in which it falls due and only really allowing them to carry forward any contractual element of leave.

As I said, annual leave is normally a use it or lose it entitlement. We can provide that carry forward for any contractual entitlement. What we can't do is pay for any accrued and untaken leave just because we've reached the end of the leave year. The only circumstances where you can pay for accrued and untaken annual leave is when the contract of employment is being terminated, either because the employee has resigned or because they have been dismissed for some reason or made redundant.

0:09:36- **Helen:**

So, Michelle, when looking at different leave entitlement, which parts are affected by case law?

0:09:44- **Michelle:**

So, the majority of case law that has gone through the court system up to Europe only refers to European statutory leave entitlement. So, any decision made technically only affects that four-week statutory entitlement. However, given that the UK government introduced the

extra 1.6 weeks to enhance that EU entitlement with exactly the same purpose behind it, in reality case law would affect that 1.6 weeks as well. We often get asked whether we have to include the contractual leave entitlements when we are talking about accruing leave whilst on family friendly leave or whilst on sick leave, the case law only applies to statutory leave. We have not seen a case where it has gone up to Europe and contractual leave has been part of the decision. So, at the moment we don't legally have to include contractual leave in those calculations. However, in reality, that question is probably more governed by your local procedures and probably your payroll system as to whether it is capable of separating out the different elements. And if it's not, do you want to go through the process of manually calculating these things to then adjust the system that way? So, from an administrative perspective, it is often easier just to look at annual leave entitlement as one lump rather than trying to break it down into the statutory versus contractual. So, as I said, most case law that we have seen is around people challenging their employer because they haven't been given their leave entitlement. And that's because they may be on maternity leave, they've been on sick leave or their employment status is in question, and that has happened in a few where the employer has argued that the individual is self-employed and is not an employee and is therefore not entitled to their annual leave entitlement. And, as I said, all of that case law has revolved around the statutory minimums rather than any contractual leave entitlements.

The other situation where we often get asked about annual leave accrual is where an employee is seeking to take a sabbatical or career break, and this very much comes down to the wording in your contracts or your sabbatical or career break policies. There are two types. There's one where the employment contract continues in full and you are effectively giving the employee a period of unpaid leave, in which case they remain an employee throughout and they will accrue their annual leave throughout. The other type is where you effectively pause the employment contract, so, whilst they remain connected to you as an employer, you are pausing all the terms of their employment contract and that's clearly stated in the policy and any letters that go to the individual agreeing, in which case they are not considered to be employed. Whilst they are on that break, their contractual entitlements do not continue, so they are not accruing their annual leave whilst they're not at work.

0:13:26- **Sarah:**

That makes sense, and it just brings up the question in my mind as well, because obviously there is a difference then between your contractual entitlement and pausing for something like a sabbatical or a career break. But as we've all had children, haven't we? So, I always wondered why, with maternity leave, suddenly you had to take all your annual leave before if you could. Certainly, if it was over a kind of end of financial year or you'd have to, then you'd have to a tonne of annual leave to have afterwards. It always struck me as slightly odd, but I suppose it's different in that way than it's not considered a break in your career or a pause on your contract. It is a statutory leave that in this country we are entitled to. One of the high-profile case law I suppose that affects holiday entitlement that has been about in the last year is the Harper Trust case. Do you reckon you can give us a little sort of brief overview about that and how it kind of is affecting holiday entitlement?



0:14:27- **Michelle:**

Yes, the Harper Trust and Brazil case is one of those really complex cases, but ultimately the outcome is quite simple. So, the Harper Trust case revolves around an effectively a peripatetic teacher. So, they weren't assigned to a particular school, they moved around different schools and were called in as and when they were needed. This meant that she didn't have a regular working pattern and at the end of each term her employer would calculate how many hours she's worked in that term. Multiply that by 12.07%, and that was the amount that they then paid as holiday pay. Now she then challenged that, because what they were doing is effectively prorating her annual leave entitlement by the number of weeks she worked in a year. But she was actually employed for the full year, and after many, many years of going through the tribunal systems and up to the courts, we've had the final decision from our Supreme Court, and the fundamental point that is made in the ruling is that where an employee is employed over a complete leave year, they must be given 5.6 weeks of annual leave, regardless of how many weeks they actually work in that working year. So what that means and the courts acknowledge this is if you have someone who is on a zero-hours contract, works for maybe two or three weeks of the year and the example they use in the ruling is an exam invigilator. Despite the fact they are only working for that three weeks of the year, they are entitled to an additional 5.6 weeks-worth of leave. So, they're getting more leave than they have actually worked.

Now the court said that was not a reason to change the decision that they had made. The legislation is written very clearly that every worker who is engaged over a year must be given the 5.6 weeks, and those weird anomaly cases should not change the way we read our legislation. What they did say is it won't apply to those employees who are employed for short periods within the year. So, if you have a fixed term contract for three or six months, you can absolutely pro rate leave entitlements for working half a year.

If you have casuals who come in and do short periods of work for you, as long as there is no overarching agreement that creates a relationship between you and the casual and an expectation that they will be called on when there's work available, again you can pro rate for the part-year that they're working and the 12.07% calculation would probably still be considered to be fair for that for those individuals. But if you have an overarching agreement for your casual workers that sort of and we quite often do this we will send out a letter saying you are engaged as a casual worker. There's no mutual obligation for us to offer work or for you to accept it, but you are kind of on our books. There's a question mark as to whether that would be considered as an engagement for over the year. We could face challenge if there are casuals out there who wanted to try it through the court system to argue that that overarching agreement letter creates that relationship that entitles them to that 5.6 weeks worth of leave.

0:18:45- **Sarah:**

That's interesting. So essentially then, there's going to be you know, since this case was ruled on, there would be a lot of sort of scabbling around and checking wording on contract. I know that zero-hour contracts were quite the thing maybe a year or so ago, but are we seeing less of those now and more people on fixed term? or, you know, the contracts have worded a little bit differently.

0:19:07- **Michelle:**

I think there has been a bit of a shift. There has absolutely been a lot of scrabbling around for people to understand what their risks and liabilities are. What I would say is the government is kind of listening to the noise that's being made by employers and are considering whether we need a new set of regulations that sort of set out more clearly how leave should be calculated and accrued. And that's possible because we have come out of Europe and we are not bound by those European rules anymore. So, it does allow us that flexibility to create our own set. That sort of moves away from the situation that the Harper Trust case has created for us.

Whether we're seeing reduction in the use of zero hours contracts. I haven't really seen that yet. I think we in local government are very careful about when we issue those zero hours contracts and there's usually a legitimate business reason for doing so. I think the issue is we have generally done the sort of the 12.07% calculation on the hours worked, rather than actually sitting down and doing those calculations on an individual basis for how much they are entitled to. So my recommendation for anyone who hasn't started to address the impacts of Harper Brazil is to go and look very carefully at your casual workforce and your zero hours workforce and really assess whether they are genuinely needed as zero hours, whether they are genuinely a casual employee, and go and look at the overarching casual agreement to see whether it creates a contract-like relationship between you and that casual worker.

0:20:58- **Sarah:**

Thank you for that, Michelle. That was really interesting. I've got my brain whirring now on people I know that could be affected. If you want to know more about the Harper Trust case, we do have an awesome blog by our colleague, Chelsea, on our website at seemp.co.uk and that blog post is all about the Harper Trust case and the knock-on effects for organisations.

0:21:22- **Helen:**

So, Michelle, if you're ready, let's look at the math of all of this and the calculations to working at a part-timers annual entitlement. Michelle has prepared a spreadsheet with all of the information that she's going to talk through now, which is available for our members on our website at www.seemp.co.uk/theHRedit, which is where all of the additional resources for our episodes will be held. If you are not a member, grab a pen and paper, as Michelle will be talking through the calculations as we work through it. So, Michelle, what do you need to know to be able to calculate apart timers annual entitlement? What is the actual calculation?

0:22:05- **Michelle:**

First of all to calculate apart timers leave entitlement, you need to know their continuous service, the normal full-time hours that your workforce works, the part-time hours that this employee is going to work and when your leave year runs, so that you know just how many bank holidays are occurring in that leave year period.

The first thing you do is work out what your employee's FTE is, or full-time equivalent. And in the example that I have created we have an employee who works 24 hours a week. The full-time hours are 37 hours a week because that's the normal contractual hours that a local



government employee would be required to work as a full-timer. So to calculate the employee's FTE, you simply take their working hours and divide it by the full-time hours. So, we have 24 divided by 37, which gives us an FTE of 0.65. I have rounded to two decimal places because that just makes life that little bit easier for us. Then we need to look at calculating the total amount of leave that a full-timer would be entitled to. Now for this employee, I've suggested that they have 10 years of continuous service. Now that will be modification order continuous service. So, they will have bought that with them, potentially from a previous employer Not necessarily worked for 10 years for your organisation. Under Green Book. that gives the employee an entitlement to 26 days of leave as a full-timer, plus two statutory days And this leave year the 1st of April 2023 to the 31st of March 2024, we actually have 10 bank holidays, because Easter next year is early and Good Friday falls into this leave year. That gives a total full-time leave entitlement of 38 days across the year. To then work out the part-time employee's total leave entitlement, you simply take that full-time total and multiply it by their FTE, so that's 38 days times the 0.65, which gives rise to a total leave entitlement of 24.65 days.

The reason we add annual leave, statutory days and bank holidays together to create a total leave entitlement is to create fairness for part-time workers. We have the prevention of less favourable treatment against part-time workers regulations, and so we need to make sure our part-timers are not disadvantaged by the fact that they don't work full-time. The reason we include bank holidays in the calculation is because part-timers work a complete range of different working patterns. Some will work the same number of hours five days a week. Some will work a set number of days in the week. Others might work just a couple of days per week. So, in order for each part-time employee to receive equal treatment, you have to prorate the bank holiday entitlement so that they get, in this case, the 0.65 worth of entitlement of bank holidays.

And the reason we do this? take a job share partnership as an example. One of your job share partners works Monday to Wednesday. the other works Wednesday to Friday. They both work half FTE. The majority of our bank holidays happen to fall on Mondays in the UK. So, the person who normally works Monday to Wednesday would get an unfair share of bank holidays if we just excluded them from that total leave calculation and they took the bank holidays as they fell. The person who works Wednesday to Friday would be disadvantaged in that situation because they wouldn't get the equivalent amount of time off work. So, by including all types of leave into one total number, it spreads that bank holiday entitlement evenly across all part-time workers, and when a person is due to work on a bank holiday, they simply need to book that time as annual leave. It then means that the person who works on a Friday the Wednesday to Friday can then book that leave at a different time in the year, which gives them a greater flexibility around when they can actually take their time away from work.

0:27:00- **Helen:**

So, you've got your 24.65 days and you've just talked about how part-time workers have different working patterns. Is there anything additional you do to those calculations to make it more usable for everybody?



0:27:13- **Michelle:**

Absolutely. For a part-time worker who works the same number of hours five days a week, you can leave it in days because there is no difference between Monday and Friday being taken off.

However, if you've got an employee who works different hours on different days or only works two or three days a week, it's often easier to actually convert the days into an hours calculation because then if someone normally works three hours on a Monday, six on a Tuesday, four on a Wednesday, they only have to book the number of hours off that they're actually taking. So, to do that, you take that part-time leave entitlement which, as you say, is 24.65, and multiply it by the normal length of a full-time worker's working day. In local government, having a 37-hour week over a five-day working week, that creates a normal length of day of 7.4 hours. So, it's the 24.65 times 7.4, and that equates to 182.4 hours. By translating days into hours, it makes leave entitlement far more flexible for the part-time worker. So, if they need to take an hour off for an appointment or want to take a half day off, it's much easier for them to just deduct the hours that they need to be away from work rather than trying to work out a proportion of a day to take.

0:28:52- **Sarah:**

So, part-timers are allowed it in hours. I suppose it's dependent on each organisation whether they allow full-timers the same kind of level of flexibility in terms of working their leave out in hours. Is that something you can request or is that down to each individual organisation's policy?

0:29:09- **Michelle:**

That would really be down to each individual organisation's policy. It's one of those things that the custom and practice has been that leave entitlement is expressed in days, and it creates a bit of a mind-shift if you then want everybody to have their leave entitlement expressed in hours. And I think a lot of organisations are a bit cautious about allowing that level of flexibility to all their staff because they'll be worried that they'll be picking random hours in the week. In reality, let's face it, most employees are not going to be picking random hours to just disappear off for an hour. They're going to want, actually I've got a dentist appointment and I know I'm not going to be able to get to work until 11 o'clock, so actually I want to book 9 till 11 as leave, depending on, again, employer policy. Sometimes dental appointments are covered and are given as paid leave off without having to take annual leave. But yeah, it's custom and practice, rather than you know setting in any statute or anything that it's expressed in days.

0:30:21- **Sarah:**

Yeah, it's interesting, like you say. I mean before COVID I don't think I'd have ever questioned it. But since COVID and all the changes that have been, that were forced and are now, you know, people are realising they are better practices. Certainly, with the hybrid working I mean as somebody who works at home myself, you know there are points in the day where I need to be, for example, at school for an assembly with one of my children. I do only want to take two hours off in the day because it, you know, I am home and the school's five minutes away. I don't need to be taking a full half day to get home from the office, to get changed, to go to



the play and then hang around for my kids and pick them up. Whereas before COVID I would have done.

0:31:01- **Michelle:**

Yeah, and that's the thing in terms of productivity, you know, not forcing someone to take a half day off when they only need two hours can only be a good thing, and that is the. you know, that is the advantage of hybrid working, homeworking is we have that flexibility now to be able to manage our life outside of work much more effectively around work.

0:31:26- **Sarah:**

Yeah, absolutely. And again, like we said at the beginning of the podcast, it's that magic work, life balance And I know the hybrid working works for a few people, it doesn't work for others And I suppose it's that level of flexibility now with employers that's actually become a benefit of the role. On our jobs site sejobs.co.uk, we're starting to see a lot more people now or a lot more employers, you know, it's a very much hybrid roles two days in the office, three days at home, or three days in the office, two days at home. So, there's a more innate level of flexibility now in jobs that we, you know, three years ago, were very much office based. You did need to take half a day off if you had a doctor's appointment because you may live 20 minutes away And it's impossible to get there and back in in the kind of hour that you're given. But maybe this is for another podcast! But yeah, thank you. Thank you, Michelle, for making the kind of part time leave Interesting. Actually, I understand it better now than I ever did. I used to be part time at another role, but I love the fact that I got the bank holidays included, but never really understood it. So, you've made that really clear for me now. Thank you.

0:32:36- **Helen:**

Thank you, Michelle and Sarah, and thank you for joining us. The HR edit podcast is free to listen to and you can find it on Apple podcasts or wherever you get your podcasts, and on our website at www.seemp.co.uk/theHRedit, which is where members will also find any related resources mentioned in our episodes. We hope to see you back next time when we'll be discussing our next topic. Thank you very much, and we'll see you then.

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