

LEGAL  
UPDATE

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# Calculating holiday entitlement

## EMPLOYMENT

The government has issued a consultation on proposals to deal with the impact of the supreme court's decision in *Harpur Trust v Brazel*. That verdict confirmed that holiday pay should not be pro-rated (historically worked out as 12.07% of the hours worked) and instead that employees are entitled to 5.6 weeks of annual leave calculated using a 52-week reference period to determine their average weekly pay, ignoring any weeks in which the individual did not work.

The effect of the Harper Trust judgment means that in essence part-year workers receive more holiday entitlement than part-time workers who work the same number of hours across the year. The government is proposing to address the



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complex issues raised in the case and ensure that holiday pay and entitlement received by workers is proportionate to the time they spend working.

The proposal looks to introduce a 52-week reference period which includes weeks with no remuneration, rather than exclude them, as is currently the case. At the beginning of a new leave year, the worker's holiday entitlement would be calculated based on

the previous 52 weeks, which would then give them their annual holiday entitlement for the new leave year. It is unclear how this would apply to workers in the first 12 months of a job while their reference period builds up and a method of calculation will need to be introduced.

The consultation, available via [www.is.gd/wotika](http://www.is.gd/wotika), closes on 9 March 2023.

## Fact File

## CLEAN AIR ZONES

Clean air zones (CAZs) charge non-compliant vehicles each time they pass through a designated area. Buses, coaches and HGVs must meet Euro VI emission standards. Vans must meet Euro 6 regulations. The following cities currently have CAZs in operation: Bath, Birmingham, Bradford, Bristol, Portsmouth, Sheffield and Tyneside (Newcastle and Gateshead). CAZs are also planned for Greater Manchester. In addition, the London ULEZ (ultra-low emission zone) is expanding in August 2023 to much of Greater London, and has similar requirements.

Local authorities are offering funding through grants and financial support schemes to replace or retrofit non-compliant vehicles. To apply for funding, operators will need to satisfy eligibility criteria. HGV or PSV funding applications are still open for Birmingham, Bristol, London, Tyneside, Sheffield, and Greater Manchester.

## EMPLOYMENT

### New guidance on suspension

In late 2022, Acas published new guidance on managing disciplinary suspension ([www.is.gd/memiyo](http://www.is.gd/memiyo)). It advises that employers consider carefully whether it is absolutely necessary to suspend an employee pending investigation/disciplinary proceedings. The guidance offers detail on the process as well as the support that should be offered. Suspension should only be considered if there is a good reason, such as to protect

an investigation – that is, if there are concerns about someone damaging the evidence or influencing witnesses.

In all circumstances, an employer must be reasonably satisfied that they have explored all alternatives to suspension. Alternatives could be a change in the working pattern, working from home, or stopping a certain type of work.

If employees do not agree with the suspension, they should raise the issue informally in the first instance and if it is not resolved, a grievance should be brought.

## REGULATORY

### New trailer IVA forms

The form used to apply for individual vehicle assessment (IVA) and entry into service consent for trailers, to make sure they meet safety and environmental standards, has been updated. There are new guidance notes as well, available via [www.is.gd/okihef](http://www.is.gd/okihef).

## ENFORCEMENT

### ER lists updated

DVSA Earned Recognition for vehicle operators is a way for vehicle operators to prove they meet driver and vehicle

standards. They regularly share performance information with DVSA. In return, their vehicles are less likely to be stopped for inspections. The list, available via [www.is.gd/wekuxu](http://www.is.gd/wekuxu), shows operators who have proved they meet the standards and have successfully joined the scheme. There are currently 112 operators in the scheme, and 22 have been removed since the scheme started. DVSA says that it removes operators when they stop trading, change company status, no longer meet the criteria for the scheme, or choose to leave.