

I think I might have a claim

How do I make a claim?

If your employer is not paying you normal pay for your holidays you may have a claim, however there are strict time limits to take your claim to an employment tribunal.

It is your responsibility to ensure that your claim reaches an employment tribunal within the time limits which is usually three months less a day from the date you were underpaid holiday pay.

You must complete form ET1 setting out the details of your claim and send it to the employment tribunal with the appropriate fee or remission application. The best way to complete your ET1 form is online on the justice.gov website.

Before your ET1 will be accepted, you must obtain an ACAS early conciliation certificate reference number. To get this you must contact ACAS (either on-line at www.acas.org.uk or by telephone on 0300 123 1100) to notify them of your intention to make a claim for underpaid holiday pay.

If you would like assistance from the union with a claim for underpaid holiday pay you must contact your local office to obtain a Member Pack application form. Once you have completed the Pack and returned it with any supporting documents it will be forwarded to the legal department who will assess your claim and decide whether or not it is one which the union will support. You should have a decision from the legal department on whether or not assistance has been granted within 10 days from the date you return the pack.

If assistance is granted the union will pay any tribunal fee that becomes payable providing that you have made a properly completed remission application.

But remember the time limits – If you wait for a decision from the legal department, you risk your claim being out of time so if you think you have a claim, you must ensure that your ET1 reaches the tribunal within the time limits and that you contact ACAS straight away.

Can I claim for backpay?

The Employment Appeal Tribunal has placed significant restrictions on the ability to make claims for backpay. These restrictions mean that most members will not have substantial claims for backpay.

The court has said that it is only the four weeks of annual leave that derives from the European Working Time Directive that must be paid equivalent to normal pay and not the additional 1.6 weeks leave from UK law (or any additional contractual leave). The court also said that this European derived leave is the first leave taken in a leave year and any additional leave is the last leave taken.

You can only claim for underpaid holiday if you were underpaid for European derived leave in the three months before you submit your ET1 claim to the tribunal (having first contacted ACAS about your potential claim).

Your claim can go back beyond the three months as a “series of deductions”. However, the Employment Appeal Tribunal has recently decided that the series will be broken if there is a gap of more than three months between periods of underpaid European derived holiday. In practice this is likely to mean few people will be able to claim for much backpay as it is likely that sometime in the last 12 months there will have been a gap of more than three months between periods of holiday you have taken that is classed as European derived.

In most of our agreements, the Union will be seeking to secure a deal on all holiday pay being based on normal pay (not just the four weeks European derived leave). For most members this will be worth more than a claim for backpay.

A small number of members may, however, have significant claims for backpay. If you feel you may have a significant claim you need to notify ACAS as soon as possible.

Usdaw can advise and assist you with a claim for underpaid holiday pay. For further advice and assistance with submitting a claim you should contact your Area Organiser but you should bear in mind the time limits for bringing a tribunal claim.