



# Calculating holiday pay

7 October 2022 – session 3

# Agenda

- Harpur Trust v Brazel – the key issue
- The process for calculating holiday pay
  - Guidance
  - Practical examples
- Questions

# Harpur Trust v Brazel - key issue

- The case is about how you **calculate holiday pay**
- **All workers** are entitled to 5.6 weeks paid annual leave
- It **does not**
  - Deal with holiday entitlement - we know everyone is entitled to 5.6 weeks paid annual leave
  - Affect those who work part time on regular hours
  - Apply to those on short term/fixed term contracts
  - Change the rules on how you treat holiday in the first and final year of employment
  - Deal with additional contractual entitlement – be mindful of what is written in the Contract, plus potential discrimination risks

# Problem:

For someone who does not work regular hours, how can you know what to pay when they take 1-week of their 5.6 weeks annual leave entitlement?



# The process for calculating holiday pay

# Step 1: Taking annual leave

## Step 1.

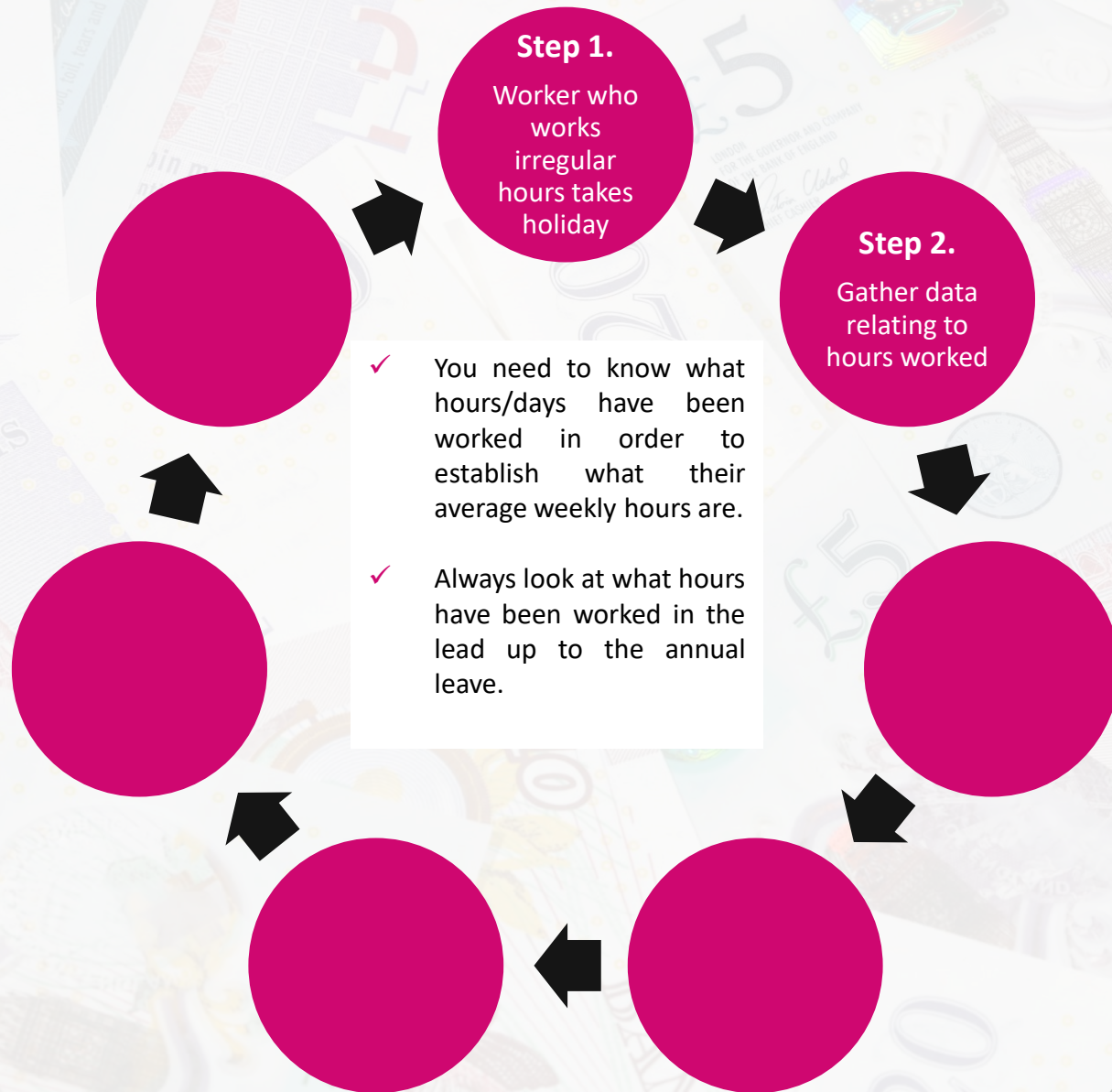
Worker who works irregular hours takes holiday

- ✓ You should have accurate annual leave records to:
- ✓ Know how much leave has been taken to date and when
- ✓ What balance remains outstanding from the 5.6 weeks entitlement to paid leave



**Step 2: Gather data on hours worked**

# Gather data on hours worked





# Gathering data

- Scenario 1
- Care worker – current placement is 30 weeks
- They did not work in the 14 weeks prior to this placement
- Lower row shows actual working hours over the placement
- Annual leave is being taken at the end – week 95

Number of actual hours worked per week																														
65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95
18	15	20	20	20	15	15	20	23	28	24	24	24	20	15	15	11	15	10	10	10	22	23	30	28	25	15	23	20	10	AL

# Gathering data

- Scenario 2
- Holiday park cleaner, who works mostly during school holidays
- The lower row shows they worked 8 weeks, then did not work for 14 weeks, then worked for a further 8 weeks.

Number of actual hours worked per week

75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105
10	20	23	15	25	28	30	23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	20	15	15	20	20	20	15	18	AL

# Gathering data

- Scenario 3
- Carer working throughout the year, working irregular hours
- The lower row of data shows how many hours of work each month, over a 52-week period.

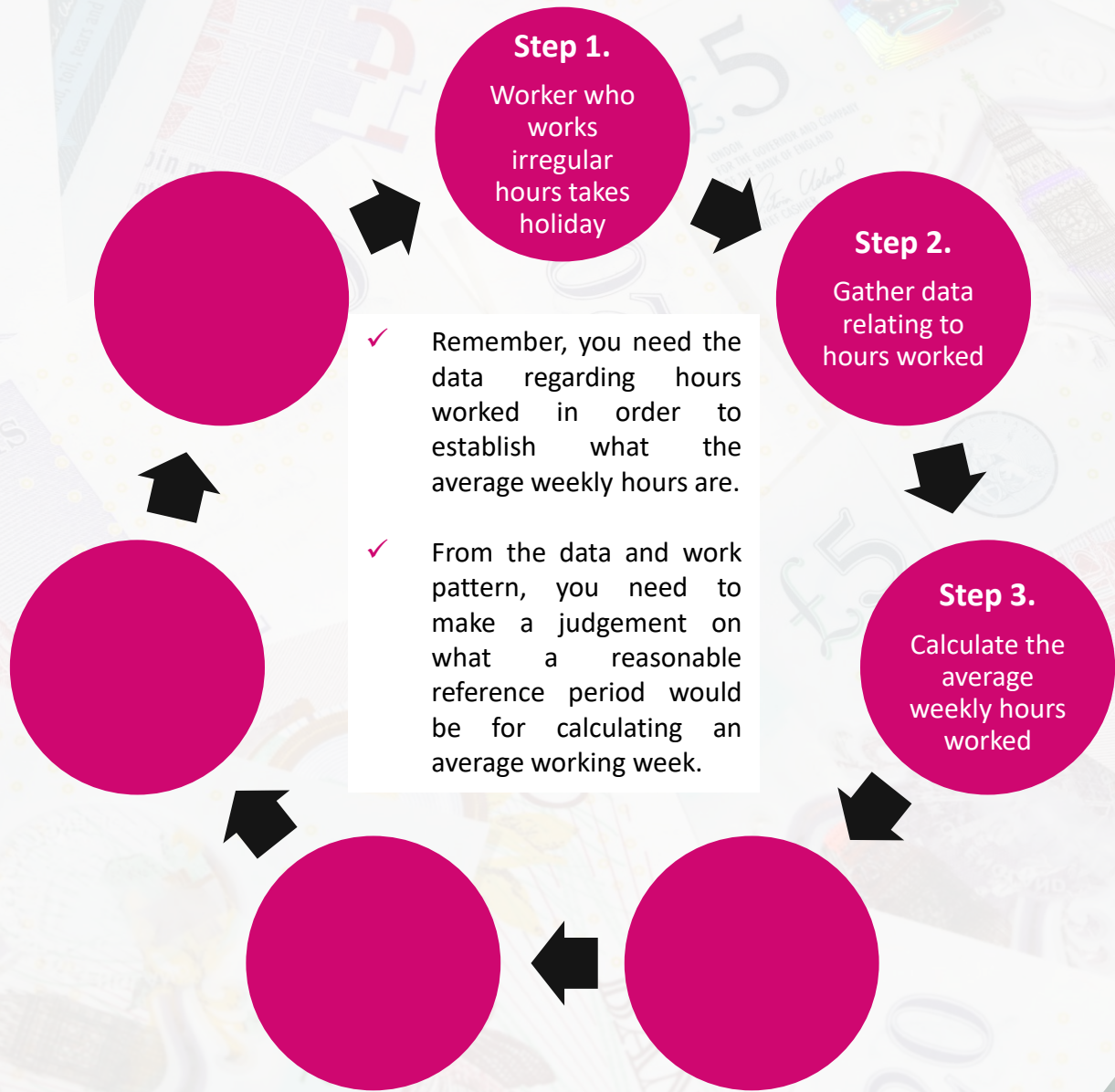
Number of actual hours worked per month											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
82	102	91	35	50	68	90	95	98	56	128	68





**Step 3: Calculate average weekly hours worked**

# Calculate average weekly hours worked



# Calculate average weekly hours worked

- There is no set formula either in legislation or case law to tell us what method to use.
- Reference periods must be long enough to give a fair representation of what an average working week would be. This will vary according to:
  - Type of business
  - Peaks and troughs of work
  - Fluctuations or less variance in hours
- The reference period may differ from one employee to the next. The reference period will be based on the circumstances.
- You could have two workers in the same business but with the way in which they work their hours, you may have two reference periods.
- Worknest Legal team advise it is important to ensure you do not include any weeks not worked because that would result in prorating on the basis of only working part year. [BEIS guidance](#)

# Calculate average weekly hours worked

- Finding an average
  - **add a group of numbers** together in the set (reference period) and **dividing that sum by the total number of numbers** in the set (reference period)
  - Reference period is the period of time you look back to find how many hours/days were worked (for instance, 52 weeks? 12 weeks? 8 weeks? Or any other timeframe that gives a fair reflection of working hours)
  - Using Excel – highlight the numbers in the set and it will automatically tell you the average, how many numbers are in the set and the total.

0	£8.91	£0.00	£142.50
0	£8.91	£0.00	£171.00
18	£8.91	£160.38	£171.00
23	£8.91	£204.93	£218.50
18	£8.91	£160.38	£171.00
23	£8.91	£204.93	£218.50
27	£8.91	£240.57	£256.50
30	£8.91	£267.30	£285.00
35	£8.91	£311.85	£332.50
30	£8.91	£267.30	£285.00
15	£8.91	£133.65	£133.65
18	£8.91	£160.38	£160.38
18	£8.91	£160.38	£160.38
30	£8.91	£267.30	£267.30
30	£8.91	£267.30	£267.30
25	£8.91	£222.75	£222.75
28	£8.91	£249.48	£249.48
20	£8.91	£178.20	£178.20
22	£8.91	£196.02	£196.02
22	£8.91	£196.02	£196.02
22	£8.91	£196.02	£196.02
25	£8.91	£222.75	£222.75
0	£8.91	£0.00	£0.00
0	£8.91	£0.00	£0.00
0	£8.91	£0.00	£0.00
0	£8.91	£0.00	£0.00
0	£8.91	£0.00	£0.00



30 week work | Example 2 Holiday park 8 week | Example 3 Carer 52 week | Average: 23.95 | Count: 20 | Sum: 479





# Your calculations...

Excel spreadsheet gives you data for 3 different scenario's – see Teams meeting chat

You will use the data to calculate:

- average hours
- average weekly pay
- holiday pay

# Case study 1: average weekly hours

## Question 1

- Using a 30-week reference period, what average weekly hours would their holiday pay be calculated on?

## Question 2

- Using a 52-week reference period, what average weekly hours would their holiday pay be calculated on

Number of actual hours worked per week																													
65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94
18	15	20	20	20	15	15	20	23	28	24	24	24	20	15	15	11	15	10	10	10	22	23	30	28	25	15	23	20	10

- Use the excel spreadsheet available.
- Care worker – current placement is 30 weeks
- They did not work in the 14 weeks prior to this placement
- Lower row shows actual working hours over the placement
- Annual leave is being taken at the end – week 95



# Calculate average weekly hours worked

- 30-week reference period
- Average hours per week = 18.933
- 52-week reference period
- Average hours per week = 20.90
- Includes prorating on the basis of working only part of the year
- When processing payroll, we process the average and do not round up. Although some employers would

# Case study 2: average weekly hours

## Question 1

- Using a 30-week reference period, what average weekly hours would their holiday pay be calculated on?

## Question 2

- Using a 8-week reference period, what average weekly hours would their holiday pay be calculated on

Number of actual hours worked per week																														
75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	31
10	20	23	15	25	28	30	23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	20	15	15	20	20	20	15	18	AL

- Use the excel spreadsheet available.
- Holiday park cleaner, who works mostly during school holidays
- The lower row shows they worked 8 weeks, then did not work for 14 weeks, then worked for a further 8 weeks.



# Calculate average weekly hours worked

- 30-week reference period
- Average hours per week = 10.56 using 30 calendar weeks - £100.38 p/wk (prorating on the basis of working only part of the year)
- Average hours per week = 20.26 using 30 worked weeks - £191.67 p/wk
- 8-week reference period
- Average hours per week = 17.87
- When processing payroll, we process the average and do not round up. Although some employers would



# Case study 3: average weekly hours

## Question 1

- Using a 6-month reference period, what average weekly hours would their holiday pay be calculated on? Holiday is after December.

## Question 2

- Using a 52-week reference period, what average weekly hours would their holiday pay be calculated on

Number of actual hours worked per month											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
82	102	91	35	50	68	90	95	98	56	128	68

- **Use the excel spreadsheet available.**
- Carer working throughout the year, working irregular hours
- The lower row of data shows how many hours of work each month, over a 52-week period.



# Calculate average weekly hours worked

- 52-week reference period
- Average hours per week = 18.51
- 6-month reference period
- Average hours per week = 19.10
- When processing payroll, we process the average and do not round up. Although some employers would





**Step 4: Gather remuneration details**

# Gather remuneration details



# Gather remuneration details

- Recommend setting up a spreadsheet to track pay changes:
  - Include overtime and bonus payments
  - Record hours worked
  - Obtain remuneration data for up to 104 weeks in order to calculate a week's average pay based on 52 weeks worked
    - Record company start date for calculating holiday pay for those with less than 52 weeks worked service
    - Track the taking of annual leave
    - Record balance remaining of the 5.6 weeks paid annual leave entitlement







**Step 5: Average weekly pay**

# Average weekly pay



# Average weekly pay

- Specifically, the Employment Rights Act 1996, chapter II, **section 224**
- “The amount of a week’s pay is the amount of the employee’s average weekly remuneration in the period of 52 weeks ending:
  - Where the calculation date is the last day of a week ending with that week
  - or
  - Ending with the last complete week before the calculation date
- no account shall be taken of a week in which no remuneration was payable by the employer to the employee and remuneration in earlier weeks shall be brought in so as to bring up to 52 the number of weeks of which account is taken.
- where an employ has not been employed for a sufficient period to enable a calculation to be made....the amount of a week's pay is the amount which fairly represents a week's pay”.
- If the amount earned is reduced for example due to SSP, use another week where usual pay has been received.



# Average weekly pay

- **Question:**
- Care worker, current placement is 30 weeks. No work in the immediate weeks prior to this placement. Takes annual leave in calendar week 95
- Prior to this 30-week placement they did not work any hours for a period of 10 weeks
- **Using the spreadsheet, calculate their average weekly pay.**

Number of actual hours worked per week																													
65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94
18	15	20	20	20	15	15	20	23	28	24	24	24	20	15	15	11	15	10	10	10	22	23	30	28	25	15	23	20	10



# Calculate average weekly hours worked

- 30-week reference period
- Average hours per week = 18.93
- When processing payroll, we process the average and do not round up. Although some employers would
- Average weekly pay = £192.70

# Average weekly pay

- Question
- Holiday park cleaner mostly during school holidays
- The lower row shows that they worked 8 weeks followed by a period of not working for 14 weeks. Then a further period of working for 8 weeks. Taking annual leave in week 31.
- Using the spreadsheet, calculate their average weekly pay.

Number of actual hours worked per week																													
75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104
10	20	23	15	25	28	30	23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	20	15	15	20	20	20	15	18





# Average weekly pay

- 8-week reference period
- Average hours per week = 17.87
- When processing payroll, we process the average and do not round up. Although some employers would
- Average weekly pay = £191.67

# Average weekly pay

- Question
- Carer working throughout the year, working irregular hours
- The lower row of data is showing how many hours of work in each month
- Using the spreadsheet, calculate their average weekly pay.

Number of actual hours worked per week											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
82	102	91	35	50	68	90	95	98	56	128	68



# Average weekly pay

- 52-week reference period
- Average hours per week = 18.51
- Average weekly pay = £170.23

OR?

- 6-month reference period
- Average hours per week = 19.10
- Average weekly pay = £179.94





## Step 6: Calculating holiday pay

# Calculating holiday pay





# Calculating holiday pay

- Internal guide provides 3 options for processing holiday entitlement and holiday pay for those working irregular hours
  - Option 1 - Holiday policy that requires leave to be taken in blocks
    - Receives 5.6 weeks paid leave
    - But the days leave entitlement does is not 28 days
  - Option 2 - Holiday policy that allows single days/hours
    - Receives 5.6 weeks paid leave
    - But the days leave entitlement does is not 28 days
  - Option 3 - Holiday policy that assigns 0.2 weeks leave per day taken
    - Receives 5.6 weeks paid leave
    - Receives 28 days, regardless of how many hours or days worked on average in a week
- **None of these options have been tested in the courts!**

# Option 1: Case study 1

- Option 2 – Holiday policy that requires leave to be taken in blocks
- More appropriate when wanting to manage holiday in hours or single days



# Calculating a percentage

## Converting percentage to decimal

60% divide by 100 = 0.6

To find 60% of 1 week:

0.6 x average weekly pay

# Option 1:

- Option 1 - Holiday policy that requires leave to be taken in blocks
- More likely to be used within education settings or where term time contracts are issued
- How to calculate the 5.6 paid annual leave entitlement:

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6 (60% of a week)	Holiday Entitlement balance
Case study 1	£192.70	£192.70	£192.70	£192.70	£192.70	?	5.6 – 1 week = 4.6 etc. until 0
Case study 2	£191.67	£191.67	£191.67	£191.67	£191.67	?	
Case study 3	£170.23	£170.23	£170.23	£170.23	£170.23	?	

# Calculating a percentage

## Converting percentage to decimal

60% divide by 100 = 0.6

To find 60% of 1 week:

0.6 x average weekly pay



# Option 1:

- Option 1 - Holiday policy that requires leave to be taken in blocks
- More likely to be used within education settings or where term time contracts are issued
- How to calculate the 5.6 paid annual leave entitlement:

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6 (60% of a week)	Holiday Entitlement balance
Case study 1	£192.70	£192.70	£192.70	£192.70	£192.70	$60\%/100 = 0.6$ $0.6 * 192.70 = £115.62$	5.6 – 1 week = 4.6 etc. until 0
Case study 2	£191.67	£191.67	£191.67	£191.67	£191.67	$60\%/100 = 0.6$ $0.6 * 191.67 = £115.00$	
Case study 3	£170.23	£170.23	£170.23	£170.23	£170.23	$60\%/100 = 0.6$ $0.6 * 170.23 = £102.138$	



# Option 2:

- Option 2 – Holiday policy that allows leave being taken in days or hours
- This method works out what proportion of a working week would 1 hour represent for the worker
- **Case study 1 - calculate pay for 8 hours leave**
- **Case study 2 – calculate pay for 5 hours leave**
- **Case study 3 – calculate pay for 8 hours leave**

# Calculating 1 hour of leave is as a percentage of their week and pay

**a) Work out 1 hour of leave as a percentage of their week**

1 hour divide by average weekly hours = ?

**b) Work out what the pay is for 1 hour of leave**

% of what 1 hour of their week is and x by how many hours leave taken

# Calculating 1 hour of leave as a percentage of their week

**c) Calculate what percentage of their week is 8 hours annual leave?**

0.00%? X 8 hours

= this is the percentage of a week's pay you must pay for the 8 hours holiday

**d) Calculate 8 hours of a week's pay**

0.00%? X average weekly pay

# Option 2: Case study 1 (8 hrs leave)

	Average weekly hours	Taking 1 hour of AL	Pay for 1 hour of leave	Holiday pay	Holiday Entitlement balance
Case study 1	18.93 (using 30-week reference period)	$1\text{hr} / 18.93 = ? \times 100$  This is a percentage of week's leave	Use the average weekly pay and pay X% for every 1-hour AL taken  Example of taking 8 hours leave		



# Option 2: Case study 1 (8 hrs leave)

	Average weekly hours	Taking 1 hour of AL	Pay for 1 hour of leave	Holiday pay	Holiday Entitlement balance
Case study 1	18.93 (using 30-week reference period)	1hr/ 18.93 = 0.0528 x 100  Which is 5.28% of one week's leave	Use the average week pay and pay 5% for every 1-hour AL taken  Example of taking 8 hours leave  $0.0528 \times 8 = 0.4224$  Which is 42.24% of one week's leave	42.24% of a week's pay at £192.70  $0.42 \times 192.70 = £81.40$	For every 1 hour taken, reduce the 5.6-week entitlement by 5.28%.  Example of 8 hours leave  $0.4224 \times 5.6 = 2.365$ weeks

# Option 2: Case study 2 (5 hrs leave)

	Average weekly hours	Taking 1 hour of AL	Pay for 1 hour of leave	Holiday pay	Holiday Entitlement balance
Case study 2	17.87 (using 8-week reference period)	1hr/ average weekly hours  X 100  This is a percent age of week's leave	Use the average weekly pay and pay X% for every 1-hour AL taken  Example of taking 5 hours leave		





# Option 2: Case study 2 (5 hrs leave)

	Average weekly hours	Taking 1 hour of AL	Pay for 1 hour of leave	Holiday pay	Holiday Entitlement balance
Case study 2	17.87 (using 8-week reference period)	1hr / 17.87 = 0.0559  This is 5.59% of one week's leave	Use the average week pay and pay 5% for every 1-hour AL taken  Example of taking 5 hours leave  $0.0559 \times 5 = 0.279$  Which is 27% of one week's leave	27% of a week's pay at £191.67  $0.279 \times 191.67 = £53.57$	For every 1 hour taken, reduce the 5.6-week entitlement by 5.59%.  Example of 5 hours leave:  $0.279 \times 5.6 = 1.512$

# Option 2: Case study 3 (8 hrs leave)

	Average weekly hours	Taking 1 hour of AL	Pay for 1 hour of leave	Holiday pay	Holiday Entitlement balance
Case study 3	18.51 (using 52-week reference period)	1hr/ average weekly hours  X 100  This is a percentage of week's leave	Use the average weekly pay and pay X% for every 1-hour AL taken  Example of taking 8 hours leave		



# Option 2: Case study 3 (8 hrs leave)

	Average weekly hours	Taking 1 hour of AL	Pay for 1 hour of leave	Holiday pay	Holiday Entitlement balance
Case study 3	18.51 (using 52-week reference period)	$1\text{hr} / 18.51 = 0.054$  Which is 5.4% of one week's leave	Use the average week pay and pay 5.4% for every 1-hour AL taken  Example of taking 8 hours leave  $0.054 \times 8 = 0.432$  Which is 43.2% of one week's leave	43.2% of a week's pay at £170.23  $0.432 \times 170.23 = £73.54$	For every 1 hour taken, reduce the 5.6-week entitlement by 5.4%.  Example of 8 hours leave $0.432 \times 5.6 = 2.419$

# Option 3

- Option 3 – Holiday policy that assigns 0.2 weeks leave per day taken
- Manage holiday in days
- More generous approach as everyone receives 28 days paid annual leave in the previous options
- 5.6 weeks paid leave is the same as 28 days
- Assign 0.2 weeks paid leave every time 1 day of leave is taken
- Using case study 3 – calculate 1 day of annual leave

# Option 3

Assign 1 day of annual leave for everyone:

5.6 weeks divide by 28 days = 0.2

This is 20% of pay

To find pay for 20% of their week:

0.2 x average weekly pay

# Option 3

	1 day AL	Weeks pay	1 day AL holiday pay	Holiday Entitlement balance
Case study 1	$5.6 / 28 = 0.2$	£192.70	?	28 days – 1 day = 27 days remaining
Case study 2	This is 20% of a week's pay	£191.67	?	
Case study 3		£170.23	?	





# Option 3

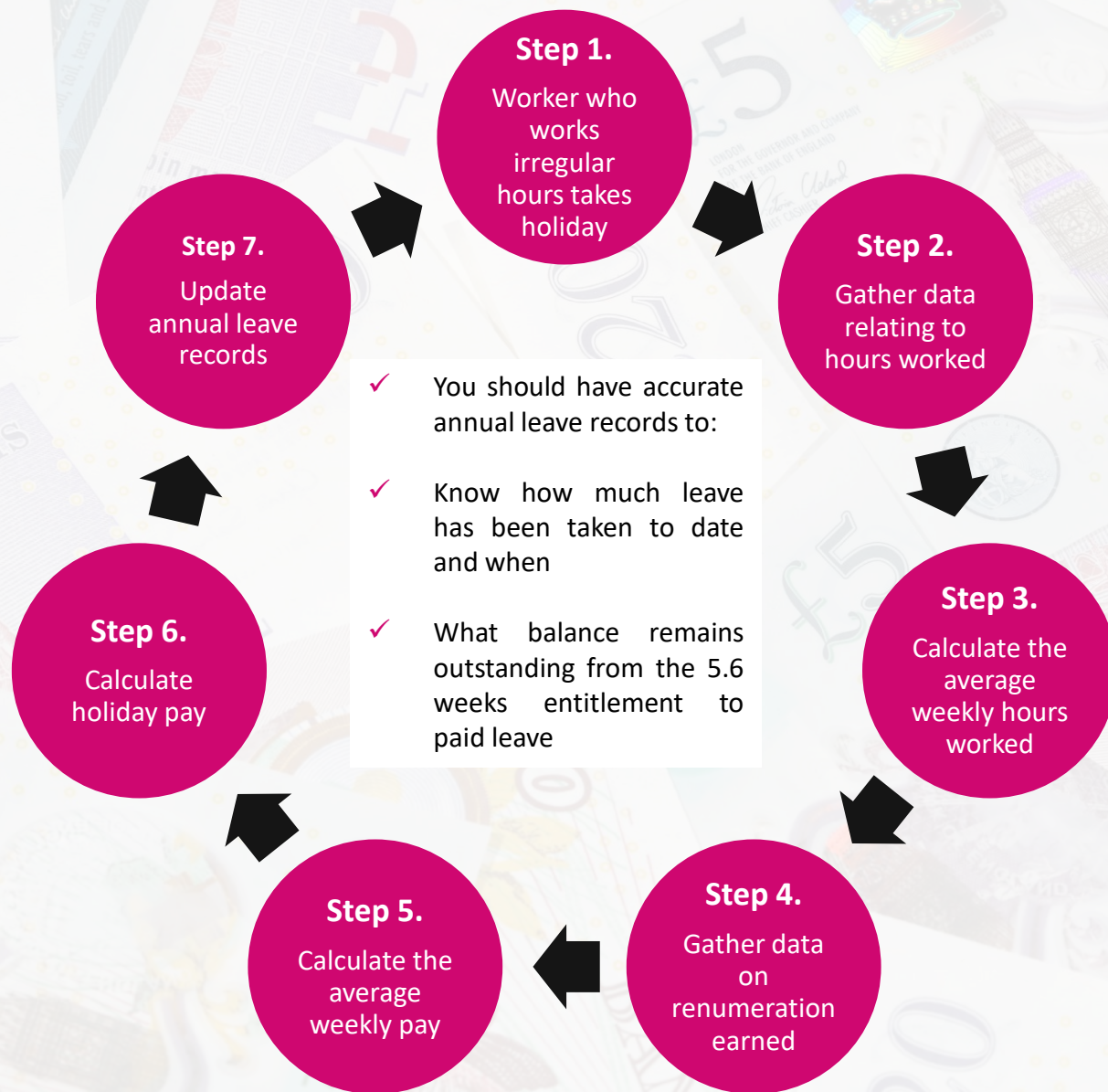
	1 day AL	Weeks pay	1 day AL holiday pay	Holiday Entitlement balance
Case study 1	$5.6 / 28 = 0.2$ This is 20% of a week's pay	£192.70	20% of £192.70 $0.2 \times £192.70 = £38.54$	28 days – 1 day = 27 days remaining
Case study 2	$5.6 / 28 = 0.2$ This is 20% of a week's pay	£191.67	20% of £191.67 $0.2 \times £191.67 = £38.334$	28 days – 1 day = 27 days remaining
Case study 3	$5.6 / 28 = 0.2$ This is 20% of a week's pay	£170.23	20% of £170.23 $0.2 \times £170.23 = £34.046$	28 days – 1 day = 27 days remaining





**Step 7: Update annual leave records**

# Update annual leave records







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