

## Workshop on Labour Costs, Rome, 5-6 May 2015

# Paid hours in case of holidays or sickness leave

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### Approach to the issue

It has become increasingly difficult to obtain accurate measures of both the hours worked and paid hours. Mainly is this due to the growing complexity of the labour market, where the hours are dealt with and registered in many different arrangements. In order to make it possible to compare the statistics across countries it is necessary to discuss details of how "Hours", both paid hours and hours worked, are handled in the surveys.

The legislation in Norway about holidays and sickness leave has raised a couple of issues related to paid hours. Here we discuss these issues in context of Norway's case.

First, from the regulation on paid hours:

**PAID HOURS** (C-variables) cover the total number of hours paid during the year; these include:

- normal and overtime hours paid for during the year, irrelevant the rate of pay (flat rate / double / reduced rate)
- hours not worked during the reference period but nevertheless paid (these include absence due to holidays, sickness, public holidays and others which employees were paid for, including time taken off for medical examinations, births, weddings, funerals, moving house, etc).
- any hours for which the employee was paid at a reduced rate, even if the difference was made up by payments from social-security funds,

### Introduction

The issue is to the definition of Paid hours, how should this be understood. It is possible to define holidays in Norway both as paid and not paid. And hours for days on sickness leave, there are zero wage costs for employers from day 17 of the employees sickness leave. Nationally this is not considered as Paid hours, is this view in accordance to the regulation?

### Hours on annual holidays;

The legislation:

#### *Holidays*

All employees have a statutory right to four weeks and one day's holidays per year. Employees over the age of 60 are entitled to an extra week. There is no obstacle to agreeing on *more* holiday days than the law requires. Many employees are entitled to five weeks of holiday either through collective agreements or other agreements with the employer. However, the fifth week, if any, is based on an agreement and is not a requirement pursuant to the Norwegian Holidays Act.

The holiday must be spent in the form of vacation days, not money. It is not allowed to receive holiday pay for holidays not spent or transferred to the next holiday year. This also applies in cases relating to transfer of holiday due to disability or maternity leave. The only way to get the holiday pay for any holiday which has not been spent is if the employment is terminated.

Employers have responsibility to ensure that workers spend all vacation during the vacation year. Employees also have a duty to cooperate in spending the holiday. However, with a maximum of two weeks of holidays, all statutory holiday which is not spent during the vacation year can be transferred to the next holiday year.

Employers shall discuss the time of holidays and holiday schedules with their employees well before the holidays. If you fail to reach agreement, the *employer* will decide when holidays are to be taken out. However, all employees can demand to have at least three weeks of continuous holidays in the period between 1 June and 30 September. If the employee so demands, the final seven days of holidays shall also be *consecutive* days.

An employee who works part time or shift work cannot demand to take out holidays on his/her work days only. If an employee has a one-week holiday, that corresponds to six working days, regardless of whether the person in question would only have worked, for example, two days that week.

Employees can demand to be informed about when their holidays are at least two months before the holidays start. If you inform too late, the employee cannot refuse to take holidays, but you can become liable for any losses they incur as a result of the late information.

The Holidays Act also contains provisions on changing the time of holidays, holidays in connection with a change of jobs, holidays in connection with a change of owner, illness during holidays, holidays during the period of notice and holidays during maternity leave. The Norwegian Labour Inspection Authority can provide further information about this.

The Holidays Act was introduced in order to ensure that employees actually have holidays and employers have a duty to ensure that they do. Correspondingly, employees have a duty to actually take time off.

### **Holiday pay**

An employee receives wages from their actual work. There is not paid any wage for time on holidays, instead Holiday pay is given. Holiday pay is earned the year before the holidays are taken and paid instead of ordinary pay during holiday absence. Employees who did not work the previous year are also entitled to holidays, but not to holiday pay. The right to holiday pay is linked to the term 'employee', i.e. someone working in the service of another. The legislation does not give freelancers and self-employed contractors the right to holiday pay.

An employee's holiday pay is calculated on the basis of pay and other work remuneration to the employee during the earning year. The calculation basis does not include payments to cover travel expenses, a share of the net profit or holiday pay paid during the earning year.

The holiday pay is 10.2% of the basis for holiday pay. For employees over the age of 60, the rate is 12.5%. The above calculation will normally result in a holiday pay that is approximately equal to what the employee would otherwise have received in ordinary pay for the holiday period.

If the agreed number of holiday days exceeds that required by law, the percentage will be increased correspondingly. If you are covered by a collective agreement or other agreement that entitles you to a fifth holiday week, the ordinary rate is 12% (14.3% for employees over 60).

Holiday pay is money you 'set aside' on behalf of your employees and must be recognised as a liability item in your accounts. You cannot pay it as part of the ordinary pay unless it has been expressly agreed in the enterprise's collective agreement.

In accordance with Norwegian legislation holiday pay is paid out on the last ordinary pay day before the holiday period, or no later than one week before the holidays start. However, it is common to agree upon one fixed month in which the holiday pay is paid out (for example June). In this case the employees will receive ordinary salary in the holiday period if this is carried out at a different time (for example in July).

On leaving, employees shall be paid the holiday pay they have earned up until the date they leave. Such payment shall normally take place on the last pay day before the employee leaves.

Holiday pay that is disbursed during the holiday year is not subject to tax withholdings, so the employer must not deduct any tax. If, on the other hand, the holiday pay is disbursed during the earning year, the employer must calculate tax.

The basis for holiday pay shall be shown on the Certificate of Pay and Tax Deducted for the earning year.

### ***How was this solved in LCS 2012***

The dilemma for Norway was to define the holidays as paid or not. This ends up to be a matter of definition. Nationally the hours on annual holidays are not considered paid. On the other hand, by looking into the regulation and how other countries seemed to be handling this, we concluded for LCS 2012 that the holidays are considered compensated, and thereby defined the hours as paid.

### **Summary**

how to understand the definition of paid hours on annual holidays when there are not paid wages and salaries during holidays. During holidays the employees are receiving allowances which come from allocations of money made the previous year. The following year, when having holiday, a type of payment called Holiday pay, which in fact the employees themselves have deposited for, is being paid out to the employees.

## **Hours on sickness leave;**

The legislation:

### ***Rules for sick leave***

Sick pay compensates for loss of income for working people who are unable to work because of illness or injury. Both employees, self-employed and freelancers may be entitled to sick pay.

Both the amount of sick pay and the period when you are entitled to sick pay depend on whether you are an employee, self-employed or freelance.

To be entitled to sick pay, a number of conditions must be met:

Employees must be unfit for work due to own illness or injury.

He / she must have been employed for at least four weeks immediately before becoming unable to work.

Work disability must entail loss of salary.

The employee must document the disability by a self-certificate or a medical certificate. Self-employed and freelancers must document the disability by a medical certificate. A chiropractor or manual therapist can in certain situations prove incapacity for up to 12 weeks.

The right to sick pay cease after sick leave for one year.

There are special rules for sailors, farmers, herders, fishermen, conscripts, persons who have temporarily been out of work and people between 67 and 70 years.

### *Who pays during sickness absence?*

As a rule, the employer is obliged to pay sick pay for the first 16 calendar days (employer's period). After that, the Norwegian Labour and Welfare Service (NAV) will take over the responsibility.

The employee is required to notify the employer as soon as possible of any absence due to illness. The duty to report includes only information regarding the absence. The employee is not required to give any information about the diagnosis or other medical information. The obligation to pay sick pay commences from the day the employer is notified about the absence, unless the employee has been prevented to notify.

If the employee falls ill again before 16 calendar days have passed, the *same* employer's period will continue. If the employer already has paid for *a whole* period, NAV will take over the responsibility and pay sickness benefit from the first day that the employee falls ill again.

If an employment contract or collective agreement provides for full pay during illness, the employer must continue to pay ordinary pay throughout the period of absence. The employer can claim reimbursement from NAV for sick pay. Reimbursement claims must be filed within three months.

NAV will pay sickness benefit after 16 calendar days, either directly to the employee on sick leave, or to the employer which have paid sickness benefit in advance. However, NAV will not cover sickness benefits over the maximum of six times the National Insurance basic amount per year (NOK 486 918 in 2012). Except as specifically agreed, employers are not obliged to cover anything over and above this either.

### *Calculation of sick pay/sickness benefit*

The sick pay basis during the employer's period is determined on the basis of a calculated weekly income. The weekly income is calculated using the employee's average weekly income from work in your employment during a certain period before he/she went on sick leave.

If the employee has fixed working hours and is paid by the hour, his/her sick pay is calculated on the basis of the past four weeks. If the employee has fixed working hours and a monthly salary, it is calculated on the basis of last *month's salary*. If the employee has variable work periods or income (for example varying bonus or commission payments based on his/her own efforts), the calculation is based on a longer and more representative period. Expense allowances intended to cover work-related expenses are not to be included in the basis for sick pay, unless the allowance exceeds the expenses, in which case the *surplus* shall be included. As a rule, overtime should not be included.

As a rule, the sick pay basis for the year shall not exceed six times the National Insurance basic amount. For 2012, this means that employees will keep their income up to approximately NOK 41 061 per month.

If the enterprise is obliged to pay full pay during illness under an employment contract or collective agreement, you must continue to pay ordinary pay throughout the period of absence. The amount that the employee is entitled to from NAV after the employer's period will be reimbursed to the *enterprise*.

You must base the enterprise's sick pay payments on the same calculation that you report to NAV in the income information form. (When NAV takes over responsibility, however, other factors may also be taken into consideration. For example, previous income can be taken into consideration for new employees. People, who earn less than half the National Insurance basic amount, or less than approximately NOK 40 576 per year, are not entitled to sickness benefit from NAV.)

Sick pay/sickness benefit entitles the employee to holiday pay for up to 48 days (from the employer or the National Insurance Scheme as applicable). As an employer you must deduct tax from and pay employer's National Insurance contributions on the sick pay during the employer's period.

### **How was this solved in LCS 2012**

The dilemma for Norway was to define the sickness leave as paid or not in reference to the regulation. Nationally the hours on sickness leave are not considered paid. On the other hand, by looking into the regulation there could be a feasible solution to treat this as paid. We concluded for LCS 2012 that the hours on sickness leave were considered as not paid.

### **Summary**

The employer pays wages and salaries to an employee which is 100% absent due to sickness for the first 16 days of absence. From day 17 and further on the Government is responsible for this payment and takes on the burden of most costs for the employee. The employees are neither working nor being paid wage at a reduced rate, in fact they are not being paid any wage at all by the employer. The employee is however still employed and is returning to the employer when the sickness leave ends.

This issue - when the Government is paying all the wages and salaries (the employers do not have other costs than a few current liabilities during this period of absence due to sickness) and the employees have zero hours worked – is it to be considered as paid hours?

### **Nationally**

#### **How data about «Hours» were obtained in the questionnaire for the LCS 2012**

The labour cost statistics is based on a sample survey covering 3200 enterprises with 10 or more employees with a total of about 732000 full-time equivalent employees in private sector. The total number of employees in private sector (full-time/part-time/including enterprises with less than 10 employees) was about 1810000. See more about the statistics at <https://www.ssb.no/en/arbkost>

The respondents were given instructions and questions in an electronic questionnaire. Some information that was already given to administrative registers for 2012 were pre-filled and open for corrections.

The questions about “Hours” were given like this (translated to English):

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The next questions are about working hours.

First, fill in the total sum of theoretical working-time for all employees in your enterprise. Fill in for full-time employees, part-time employees and apprentices (question 16).

By theoretical working-time we mean the working hours the employees have if there were none days of leave from vacations, sickness, public holidays or other leave of absence. This includes all contractual working hours, all days of sickness leave, all holidays, hours from short leaves of absence like compassionate leave, personal days leave and leave for occasional care of children.

Hours from paid overtime, long leave of absence, timeoff in lieu of unpaid overtime and unpaid meal breaks are not included.

Example; an employee with contractual hours of 37.5 hours a week which has been employed the whole year will have a theoretical working-time of 37.5 hours \* 52 weeks = 1950 hours.

Det neste spørsmålet gjelder teoretisk arbeidstid. Med teoretisk arbeidstid menes den arbeidstid en ansatt ville hatt dersom det ikke hadde vært noen fridager i forbindelse med ferie, sykdom, røde dager, diverse korte permisjoner med mer.

*Teoretisk arbeidstid omfatter:*

- Alle sykedager, også de som faller utenfor arbeidsgiverperioden og sykedager for egne barn.
- Diverse korte permisjoner
- Ferier
- Røde dager og andre bevegelige helligdager
- Avtalt arbeidstid
- Timer for frilansere
- Timer for ekstravakter/tilkallingsvikarer
- Deltidsansattes timer utover avtalt arbeidstid

*Teoretisk arbeidstid omfatter ikke:*

- Betalt overtidstimer
- Svangerskaps- og foreldrepermisjon
- Lengre studiepermisjoner og andre permisjoner med planlagt lengde over 14 dager
- Ubetalte matpauser

*Eksempel 1:*

En person som har arbeidsavtale om 37,5 timer per uke, og har vært ansatt i hele 2012, vil ha en teoretisk arbeidstid på:  $37,5 \text{ timer} * 52 \text{ uker} = 1\,950 \text{ timer}$

*Eksempel 2:*

En person som har arbeidsavtale om 30 timer per uke, og kom tilbake fra foreldrepermisjon 1. april 2012 ( etter 13 uker i 2012) og jobber ut året:  $52 \text{ uker} - 13 \text{ uker} = 39 \text{ uker}$ . Jobber i tillegg ekstravakter tilsvarende 50 timer. Årlig arbeidstid:  $39 \text{ uker} * 30 \text{ uker} = 1\,170 \text{ timer}$  pluss ekstravakter gir 1220 timer.

**16** Hva var summen av teoretisk arbeidstid for de ansatte i foretaket i 2012?

	For alle	Hvor mye gjaldt lærlinger?
Heltidsansatte	<input type="text"/> timer	<input type="text"/> timer
Ikke heltidsansatte	<input type="text"/> timer	<input type="text"/> timer

Question 17. Fill in the total of paid hours for overtime

Question 18. Give the total hours of leave from the employees' holidays

Question 19. Fill in the total hours where the employees did not work due to public holidays

Question 20. Give the total hours of paid leave of absence

Question 21. Fill in the total hours absence due to strike and lockouts

Question 22. Give the total hours of sickness leave

Question 23. How many of the hours given in question 22 were related to the period which the employer pay the sick pay (first 16 calendar days)

## Summary of working-time

Based on the information your enterprise have given in the questions, your total paid hours and hours worked will be (automatically calculated based on the respondents filling in):

Theoretical hours (Q16)  
 + Paid overtime (Q17)  
 - Holidays (Q18)  
 - Strike/lockouts (Q21)  
 - Sickness leave where the employer doesn't pay the sick pay (Q22 - 23)  
 = Paid hours  
 - Public holidays (Q19)  
 - Paid leave of absence (Q20)  
 - Sickness leave where the employer pays the sick pay (Q23)  
 = Hours worked

Percentage of paid hours which were actually worked = <calculated>

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The questions about "Hours" are always difficult for an employer to answer in detail. In the quality report, <https://www.ssb.no/en/arbeid-og-lonn/artikler-og-publikasjoner/labour-cost-survey>, we see the percentage of correction.

### Processing errors

The majority of the data has been reported through our web gateway (more than 99 per cent); leaving less than 1 per cent for manual recording. Both manual and automatic controls have been carried out on the material. Table 2-3 below show that the variables most often corrected are wages and salaries in kind and employers' social contributions. Likely errors have been revealed through controls against other sources. In general many of the corrections are caused by respondents not summing up variables to a total. Several variables have solely been retrieved from register and are not included in the table. The percentage in table 2-3 has been calculated with the total number of enterprises as the numerator. This implies that a low percentage of correction doesn't necessarily imply that the data reported are of good quality. Many variables have a high occurrence of zero, and values of zero are seldom revised.

**Table 3-3: Percentage of correction**

Variable	Definition	% of cases that has been corrected	Enterprises <sup>1</sup> with data value larger than 0, after correction
A11	Full-time employees (excluding apprentices)	5,6 %	3 210
A13	Apprentices	0,0 %	1 113
B11	Total hours actually worked for full-time employees	37,6 %	3 210
C11	Paid hours for full-time employees (excluding apprentices)	25,5 %	3 210
C12	Paid hours for part-time employees (excluding apprentices)	18,6 %	2 647
C13	<u>Paid hours for apprentices</u>	14,1 %	1 113
D11112	Direct remuneration, bonuses and allowances not paid each pay period	0,1 %	968
D112	Wages and salaries of apprentices	11,2 %	1 113
D1114	Wages and salaries in kind	67,9 %	3 191
D11143	Company cars (optional)	31,2 %	1 425
D121	Employers' actual social contributions (excluding apprentices)	35,6 %	3 213
D1211	<u>Statutory social-security contributions</u>	60,5 %	3 027
D2	<u>Vocational training costs</u>	0,0 %	2 676
D3	Other expenditure paid by the employer	0,1 %	2 376

<sup>1</sup> There were 3223 enterprises in the sample