

FACTSHEET 8

PAY, RECORDS, AND ENFORCEMENT: HOLIDAY PAY RECORDS & THE NEW FAIR WORK AGENCY

WHAT'S CHANGING?

Two less “glamorous” but crucial areas: one, a new record-keeping duty for holiday entitlement and pay; and two, a beefed-up enforcement regime via a proposed Fair Work Agency.

- **Holiday Pay Records:** ERA 2025 introduces a requirement that **all employers must keep records to demonstrate compliance with holiday entitlement and holiday pay*). Right now, there's no general legal obligation to keep specific holiday pay records (though practically, most do track leave). Under ERA 2025, not only will you need to keep such records for 6 years, but failure to do so becomes a criminal offence with potentially unlimited fine. This is serious – it puts holiday pay record-keeping on par with requirements like national minimum wage records. Why? Likely because of widespread underpayment or miscalculation issues (e.g., not including overtime in holiday pay, or confusion over the 5.6 weeks entitlement especially for irregular hours workers). The government wants to be able to enforce holiday pay, and records are the foundation. So, expect you will need to have readily available data on each worker's accrued and taken leave, and how their holiday pay was calculated.
- **Fair Work Agency (FWA):** ERA 2025 gives powers to create a new single enforcement body (commonly referred to as the Fair Work Agency) to oversee various right. Think of it like a “super inspectorate” combining the work currently done by HMRC on minimum wage, by HMRC (or rather SSP is not enforced currently – that's new), by the GLAA on labour abuse, etc. and adding new areas like holiday pay

enforcement. The FWA would have strong investigative powers – entering premises, demanding documents, inspecting records (hence not keeping those holiday records could lead to a knock on the door. The FWA will be established in April 2026 and will take-on its enforcement role on a phased basis. Once fully operational, it will be able to:

- Issue underpayment notices for things like unpaid holiday pay or sick pay, with hefty penalties (200% of amount owed, capped at £20k per worker).
- Bring tribunal claims on behalf of workers who aren't doing so themselves.
- Assist with legal action (like help workers file claims).
- **Recover its own costs from non-compliant employers).*
- And even enter homes with a warrant if used as workplaces to seize evidence (this is targeted at, say, rogue employers who keep records at home, or perhaps residential care settings).

The idea is to have a proactive state enforcement of core employment rights, reducing reliance on individual employees litigating. It's akin to HMRC enforcing minimum wage (which will continue) but extended to things like holiday pay and SSP. The FWA likely will absorb the Employment Agency Standards Inspectorate, the minimum wage team, etc.

The FWA will take-on its responsibilities on a phased basis (likely over a few years from April 2026) , but its powers being defined now means employers should start treating compliance as something that could be checked at any time by an inspector, not just raised by an employee complaint.

Another change to mention here: Extension of tribunal claim time limits from 3 months to **6 months*. This is also enforcement-related: it gives workers more time to bring claims, which means you might see old issues coming back months later. So, keep records of issues and communications for longer, and don't assume you're "safe" after 3 months from an incident. They doubled the time to claim, which could increase case volumes a bit or at least mean longer wait-and-see periods. This change is due to take effect from October 2026.

Also note, ERA 2025 penalises not keeping records and not paying things like holiday/SSP. So essentially, don't mess up calculations – the punishment could be double the underpayment plus fines.

HR IMPACT

– WHAT TO DO NOW:

- **Audit your holiday records:** How do you currently track holiday accrual and pay? Many rely on HRIS to track days taken, but do you record how you calculated each holiday pay? For salaried staff with normal hours, easy. For variable hours or those with overtime/commissions, do you keep the 52-week average calculation? Under ERA 2025, if an inspector asks, you should be able to produce records showing each worker's entitlement, what they took, and if any holiday pay was paid and how it was figured. If you have gaps, fix them. Introduce a standard spreadsheet or system report that, for each employee, logs:
 - Holiday entitlement for the year,
 - Dates taken and how much,
 - Holiday pay given for each absence (especially if it fluctuates),
 - Running balance. And **retain those for at least 6 years**. Align this with your

document retention policy (might need extension). If using an external payroll provider, talk to them about providing holiday pay reports or calculations.

- Also consider upcoming changes to holiday pay (the government's planning to simplify how holiday for part-year workers is calculated, etc. but that's separate). Regardless, accurate records are key.
- **Compliance check on holidays and sick pay:** The FWA will enforce these, so ensure you're paying correctly. For holiday pay: are you including regular overtime, commission, etc., as required by case law? If not, you could face 200% penalties on whatever you shorted employee. For SSP: Are you paying eligible employees from day 4 currently? Note ERA 2025 changes SSP to be from day 1 of sickness (no waiting days), and extends to those below LEL at 80% pay – effective from April 2026. So, look out for those changes: you'll need to budget for a bit more SSP outlay and update payroll systems when it kicks in. That said, one original plan to scrap the lower earnings limit for SSP entirely was altered – now low earners get 80% pay, so it's a bit complex. Keep eyes open for when that's effective, likely 2026.
 - In the meantime, if someone's borderline on earnings, soon they'll be eligible. HR should be prepared to administer SSP for more people, and from day one of absence (no more "first 3 days unpaid").
- **Prepare for the Fair Work Agency mindset:** Start treating core rights (wages, holiday, sick pay, etc.) as if you could be inspected anytime. Much like you wouldn't knowingly underpay minimum wage for fear of HMRC, now treat holiday and SSP the same. That means:
 - **Fix known issues proactively:** If you know of any historical holiday underpayments (maybe you weren't grossing up pay for bank holiday for part-timers, or miscalculated carryover), quietly correct them and pay arrears. It's better to self-correct than wait for an enforcement officer or claim.
 - **Ensure HR/Payroll cooperation:** These new laws blur into payroll territory. Work closely with payroll so they understand the new demands. For example, payroll might need to be ready to implement "SSP from day 1" rules and possibly manage two-tier SSP rates (full rate vs 80% for low earners). Also, if the FWA can recover costs, that implies more enforcement orders and potential involvement with your finance/legal team.
 - **Mock audit:** Consider running a "mock audit" where you pretend the FWA came knocking: can you produce all relevant records quickly? Are your right-to-work docs, pay records, working time records all in order? ERA 2025 specifically calls out holiday pay records, but an inspector with broad authority might check other compliance areas. It's a good exercise in housekeeping.
- **Time limit extension:** The move to 6 months for claims means lingering liability. Document contemporaneous evidence for any employee disputes or performance issues because an employee has more time to bring, say, a discrimination claim or unfair dismissal. Don't toss out notes thinking they surely won't file after quarter end. Extend how long you keep performance notes or grievance files (I'd say at least 6-12 months now). Also, this may reduce immediate ACAS Early Conciliation notifications as people might take more time. So don't breathe easy after 3 months from someone's exit or incident

– diarise a 6-month check if you were concerned about a claim.

- **Inform leadership:** The concept of a Fair Work Agency might not be on everyone’s radar. Explain to execs that enforcement of employee rights is being centralised and toughened. Non-compliance could lead not just to tribunal costs but government fines and public orders. There’s reputational angle too: if the FWA names and shames offenders (as HMRC does for NMW), you don’t want your company on that list. So it pays to invest in compliance staff, systems, and training.
 - If your company has gig workers or uses umbrella companies, note: ERA 2025 also sets groundwork to regulate umbrella companies and shift tax liability to agencies or client – which might indirectly affect you if you rely on such models. So, share that with procurement or operations if relevant: by 2027, umbrellas will be regulated and their costs might go up; maybe rethink using them heavily.
- **Anticipated questions:**
 - *“Isn’t this overkill – criminal offence just for not keeping records?”* – That’s how seriously the government takes holiday pay now. It’s similar to how you can be criminally fined for not keeping proper minimum wage records. It doesn’t mean HR professionals will be carted off to jail, but companies can get penalised heavily. The logic is: if you’re not keeping records, likely you’re not complying. So yes, it’s strict liability. We just have to treat it as mandatory admin. It underscores: get a good HRIS or payroll system that logs this by default, so you’re automatically compliant.
 - *“Will the FWA knock on my door randomly?”* Possibly, especially if you’re in a sector known for issues (e.g.

hospitality – think of all those holiday pay disputes for staff on irregular hours, or care sector – often issues with pay). They might do targeted inspections like HMRC does for NMW. Or if a worker complains to them, they might come investigate more broadly. It’s not immediate (agency likely operational by 2026) but start acting like it’s out there.

- *“We’re pretty small – is this just for big companies?”* – All employers, even SMEs, have to keep records and can be subject to enforcement. There might be some proportionate approach in practice (the agency might focus on big players or high-risk sectors), but don’t bank on being beneath the radar. Many small employers got caught out by NMW underpayments via HMRC enforcement. Best to comply regardless of size.
- *“Can the FWA make us pay employees directly?”* – Yes, it can issue notices requiring you to pay the arrears of, say, holiday pay within 28 days, plus a penalty to the government. If you don’t, they might take you to tribunal or court on the employee’s behalf. This means even if an employee doesn’t know their rights or is too scared to claim, the state can enforce it. So, ignore compliance at your peril – you could still end up paying, and more.

Action items now: Implement a robust document retention and compliance monitoring system. For example, do a quarterly check: *“Do we have holiday records for everyone? Any anomalies (like someone not taking leave at all – which might raise an issue of them not getting their entitlement)?”* Similarly, ensure processes for providing itemised pay statements and tracking hours are solid; those are often entwined with holiday calculations. If your workforce spans GB and Northern Ireland, note NI likely will have separate

enforcement, but keep consistent standards anyway.

Also think about how you handle tips if applicable: ERA 2025 also has a bit on tips (requiring consultation on tips policies from October 2026) – for restaurants/hospitality, that’s relevant (you need a written tips policy and must review it every 3 years with staff input). This ties into fairness and record-keeping too (though not as heavy enforcement as holiday pay).

Bottom line: A key theme of ERA 2025 is “modernise the employment rights framework to suit today’s economy”. Part of that is ensuring rights aren’t just on paper but in practice – hence more state oversight. HR should welcome this in the sense that good employers already strive to comply; it’s

the cowboys that will be squeezed. But it does mean extra admin and vigilance for us. Embrace technology to ease the record burden, stay informed on regulatory updates, and maybe do some internal training for payroll/HR on the new enforcement landscape so nobody takes shortcuts thinking “we won’t get caught.” The net is tightening on non-compliance.

Lastly, be aware that with the extended claim time and empowered agencies, issues like systemic underpayments (e.g. if you miscategorised overtime in holiday pay for years) could surface. Pre-empt that risk by doing a legal audit – maybe with your legal counsel, review if any of these reforms catch something you’re doing. Better to self-correct than be made to.