



HR Broadcast – What is a day's pay?

I was recently asked a very strange question and that was, "How do I calculate a day's pay?" Apparently an employee had used up their holiday entitlement but had then been offered the opportunity of going to a Test match at the Oval for the day. The employee had asked for this day to be counted as "unpaid leave" and the employer had no objections to this but was confused as to how to calculate a day's pay.

My immediate thought was to do a simple calculation;

52 weeks in the year multiplied by 5 days per week gives 260 working days, therefore one day of unpaid leave is simply $1/260 \times$ annual salary.

However, before I answered the query I thought it best to do some research, and I found that this calculation was used in *Hartley v King Edward VI College 2017*; in this case it was a deduction from pay following a one-day strike.

The Court of Appeal had also used the same $1/260$ approach as I had, but I found that the employees involved had appealed this method to the Supreme Court.

The Supreme Court overturned this calculation and held that, in the absence of any express contractual wording to the contrary, the correct rate of deduction is $1/365$ th of the employee's annual salary. It also stated that this $1/365$ th approach does not apply where an employee on an annual contract has a set hourly rate rather than a fixed salary.