



Scottish Engineering

Monthly Breakfast Briefing

7 February 2024

Update on Holiday Pay Changes



- > Wednesday 7 February 2024
- > 08.00 - 08.30
- > First Wednesday of Every Month
- > Presenter : Lindsey Miller, Legal & HR Support Manager

Introduction



- The UK Government has legislated in the area of holiday pay with the provisions of the Employment Rights (Revocation and Transitional Provision) Regulations 2023 taking effect from 1 January 2024
- Holiday pay is one of the areas impacted by these provisions.

Composite Holidays



- The Supreme Court recently issued judgment in the case of *Chief Constable of the Police Service of Northern Ireland v Agnew*.
- It is best known for rejecting the idea that breaks of 3 months or more between periods of holiday breaks the right to make a claim for underpayment of holiday pay in the case of a series of deductions;
- However, the Supreme Court also decided that unless the employment contract specifies otherwise every day of annual leave is “composite” and is made up of:-
 - A percentage of the 4 weeks (20 days) due under Regulation 13 of the Working Time Regulations
 - A percentage of the 1.5 weeks (8 days) due under Regulation 13A of the Working Time Regulations and
 - A percentage of any additional contractual leave offered by companies

Composite Holidays



This is important if either:-

- Different rates of pay apply for different types of leave; or
- There is carry over of annual leave in respect of sickness or statutory family leave when annual leave cannot be used within the current holiday year.

Composite Holidays



This is pretty unworkable and leads to complex calculations.....

- Employers should simply prescribe when each type of leave is taken e.g. first 20 days are the Regulation 13 days, next 8 days are the Regulation 13A days and any additional company days are taken last.

Normal Remuneration



- This term has now been defined and the intention was that it would reflect case law – but does it?
- 'Normal remuneration' must be paid for the 20 days of Regulation 13 leave
- There is a 52 week reference period, which now includes workers with normal working hours – previously it only covered workers engaged in piecework or with no normal working hours

Normal Remuneration



- The payments which count towards normal remuneration include:-
 - Commission or other payments intrinsically linked to tasks the worker is required to perform under their contract
 - Payments for professional or personal status relating to length of service, seniority or professional qualifications
 - Overtime payments which have been paid regularly to a worker in the 52 weeks prior to the calculation

Normal Remuneration



- There is therefore scope that this now includes an annual bonus
- Previously it was arguable that bonus was not included because there was no disadvantage to an employee in taking annual leave as far as bonus was concerned
- Employers should consider the wording of any bonus arrangements

New Definitions



- 'Irregular hours workers' – the number of paid hours worked in each pay period during the term of their contract in that leave year is, under the terms of their contract, wholly or mainly variable
- 'Part year workers' – under the terms of their contract they are required to work only part of that year, and there are periods within that year (during the term of the contract) of at least a week when they are not required to work for which they are not paid. (This does not include the situation where a term time worker's payments are "smoothed" across a 12 month period – they would have to not be paid for the periods where they are not required to work to qualify.)

New Definitions



- Where the terms of the contract meet the legal definitions, holiday accrues at 12.07% per pay period on the last day of the pay period
- Fractions are expressly stated to be zero if less than 30 minutes and one hour if 30 minutes or more
- There is a different calculation for an accrual during sick leave or statutory leave
- These provisions apply to leave years which begin on or after 1 April 2024, so if your leave year started from 1 January 2024, implementation of this would be 1 January 2025

Additional Provisions



- A worker cannot accrue more than 28 days of annual leave in any year leave
- Payments in lieu of holiday on termination or recovery, if the employee has overtaken annual leave are also covered
- All leave can be carried forward if the worker and employer agree unlike regular hours workers, where only the extra 1.6 weeks can be agreed to be carried forward

Rolled Up Holiday Pay for Irregular Hours and Part Year Workers



- Again, applies to holiday year starting on or after 1 April 2024
- Holiday is paid at the same time as normal earnings with a 12.07% uplift being added to each pay period and specifically itemised on each payslip
- There are specific provisions dealing with rolled up holiday pay when the worker is sick or on statutory or family leave

Carry Over of Annual Leave



- Current provisions which continue –
 - Worker on statutory leave (eg maternity, paternity, shared parental or adoption leave) can carry forward all leave into the following year
 - Worker on sick leave who is unable to take leave can carry forward up to 20 days holidays into the following year

Carry Over of Annual Leave



There are some new provisions on carry forward

- A worker can carry forward leave not taken in leave year or leave taken but not paid for if the employer fails to:-
 - Recognise a worker's right to annual leave or payment for that leave (status cases)
 - Give the worker a reasonable opportunity to take the leave or encourage them to do so
 - Inform the worker that any leave not taken by the end of the leave year which cannot be carried forward will be lost

The above carry forwards are limited to the end of the first leave year in which such failures do not apply.

Accrual of Covid 19 Carry Over Leave



- Following legislation passed during the pandemic, workers were permitted to carry over untaken leave into the next 2 years if they were unable to take it because their work was affected by Covid
- From 1 January 2024 workers can no longer accrue leave on this basis
- They can use leave they have already accrued on or before 31 March 2024
- Workers whose employment terminates on or before 31 March 2024 are able to claim any pay in lieu in respect of any remaining entitlement they were unable to use due to the effects of Covid

Holiday Pay Records



- The Government has clarified that employers do not have to keep records of all daily working hours for all workers
- What is now required is adequate records – presumably so employers can prove compliance in relation to holidays, rest breaks, daily and weekly rest periods

Questions?



- Any general questions on today's topic?
- Please contact a member of the Legal and HR team with any company specific questions



Thank you



scoteng.org.uk | 0141 221 3181

