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Holiday pay: Appeal court rules voluntary overtime should be included

There is no reason in principle why voluntary overtime should not be included in holiday pay, according to an important judgment in the case of Patterson v Castlereagh Borough Council.

Mr Patterson brought the claim against his employer on the basis that the calculation of his holiday pay should have included pay for overtime hours that he volunteered to work despite no mention of this in his contract and no obligation for the employer to either offer or the employee to undertake the said overtime.

The industrial tribunal concluded that, since Mr Patterson's overtime was "voluntary overtime" and not obligatory "non-guaranteed overtime", the employer was not required to include the overtime in the calculation of his paid annual leave.

However, on appeal, the Northern Ireland Court of Appeal overturned the tribunal's decision accepting the employer's concession that there is nothing in principle to prevent purely voluntary overtime from counting towards holiday pay in appropriate circumstances.

The Northern Ireland Court of Appeal's written judgment states that the employer was correct to concede that there is no reason in principle why voluntary overtime should not be included in holiday pay calculations.

But it goes on to stress that it will be a question of fact for each tribunal to determine whether or not the voluntary overtime includes the necessary features to be included. The overtime must normally be carried out by the worker, and be an "appropriately permanent feature" of the worker's remuneration to trigger its inclusion in the holiday pay calculation.

As it is a Northern Ireland case, this decision is not binding in courts and tribunals in England, Wales and Scotland. However, it will be considered and cited in holiday pay cases in those jurisdictions and may be persuasive in court hearings in these countries.

For more information on any of the issues raised in this article, contact our team of specialist solicitors.

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Early stats confirm higher apprenticeships on the rise

The government has exceeded its target of supporting 20,000 higher apprenticeship starts over the last two years.

Since the start of the academic year 2013/14, over 22,000 higher apprenticeships have already been supported and there have been over 15,000 traineeship starts in the first three quarters of this academic year. The government is also committed to supporting a further three million apprenticeship starts by 2020.

Age to be measured in BITC Diversity and Wellbeing Benchmark

Age will be included as a consideration in the Business in the Community (BITC) Diversity and Wellbeing Benchmark for the first time in 2015.

Age At Work director for BITC, Rachael Saunders said it was included after the organisation was approached by companies concerned about best practice in relation to an ageing workforce.

The benchmark allows organisations to supply metrics to determine their performance on gender, ethnicity, and now age, and compare themselves to others.

Equalise pension survivor benefits for same-sex couples, urges TUC

The TUC is calling for the Government to review pension survivor benefits for same-sex couples, since civil partners or same-sex spouses are often left thousands of pounds worse off when their partner dies.

Although surviving partners in same-sex relationships now have the right to claim a survivor pension from their late partner's scheme, this only applies from 2005, when the Civil Partnership Act came into force, meaning that contributions made before this date do not count.

Women on maternity leave must keep childcare voucher benefit

In Donaldson v Peninsula Business Services, an employment tribunal found it discriminatory for an employer to require employees leave a childcare vouchers scheme while on maternity leave.

The employer's scheme provided a reduced salary in return for childcare vouchers, which are exempt from tax up to a certain weekly limit.

But employees are required to suspend their membership during various types of leave. These include maternity and paternity leave, and sick leave while the employee is entitled to only statutory sick pay.

The claimant sought to join the childcare vouchers scheme while she was pregnant. However, she was refused entry to the scheme because she would not agree to this condition.

In her pregnancy and maternity discrimination claim, the employment tribunal held that the employer committed discrimination by making an agreement to suspend membership during maternity leave a prerequisite of joining the childcare vouchers scheme.

The employment tribunal awarded the claimant £5,361 and recommended that she be admitted to the childcare vouchers scheme from 1st April 2015.

Almost half of employers at risk by failing to review restrictive covenants

Almost half of businesses have not done an audit of senior employees' contracts in the past year – despite one in 10 having lost financial information after the departure of a senior employee.

75% of businesses use restrictive covenants, designed to protect the interests of the business when an employee leaves, but 45% have not reviewed senior employees' contracts in the past year.

Restrictive covenants can help employers prevent the loss of key clients or confidential information. They need to be reasonable and must be reviewed and updated throughout the course of employment in order to be enforceable.

Evidence does suggest that employers have become increasingly aware of the risk that departing employees pose to their business. Of those employers surveyed, 12% had been the victim of an employee taking confidential information to a competitor and 26% said that they were more likely to take legal action against employees that breach their covenants than they were a year ago.

Nearly 80 percent of UK managers think over politeness could be costing their business money

Research reveals that over politeness in the workplace could be detrimental to UK businesses. The research found that a staggering 78% of office-based business managers claim that being too polite could be costing their organisation money.

22% of managers said they have not challenged people taking too long on their lunch break, 21% said they hadn't challenged people coming into work late and 20% said they hadn't challenged a fraudulent expenses claim!