

EmployNet update

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Holiday pay: the impact of recent case law for employers



With two more decisions on holiday pay announced recently, keeping track of the ever-expanding volume of case law on paid annual leave is becoming increasingly difficult.

Here are the key decisions on paid annual leave that employers should be aware of summarised below:

Sickness absence cannot result in a worker losing entitlement to minimum paid annual leave

In *Stringer and others v HM Revenue and Customs sub nom Commissioners of Inland Revenue v Ainsworth and others*; *Schultz-Hoff v Deutsche Rentenversicherung Bund*, the European Court of Justice (ECJ) held that the right to paid annual leave continues to accrue during sick leave. On termination of the employment relationship, a worker who has been on sick leave and unable to take paid annual leave is entitled to payment in lieu.

An employee who is sick during annual leave should have another opportunity to take holiday

In *Pereda v Madrid Movilidad SA*, the ECJ held that national laws cannot deny an employee on sick leave during a period of scheduled annual leave the right to take the annual leave at a later time, even if this is outside the holiday year in which leave was accrued.

Holiday entitlement can be subject to notice requirements

In *Lyons v Mitie Security Ltd*, the Employment Appeals Tribunal held that a worker who fails to comply with statutory or contractual notice requirements for taking holiday can lose annual leave at the end of the leave year if not taken.

Commission should be included in holiday pay

In *Lock v British Gas Trading Ltd and others*, the ECJ held that a worker's commission payments must be included in the calculation of his or her holiday pay.

Holiday pay entitlement survives death

In *Bollacke v K+K Klaas & Kock BV & Co KG*, the ECJ held that a payment must be made for accrued but untaken annual leave on the death of a worker.

Employers should review their contracts and policies without delay to decide whether or not to correct any potentially unlawful pay practices. For bespoke legal advice on this complex issue, contact our team of specialist solicitors.

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Exclusivity clauses on zero hours contracts to be banned

Exclusivity clauses in zero hours contracts will be banned and anyone working under such an arrangement will be entitled to work for other employers.

The ban forms part of the Small Business, Enterprise and Employment Bill published 25th June. It is thought that a ban on exclusivity clauses will benefit around 125,000 workers locked into working solely for their employer on a zero hours arrangement.

Job applicants do not have to disclose minor offences, Supreme Court rules

The Supreme Court has ruled that forcing job applicants to disclose minor crimes as part of background checks is a breach of their human rights.

The ruling is related to the case of a man, denied employment at a football club and later a place at university due to a caution for stealing a bicycle when he was 11.

He took his case to the Court of Appeal, which ruled in his favour. This latest ruling upholds that court's decision. It will now apply to all UK job applicants.

Government asks Low Pay Commission to review apprentice wage

The Government has asked the Low Pay Commission (LPC) to look at ways of streamlining the wage rate for apprentices as part of its annual remit.

Apprentices currently attract a minimum wage of £2.68 per hour, a level which many employers who offer apprenticeships believe gives the scheme a bad name.

Equally, the current rates which depend on age and how long someone has been an apprentice can be difficult for employers to understand.

The changing face of the normal working day

New legislation, which came into force on 30th June, gives all workers, with at least 26 weeks of service, the right to make a request for flexible working. New research shows that most workers would prefer a more flexible schedule:



- Almost 48% of Brits said that their ideal workday would start before 9am.
- 7% of workers clock-in after 10am rising to 22% in London (over three times the national average).
- Across the UK, 40% of workers aren't offered any flexible working benefits by their employer at present.
- Only 24% of employers plan to offer more flexible working benefits to their staff from 30th June while 40% do not plan to make any changes.
- 11% of employers plan to introduce mobile working technology while 67% of employers polled already offer mobile or remote working technology to some employees.

While 56% of workers polled are thinking about making a request for flexible working, only 27% of employers are expecting staff to make such requests. Please contact us for more information about flexible working hours requests

Changes to employee rights shouldn't make employers complacent

Last summer, the tribunal system was overhauled and fees for bringing a claim against employers was introduced.

Further, since April 2012, legislation has also allowed employers to sack or make redundant those with less than two years' service, without justification or recourse.

The result? New figures show that fees are proving a deterrent with a 59% drop in the total number of claims in the first three months of 2014.

However, these figures shouldn't encourage complacency among employers. Anecdotal evidence suggests that those employees who have committed to funding their cases are bringing increasingly complex claims.

Also, a number of trade unions are now offering to cover members' legal fees should they make a claim, reducing the financial impact on workers.

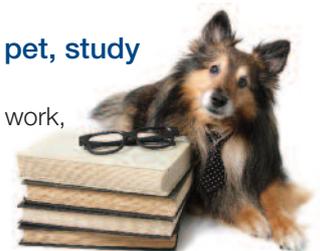
There has been a fundamental shift in workers' rights, but with the backing of trade unions, employees still have options for accessing justice where they have a strong case to bring.

Employers must ensure they behave within the confines of their employment contracts if they are to avoid costly legal action.

For more advice or guidance, contact our team of specialist solicitors.

Employees would 'work better' with workplace pet, study finds

Almost half of us would like to bring animal companions to work, according to research of more than 1,000 UK workers and more than one-quarter of people would consider taking a lower-paid job if they could bring their pet to work.



Dogs are the most popular animal by far, with 72% of workers opting for the faithful hound.