

Employment Law Update

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Holiday Pay

- ▶ *Harpur Trust v Brazel [2019]* - decision and reversal
 - ▶ *School setting, Music Teacher*
 - ▶ *Varying hours worked each week reflecting needs*
 - ▶ *No work in school holidays (“Part Year Worker”)*
 - ▶ *Paid only for hours worked*
- ▶ Supreme Court November 2021- *“the amount of leave to which a part-year worker under a permanent contract is entitled is not required by EU law to be, and under domestic law is not, prorated to that of a full-time worker”*

Holiday Pay - New Regs

- ▶ The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023
- ▶ Holiday Pay - aspects came into force in April 2024
- ▶ Annual leave and holiday pay calculations have been simplified:
 - ▶ Holiday pay for the first 4 weeks of pay to be paid at normal rate of pay for all, which includes commission, regular overtime and payments related to professional or personal status (length of service etc.).
 - ▶ Holiday pay for the remaining 1.6 weeks of pay to be paid at the worker's basic ray of pay.

Holiday Pay - Carry over

- ▶ COVID-19 holiday carry over rules have gone.
- ▶ All workers can now carry over 4 weeks' holiday pay to the next year where:
 - ▶ They were unable to take holiday due to sickness absence or family leave.
 - ▶ They were not given a reasonable opportunity to take holiday or not encouraged to take holiday.
 - ▶ They were not informed that if they did not take their holiday, they would lose their entitlement.
 - ▶ They were wrongly classed as self-employed and not given paid holiday.

Rolled-up Holiday Pay

Now permitted for irregular and part-year workers only, and, only allowed if following requirements are met:

- ▶ Calculated at 12.7% of workers' pay.
- ▶ Paid at the same time as their normal remuneration.
- ▶ Evidenced on their payslip.

Working Time Regulations

- ▶ The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023
 - ▶ Simplified record keeping requirements.
 - ▶ Reduction of time-consuming reporting under the WTR 1998.
 - ▶ Employers no longer need to record daily working hours of each employee, including rest times and breaks.
 - ▶ Employers may now create and maintain records *in such manner and format as the employer reasonably thinks fit*.
 - ▶ Employers' records must show compliance with WTR 1998.

TUPE

- ▶ The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023
 - ▶ Streamlines the regulations that apply to business transfers to a new owner.
 - ▶ Removal of requirement to elect employee representative for employers with fewer than 50 employees.
 - ▶ These changes applied from 1st July 2024.

Coming Soon...

- ▶ The Worker Protection (Amendment of Equality Act 2010) Act 2023 - October 2024
- ▶ Enhanced employer duty to prevent sexual harassment
 - ▶ Employers *must* take “*reasonable steps*” to prevent sexual harassment.
 - ▶ Employers must ensure at all times they are taking steps to prevent sexual harassment.
 - ▶ If an employee wants to claim for a breach of this duty, it must be alongside a claim for sexual harassment.
 - ▶ Tribunal power has been increased to uplift compensation by 25% if employee is successful in their claim for sexual harassment.

What may be on the horizon?

- ▶ Making parental leave, sick pay, and protection from unfair dismissal a 'day one' right. However, special rules apply for probationary periods.
- ▶ A ban of zero-hour contracts with a right to a contract that reflects the hours they regularly work.
- ▶ End to 'fire and rehire' and 'fire and replace' practices by reforming the law and replacing the statutory code.
- ▶ Removal of the lower earnings limit and waiting period for Statutory Sick pay.
- ▶ Making flexible working the default for all workers from day one. Employers will be required to accommodate this as far as is reasonable.
- ▶ Making it unlawful to dismiss a woman who has had a baby for six months after she comes back to work. There will be certain exceptions to this.
- ▶ Creation of the Fair Work Agency to enforce workplace rights.

LLPs - The way forward?

- ▶ The Labour Government may consider allowing GP partners to enter limited liability partnerships as part of a new national contract with the Government.
- ▶ Amendment to GMS/PMS regulations would allow for this.
- ▶ LLPs will allow GPs to remove the unlimited personal financial risks they face under the traditional partnership model - *removal of “jointly and severally” liable.*
- ▶ Pension issues - the NHS regulations as they stand will not allow LLP members to contribute to the NHS pension scheme. Proposal to reform the current regulations to allow for this.

LLPs - Things to think about

- ▶ Member agreements
- ▶ TUPE
- ▶ Taxation and accountancy
- ▶ Pensions
- ▶ Property
- ▶ Obtaining good advice on legal and accountancy aspects

And Finally, in the Employment Tribunals...

- ▶ Dismissal for refusing to work weekends was fair
 - ▶ *Dobson v Cumbria Partnership NHS Foundation Trust*
- ▶ Six Year collective memory on whistleblowing
 - ▶ *First Great Western v Moussa*
- ▶ *Christian belief that gender is not fluid capable of being a protected belief*
 - ▶ *Higgs v Farmor's School*
- ▶ Facial recognition software can be discriminatory
 - ▶ *Manjang v Uber Eats*
- ▶ You cannot refer to someone as a “Bald XXXX”
 - ▶ *British Bung Manufacturing Company LTD v Finn*. (Awaiting EAT appeal judgment)