



CHILTERN HR AUGUST 2013 NEWSLETTER

110 Butterfield, Great Marlings
Luton ■ Bedfordshire ■ LU2 8DL

T: (01582) 439 795

F: (01582) 439 796

E: philip.ivinson@chilternsolicitors.co.uk
www.chilternsolicitors.co.uk

1. **Holiday carry over in cases of sickness is limited to four weeks**

The Employment Appeal Tribunal has held that where a worker is unable to take holiday due to sickness the employer does not need to carry over 8 days of holiday in the next leave year.

What does this mean?

Under European law workers have to be able to carry over paid annual leave if they were unable to take it because of sick absence. However, workers in UK have 8 days' additional entitlement to take account of bank holidays, giving them 28 days in total if they work full-time. An employee who has been absent due to long term sickness has no right to carry over that additional 8 days unless there is a contractual agreement to the contrary.

What should employers do?

In the absence of any contractual entitlement, employers do not need to let staff, who have been prevented from taking holiday due to long term sickness, carry forward more than 4 weeks of their holiday entitlement and if an individual's contract of employment is terminated, any payment due in lieu of holiday can be limited to 4 weeks.

Case reference: Sood Enterprises Ltd v Healy

2. **Calculating holiday pay**

An employment tribunal has ruled that voluntary overtime must be taken into account when calculating statutory holiday pay, having taken the view that UK legislation is at odds with European legislation relating to the calculation of statutory holiday pay.

What does this mean?

An employment tribunal decision is not legally binding so the question whether voluntary overtime has to be taken into account will need to be determined by the Employment Appeal Tribunal or a higher court in order clarify this point.

What should employers do?

Employers who pay staff who volunteer for overtime should consider taking into account their overtime pay when calculating holiday pay. Employers who could be significantly affected by any legally binding ruling could consider restricting overtime or giving staff time off in lieu instead of overtime pay.

Reference: Neal v Freightliner Limited

3. New work experience guidance

The Health and Safety Executive (HSE) has published new guidance for employers who take on work experience students.

The HSE advises employers generally to treat the management of risk for work experience students no differently from risk management for other young people they employ and assures employers that existing employers' liability insurance policies should cover work placements as long as the insurer is a member of the Association of British Insurers.

Employers with fewer than 5 employees, the HSE explains, do not need a written risk assessment and repeat assessments are not required for all new work experience students.

A full copy of the guidance can be found here

<http://www.hse.gov.uk/youngpeople/workexperience/placeprovide.htm>

It is also worth noting that employers are no longer able to carry out Disclosure and Barring Service checks on staff supervising young people aged 16 to 17 on work experience. Employers are, therefore, entitled to refuse to carry out such a check if one is requested by an education provider.

4. Comparators in equal pay claims need not work in the same establishment

The Supreme Court has held that staff employed at different establishments were in the same employment for equal pay purposes.

What does this mean?

If two groups are on 'common terms' they are 'in the same employment', for the purposes of the Equal Pay Act 1970. In this case both groups were employed by the same local authority but at different establishments. None of the female workers performed work similar to that of the male workers who were paid bonuses which the female workers argued they should also be paid.

What should employers do?

Specific legal advice should always be taken where an employee raises a complaint relating to equal pay.

Case reference: North and Others v Dumfries and Galloway Council

5. Employee ownership

The Department for Business, Innovations and Skills has published model documents for employee owned companies as well as two guides.

Employee ownership is where all employees have a significant and meaningful stake in a business.

The model documents

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210449/bis-13-948-model-documentation-for-company-with-employee-ownership.pdf include articles of association for companies with employee ownership and for trustee companies and a trust deed for an employee benefit trust.

A guide 'Moving to employee ownership – guidance on model documentation' https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210450/bis-13-949-moving-to-employee-ownership-guidance-on-model-documentation.pdf explains how the documents should be used. The other guide 'Moving to employee ownership – a brief guide for employees'

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210441/bis-13-939-moving-to-employee-ownership-guide-for-employees.pdf explains what employee ownership means for employees.

HMRC has published an introduction to tax issues for an employee share benefit trust <http://www.hmrc.gov.uk/shareschemes/est-intro.pdf>.

More information on employee ownership can be found on the Employee Ownership Association's website <http://employeeownership.co.uk/employee-ownership/about-employee-ownership/>.

What should employers do?

Employers intending to offer employees a stake in their business should take legal advice.

6. Settlement Agreements

Legislation re-naming 'compromise agreements' as 'settlement agreements' came into force on 29 July. It prevents pre-termination negotiations from being used in evidence in any unfair dismissal claim even if there has been no current employment dispute.

A Statutory Code of Practice on Settlement Agreements prepared by ACAS applies from 29 July. This can be found at Annex A on this link: <http://www.acas.org.uk/media/pdf/n/o/Acas-response-to-Settlement-Agreements-Code-June-2013.pdf>.

What does this mean?

Parties to unfair dismissal claims will not, in most instances, be able to tell a tribunal about any offer made or discussion of proposed settlement terms before the termination of a person's employment unless there has been 'improper behaviour'. Parties will still be able to mention these offers or discussions when a tribunal is asked to make an award of costs or expenses. If the discussions follow a pre-existing dispute, they will still be protected from disclosure whether in unfair dismissal claims, discrimination claims, 'automatic' unfair dismissal or breach of contract claims, unless there is "unambiguous impropriety".

What should employers do?

Employers who wish to discuss paying a settlement to employees should consult the Code of Practice and seek legal advice.

7. Employee was entitled to bring claim against former colleague

The Employment Appeal Tribunal has held that an employee was not precluded from bringing a discrimination claim against a fellow employee by virtue of the fact that the employer was not a party to the proceedings.

What does this mean?

Where an employee enters into a compromise agreement with their employer when their employment ends which precludes the employee from bringing any claim against the former employer arising out of their employment and its termination, the employee may still be able to bring a claim against a fellow employee.

Case reference: Hurst v Kelly

8. Interest on tribunal awards

Changes to the rules on interest on tribunal awards came into force on 29 July.

What does this mean?

Interest on tribunal awards will now accrue from the day after the day the case is decided, unless the full amount is paid within fourteen days. The rate of interest on an unpaid tribunal award remains at 8%.

In discrimination cases tribunals have the power to award interest on a claimant's losses as part of the compensation for discrimination up to the date of judgment, now at the rate of 8% for discrimination claims presented on or after 29 July.

References: The Employment Tribunal (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013 and the Employment Tribunals (Interest) Order (Amendment) Order 2013.