

## Holiday Pay

### Recent and Forthcoming Changes

#### Holiday entitlement from 1<sup>st</sup> April 2009

Workers are entitled under the Working Time Directive to paid holidays. Currently they are entitled to 4.8 weeks per year which will rise to 5.6 weeks per year from 1<sup>st</sup> April 2009.

For a worker who works a 5-day week that is equivalent to 4 weeks plus bank holidays.

The definition of "Worker" is wider than employee and covers staff who are paid on a self employed basis but work for one employer as an individual.

Employers are entitled to decide when their holiday year runs from, but if there is no set holiday year in practice it starts on the day the individual worker concerned commenced their employment.

#### Paid holiday for employees who are on sickness absence

On 20<sup>th</sup> January the European Court of Justice determined in the case of *Stringer v HMRC* that an employee who was off sick was still entitled to the right to paid holiday. If an employee was not entitled to take paid holiday during their sickness absence then they would accrue those holidays which they could use on their return to work even if that was after then end of the holiday year. Although normally an employee does not have the right to carry untaken holiday forward to the next holiday year, if an employee has been unable to exercise their right to paid holiday because of sickness, they can now carry it forward.

When a worker's employment terminates during a holiday year and they have not taken their entitlement to paid holiday for the proportion of that holiday year, they are entitled to pay in lieu of untaken holiday even if they have been off sick for part or the whole of that holiday year, and if they have carried forward paid holidays because they were off sick at the end of the previous holiday year, that period of untaken holiday leave is also taken into consideration when calculating payment in lieu of holiday.

Although the House of Lords will need to rule on this case in the light of the European Court's Judgment, they are bound by that decision and for



all practical purposes, employees will be able to claim these rights now.

The implication of this case is that even if employees are only paid SSP while off sick, they will still be able to take holidays paid at their normal contractual rate of pay, or paid in lieu if their employment is terminated.

<http://business.timesonline.co.uk/tol/business/law/reports/article5601089.ece>

#### What if an employee took more holiday?

Employers should note that if employees have taken more than the proportion of holiday due for the holiday year in which they leave, an employer cannot deduct wages paid for these extra holidays unless there is a clause in the contract which entitles them to make this deduction.

**Extra contractual holiday entitlement** For employers who provide more paid holidays than the minimum statutory requirement, they do not have to provide the same rights in respect of the extra holidays when employees are off sick nor at the termination of their employment, although if employers intend to treat extra holiday entitlement differently it would be wise to make this clear in the employment contract.

# The Employment Act 2008

## - the end of Statutory Procedures

### Summary of the Changes

The 6<sup>th</sup> April 2009 sees the beginning of the end of the statutory procedures which came into force in October 2004. The Employment Act 2008 which comes into force on this date will:-

1. End of the statutory disciplinary and dismissal procedure which rendered dismissals which did not comply with it automatically unfair.
2. End of the statutory grievance procedure which will no longer be a requirement before employees start claims.
3. Replace the increases or decreases in compensation for failure to comply with these procedures with a discretionary increase or decrease in compensation by up to 25% for unreasonable failure to follow the new ACAS code of practice.

### Effect of the Changes

Employment Tribunals will have a wider flexibility when deciding if a dismissal is unfair. From a practical point of view there will be little change to what is required for a fair dismissal, and Employment Tribunals have always had regard to ACAS

codes of practice. Although most dismissals which comply with the code will be fair, failure to adhere to everything in the code does not automatically make a dismissal unfair and strict adherence to it does not guarantee that a dismissal is fair. However if a finding of unfair dismissal is made, a breach of the code of practice by the employer may lead to the sanction of an increased award of compensation.

Similarly any successful claim made by an employee for which they have submitted a grievance, could also lead to the sanction of a higher award of compensation if the employer failed to follow the code of practice.

If there is a failure by the employee to follow the code of practice, either in co-operating with a disciplinary procedure or in pursuing a grievance, an employee who wins a Tribunal claim could find their compensation reduced.

### The new ACAS Code of Practice

The final code has yet to be confirmed but will be similar to the draft code. The draft code is at <http://www.acas.org.uk/CHttpHandler.ashx?id=961&p=0>

The code of practice will apply to dismissals for misconduct or poor performance, but will not be applicable to redundancy dismissals.

### When will the changes take effect?

There will be a transitional period, so even after 5<sup>th</sup> April, Tribunals will still apply the statutory procedures to claims which have arisen as a result of dismissals where action started prior to 6<sup>th</sup> April, or (in relation to constructive dismissal or other claims) where an employee complains about an action which took place before 6<sup>th</sup> April.

Employers should ensure that in relation to disciplinary procedures started up to 5<sup>th</sup> April they continue to adhere to the Statutory procedures and if any employee makes a complaint about an incident which occurred prior to 6<sup>th</sup> April (even if the complaint is made later), that should be investigated following the statutory grievance procedure. It would be wise for employers to start to follow the draft ACAS code of practice now, and review their own procedures in the light of it.

## Pay - Key Facts

### National Minimum Wage -

Age 22+	£5.73
Age 18 - 21	£4.77
Age 16 - 17	£3.53

### Statutory Sick Pay (from 6 April 2009) -

	Up to 5/4/09	From 6/4/09
Weekly amount (for up to 28 weeks in any 3 year period)	£75.40	£79.15

### Parental Payments (from 6 April 2008) -

Type of Payment	Up to 4/4/09		Maximum Period
Statutory Maternity Pay (higher rate)	90% of weekly earnings	90% of weekly earnings	6 weeks
Statutory Maternity Pay (basic rate)	£117.18 per week (or 90% of earnings if lower)	£123.06 per week (or 90% of earnings if lower)	33 weeks
Maternity Allowance	£117.18 per week (or 90% of earnings if lower)	£123.06 per week (or 90% of earnings if lower)	39 weeks
Statutory Paternity Pay	£117.18 per week (or 90% of earnings if lower)	£123.06 per week (or 90% of earnings if lower)	2 weeks
Statutory Adoption Pay	£117.18 per week (or 90% of earnings if lower)	£123.06 per week (or 90% of earnings if lower)	39 weeks

### Maximum weekly pay for redundancy calculation

£350 per week

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