

Workers entitled to indefinite carry over of unpaid annual leave

The Court of Appeal has made a significant decision on holiday pay in the case of *Smith v Pimlico Plumbers Ltd.* We consider the implications for businesses.

- As a self-employed contractor, Mr Smith was not given paid leave by Pimlico Plumbers Ltd. He did, however, from time to time, take unpaid leave from his work. However, Mr Smith's status as a worker was established by the Supreme Court in an earlier decision, and this case was as a result of the respondent's failure to pay annual leave for the duration of the contract.
- In this latest case, the Court of Appeal confirmed that workers who have taken leave but not been paid for it will be able to carry over the right to payment from one leave year to the next.
- Workers who are denied the right to take paid annual leave (e.g. those with incorrect employment status) will accrue the right to that leave over the whole course of their contract.
- If the worker is not given the opportunity to take the paid leave before their contract terminates, they will be entitled to pay in lieu of the entire amount of accrued leave on termination.
- This case only applies to the four weeks' annual leave workers are entitled to under EU law, and only applies where the right to the leave is in dispute and the employer is refusing to pay for it, i.e. someone labelled as self-employed but in reality, they are workers/employees.

High Court grants injunction against Tesco

A group of Tesco employees have won an injunction to stop them being "fired and rehired" i.e. dismissed from their roles and offered re-engagement on less favourable terms. The injunction was granted to protect a specific contractual entitlement to Retained Pay which Tesco were attempting to remove, as the High Court concluded that damages would not be an adequate remedy.

Did you know?

Whilst it is rare for injunctions to be granted in employment matters, this case demonstrates that in some circumstances the employment tribunal is not the only route available for employees.

Covid vaccine mandate update

One week on from the government's announcement that a consultation will be launched to consider removing the mandatory Covid vaccine regulations in care homes and wider health and social care settings, we are still waiting for the consultation to officially open. In the meantime, Sajid Javid has confirmed that the 3 February 2022 deadline for the first dose of the vaccine no longer applies.

Did you know?

This means that no formal action should be taken against affected workers while the outcome of the consultation is awaited, including formal meetings, notice of dismissal or re-deployment.

Government to consider reform following Brexit

The government has announced a new 'Brexit Freedoms Bill' which will include a review of all retained EU law. Much of employment law in the UK is derived from EU rights, such as TUPE and the rules around working time, and EU cases have had an impact on decisions made in our courts. However, we are yet to see what employment laws specifically are under scrutiny for reform.

Did you know?

Although we are unlikely to see a regression from the current level of employment rights, the good news for employers is there is likely to be plenty of notice of any changes that are made.

The financial implications of the Court of Appeal decision on unpaid annual leave have the potential to be significant for employers who have denied worker status. Contact our 24-hour Advisory Service for up-to-date guidance on this and more.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this publication.