



This Week in Employment Law

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Holiday leave and pay cannot be pro-rated for part-year workers

In a case of huge significance for employers, the UK Supreme Court has handed down its judgment in Harpur Trust v Brazel. We look at what you need to know for your holiday calculations.

- The UK Supreme Court confirmed that annual leave cannot be pro-rated for part-year workers. Instead, all workers are entitled to 5.6 weeks' paid annual leave, regardless of how many weeks per year they work.
- This includes workers who are term-time only, zero-hours or on variable hours where they don't work every week of the year.
- Pay for this leave should be based on average weekly earnings over the previous 52 weeks in which the worker was paid. The 12.07% Method cannot be used as a way to calculate holiday entitlement or accrual.
- Employers will need to re-calculate annual leave and pay to ensure part-year workers are given their 5.6 weeks' entitlement for the current holiday year.
- Some may have to assess whether they need to provide holiday back pay to protect against an unlawful deduction from wages claim. Using 12.07% to calculate holiday pay instead of the 52-week average could leave some employees worse off.
- Employers should review and update their contracts and annual leave policies to incorporate these changes.
- This does not change the position for part-time workers (i.e. those who work 52 weeks per year, but only 3 days per week) or fixed-term workers who can continue to have their holiday calculated pro-rata.

Agency workers can be used during strikes

Previously, employers were banned from hiring temporary workers to cover for staff on strike. But, new legislation came into force on 21 July 2022 to remove this ban; The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022. The change applies to England, Scotland and Wales. The government hopes that this will lessen the impact of strikes on business operations.

Did you know?

It is the responsibility of individual businesses to maintain safety standards and hire temporary workers with the suitable skillset and/or qualifications to meet the obligations of the role.

Government recommends EAP for menopause support

In its response to an independent report on menopause and the workplace, the government has recommended that all employers provide staff with an Employee Assistance Programme (EAP). The government's response emphasises the vital support EAP offers employees with their mental health and wellbeing. Where possible, employers are encouraged to ensure that menopause is part of the EAP offer.

Did you know?

EAP can be a valuable tool for line managers to signpost employees to. Employers who provide this benefit should make sure their staff know what support is available and how to access it.

21% fall in the number of planned redundancies

The number of planned redundancies in the UK fell by 21% in the last quarter, according to new research. There were 39,669 planned redundancies between 1 April and 30 June 2022, compared to 50,382 in the first quarter of the year. Some experts find this surprising, given the rate of inflation and economic outlook, but for many businesses this shows an increased focus on retaining current employees.

Did you know?

Employers should consider all possible alternatives before proceeding with redundancies. A proper pre-consultation process can avoid the need to place staff at risk of redundancy in the first place.

Employers will need to review their annual leave policies and calculations in light of the UK Supreme Court's decision in Harpur Trust v Brazel and make changes where necessary. 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.