



RAWORTHS EMPLOYMENT NEWSLETTER April 2005

Workers on sick leave are not entitled to holiday pay....

Good news for employers!

On 22 April 2005, the Court of Appeal in the Commissioners of Inland Revenue-v-Ainsworth & Others held that the Employment Appeal Tribunal was wrong to find that workers on long-term sickness absence could claim statutory holiday pay.

The Working Time Regulations 1998 state that "Workers are entitled to four weeks paid annual leave." The Claimants were all on long-term sick and brought their claims based on the Kigass case which had said that there doesn't have to be any actual work done for someone to be deemed a "worker" and therefore claim holiday leave/pay.

The Court of Appeal said that this was not the right approach. What the Employment Appeal Tribunal should have done is to look at the word "leave". Leave means a release from an obligation. Furthermore, the purpose of the Regulations are based around better health and safety in giving the worker a break from the pressures of work. As the workers in the instant case were on long-term sick, they didn't need a break from work and no holiday pay was payable.

Non-payment of holiday pay

More good news for employers!

The Court of Appeal has overturned another Employment Appeal Tribunal Decision (they are obviously on a roll!).

Regulation 30 of the Working Time Regulations 1998 states that any claims regarding a breach of the right to annual leave (in this case, non-payment of holiday pay) must be brought within three months of the breach. The Employment Appeal Tribunal in List Design-v-Douglas decided that non-payment of holiday pay amounted to an unlawful deduction of wages under the Employment Rights Act 1996. That particular Act allows claims to be brought within three months of the last in the series of deductions. The Court of Appeal said that this was incorrect and that the regulations (brought out after the Employment Rights Act!) were intended to apply to a single breach. The claim must therefore be made within three months of the particular breach.

Information and Consultation of Employee Regulations 2004 (ICE Regs.)

Very briefly, the initial phase of these Regulations came into effect at the beginning of April 2005 but at this stage, only affect businesses with 150+ employees. They are designed to make sure that employers of a certain size undertake to inform and consult employees on changes in the workplace. Their application is being phased over the next three years and are applicable depending upon the number of employees in the business. They will not affect any business with less than 50 employees.

Raworths' April Employment Seminar

This dealt with the new ICE Regulations and gave our clients practical advice on how to combat stress in the workplace and how to deal with long-term and intermittent sickness absences.

Two of the seminars were held at 8:00am – a big thank you to all of our clients who attended and especially to those who can't eat that early in the morning leaving more sticky buns for the rest of us!

If you are interested in attending our October 2005 seminar, please contact us by phone or e-mail and we will be happy to add your name to our invitation list.

Part-time workers – less favourable treatment

An early warning from Europe?

In *Elsner-Lakeberg –v- Lane Nordrhein-Westfalen*, remitted to the European Court of Justice, a German statutory code stated that both part-time and full-time teachers did not receive extra pay for additional hours until they had worked a certain number of additional hours per month. In effect, this meant that a full-time teacher had to work an additional 3% whereas a part-time teacher had to work an additional 5%.

The European Court of Justice held that as this difference affected considerably more women than men, it contravened Article 141 and the Equal Pay Directive. In other words, it was sex discrimination!

Disability Discrimination Act 2005

This makes various amendments to the Disability Discrimination Act 1995. Of note to employers will be that the meaning of disability has undergone some changes. The requirement that a mental illness must be a clinically well-recognised one, if it is to be deemed a "mental impairment", has now been removed. Furthermore, a person who is diagnosed with cancer, HIV or multiple sclerosis is deemed disabled from the outset.

Increase in benefits

Maternity, paternity and adoption pay has been increased to £106 per week.

You should also be aware that any pay increase which applies to staff generally, applies automatically to those women who are on maternity leave.

Statutory sick pay has been increased to £68.20 per week.

If you have any specific questions relating to your business, please contact:

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