

## **Newsletter - Employment Law Update January 2024**

### **What's New for 2024 Forthcoming Legislation Changes from 1<sup>st</sup> April 2024**

- 1. Holiday Pay Changes**
- 2. Employment Relations (Flexible Working) Act 2023**
- 3. Carers Leave Entitlement**
- 4. Paternity Leave Entitlement**
- 5. Workers (Predictable Terms and Conditions) Act 2023**

#### **1. Holiday Pay - New holiday regulations that come into effect from April 2024**

##### **Calculating Holiday Pay**

For many years, Employers had been calculating holiday pay on the basis of 12.07% of an Employee's total salary. The Supreme Court put a stop to this in 2018 (*Harper Trust v Brazel*), and required Employers to base annual holiday pay on an average weeks' pay multiplied by 5.6 weeks per annum.

The Government has now reversed that decision. Employers can now revert back to the 12.07% method. For example, if someone earns £30,000 per annum, their holiday pay would be £3621 (£30,000 x 0.1207).

This may benefit Employers who employ staff on variable hours. The Employer will be able to calculate their holiday pay entitlement based on 12.07% of what the Employee earns for a pay period.

##### **Rolled Up Holiday Pay**

This is another reversal by the Government of a Court decision. Prior to 2009 Employers could add a 12.07% onto a worker's hourly rate of pay, to provide them with their holiday pay entitlement. This was an alternative to paying the worker holiday pay when they took annual leave.

For example, if a worker earns £10.42 per hour and works 40 hours per week, their total pay would be £416.80. Their Holiday Pay entitlement would be 12.07% of that - £50.31. This would then be split over the 40 hours worked to add £1.26 to the hourly rate of pay. The Employee would receive £10.42 + £1.26 = £11.68 per hour, £467.11 per week.

The 2009 decision of the Courts to stop this method of payment has now been revoked, and Employers can resume the practice in April 2024. This may be popular with Employees whose hours are variable, and don't necessarily want to book a specific period of paid holiday. The Employer's payroll would simply need to calculate 12.07% of the total pay and add it to the hourly rate of pay.

#### **2. Employment Relations (Flexible Working) Act 2023 – Implementation April 2024**

This provides Employees with more rights to request a change to the number of hours they work each week, as well as their start and finish times. It also includes the right to request home working. These will be day one entitlements.

This means that regardless of whatever appears in a Job Advertisement, Job Offer letter or Contract of Employment regarding the location of work, working hours or other working time details, a new Employee can submit a request to change these terms from their first day in a job. At present, requests can only be made after 6 months continuous employment and there is no need for consultation.

The Act also includes an opportunity for workers to submit two requests to make these changes in a rolling twelve-month period. Currently it is limited to just one request.

Any request made by an Employee will have to be subject to a 2/3-week consultation process. Currently a line manager only needs to meet with an Employee to discuss their request.

The Government has decided to beef up this current entitlement to try and tempt those people back to work who chose to stay at home after lockdown regulations were lifted. The purpose is to make work more attractive to these people and enable them to fit work in around their domestic circumstances.

Companies do not have to agree to an Employee's request, there are six Statutory reasons for refusal, which are:

- Additional cost to the business.
- Damage to customer service.
- Inability to share work out amongst other staff.
- Damage to quality of work.
- Damage to performance.
- Inability to recruit staff to cover reduced hours.

If, following a period of consultation and a meaningful assessment of the evidence, it can be proven that one or more of the above apply, the request can be rejected.

### **3. Carers Leave Entitlement – Implementation April 2024**

Employees who have caring responsibilities for a dependent will be able to request up to 4 weeks unpaid leave in a 12 month period. This entitlement has no qualifying period and will be available from day one of employment.

Requests can be made for the whole 4 weeks, 1, 2, or 3 weeks, or single days or half days.

Companies can refuse to allow the Employee to take specific dates due to business reasons, but must provide a mutually agreed date within one month of the original request.

Failure by Companies to facilitate these requests would be a breach of Statutory rights and could result in claims for Unfair/Constructive Dismissal.

### **4. Paternity Leave (Amendment) Regulations 2024 – Implementation April 2024**

The Regulations make the following changes:

- Employees will be able to take their two-week paternity leave entitlement as two separate one-week blocks (rather than having to take just one week in total or two consecutive weeks).
- Employees will be able to take paternity leave at any time in the 52 weeks after birth (rather than having to take leave in the 56 days following birth).
- Employees will only need to give 28 days' notice of their intention to take paternity leave (reduced from the previous position that required notice to be given 15 weeks before the Expected Week of Childbirth (EWC)).

### **5. Workers (Predictable Terms and Conditions) Act 2023 – Implementation September 2024**

The above legislation has now been passed by Parliament and is expected to come into effect in September 2024.

The purpose of the Act is to create a more secure work environment for people on Zero Hours contracts, Fixed Term contracts of 12 months or less, and also Agency Workers.

Anyone with 26 weeks continuous service, engaged on a zero hours contract, or fixed term contract, will be able to request:

1. Regular hours.
2. Regular days.
3. If they are engaged on a fixed term contract of 12 months or less, they can request that the contract be extended for a longer period or made permanent.

The worker must submit their request in writing, and the Employer is obliged to fully investigate it. If the Employer wishes to reject the offer it must be for one or more of the following reasons:

1. Additional costs.
2. Potential damage to customer service.
3. Detrimental impact on recruiting staff.
4. Detrimental effects on other aspects of the business.
5. Lack of work.

If the request is turned down the Employee can Appeal. If the Appeal is turned down the Employee can make a claim to an Employment Tribunal based on the Employer's failure to prove that their reasons had been properly investigated and were based on points 1-5 above. The claim would be for loss of Statutory rights under the new Act, which would enable them to claim Unfair/Constructive Dismissal, which could award them up to 12 months' pay.

Workers who have less than two years' service would be able to submit a claim.

### **Agency Workers**

The Act enables Agency Workers whose hours are variable and unpredictable to apply to either the Agency or the Company where they are working for predictable days, hours, as well as a guaranteed period of engagement, if the Worker has been supplied for 12 weeks or more to the same company.

The Agency worker will also be able to apply directly to the Company, where they are working for a contract of employment with them. The application has to be for a job that is broadly similar to the one they were doing as an Agency worker.

Both Agency and Hirer can reject the request due to:

1. Additional costs.
2. Damage to customer service.
3. Detrimental impact on recruitment.
4. Detrimental impact on either the Agency or Hirers business. It is unlikely that an Agency could use this clause to hang on to workers, using the reason that they would lose their assets. It is also unclear as to what effect this clause would have on temp to perm payments to Agencies by a Hirer for the recruitment of their workers.
5. Lack of work.

As above, if the request is rejected the worker can Appeal, and ultimately take a claim for loss of statutory rights to an Employment Tribunal.

The Act allows all workers, either Agency or those engaged directly by a Company, two opportunities to make these requests within a 12-month period.

### **PROFILE**

Chris Moses LLM Chartered FCIPD is Managing Director of Personnel Advice & Solutions Ltd. He is a Chartered Fellow of the Chartered Institute of Personnel and Development, and has a Master's Degree in Employment Law. If you have any questions regarding these issues please feel free to contact him on (01529) 305056 or email [p.d.solutions@zen.co.uk](mailto:p.d.solutions@zen.co.uk)

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