

**NEWSLETTER - EMPLOYMENT LAW UPDATE  
MARCH 2022**

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**1. Unpaid Holiday Entitlement**

A worker can claim pay for annual leave carried over from one leave year to the next, if the worker has been prevented from taking annual leave.

In *Smith v Pimlico Plumbers* the Court of Appeal found that workers who were effectively prevented from taking annual leave had to be paid for it. In this particular case, the Employee hadn't received paid leave for several years because the Employer mistakenly believed that they were a self-employed contractor. As a consequence, the Employee was able to claim payment for all untaken holiday entitlement going back to when they started working for the Company.

However the same remedy can be applied to Employees who have been prevented from taking leave for a number of reasons. Advice to Employers is firstly to make sure that workers who they consider to be contractors, and therefore not entitled to holiday pay, don't fall into the definition of being an Employee. In particular:

- 1 If they are under managerial control of the business they are an Employee.
- 2 If they use the tools and equipment of the business they are an Employee
- 3 If they expect, and receive regular hours of work, they are an Employee
- 4 If they are integrated into doing a variety of activities within the business, rather than just a contracted service, they are an Employee
- 5 If the business expects a named individual to turn up and do the job, they are an Employee.

Secondly, make sure that the Employment Contract clearly states whether or not unused leave can be carried over from one year to the next. It is still permissible for contracts to make clear that annual leave cannot be carried over to the next leave year, but such a provision is only effective where the worker has had the opportunity to take paid leave within the year.

It will be incumbent on an Employer to show that it specifically gave the worker the opportunity to take paid annual leave, encouraged the worker to take the leave and informed the worker that the right will be lost at the end of the leave year.

Contracts should be amended if they do not yet set out that leave will be lost if not taken during the year. Employers should adopt the practice of regularly reminding and encouraging their workers to take annual leave before the end of their leave year.

**2. There's always someone who'll keep the Tribunals in business**

A nursery worker who told her bosses she was pregnant a week after starting her new job has won £25,000 after she was asked if keeping the baby was a 'good idea'.

Darci Topping, a qualified nursery nurse, started work at Stepping Stones Nursery in Hoddlesden in February 2020. A week later she told her line manager she was pregnant.

The 23 year old - who was on minimum wage - was then subjected to 'negative inferences' about her pregnancy by her managers, was quizzed about the baby's father and about her intention to go through with the birth.

She was also 'pressured' into reducing her hours as the Covid-19 pandemic hit and then made redundant out of the blue, the employment tribunal heard.

But bosses at Stepping Stones Nursery had 'dressed up' her sacking with a sham process because she was pregnant, the tribunal ruled. She successfully sued the nursery at an employment tribunal for pregnancy discrimination and unfair dismissal.

A tribunal report said: "In the course of a discussion about her pregnancy, Ms Costello told her that the owner of the nursery, would 'come round to it', and she mentioned the fact that Miss Topping was on probation.

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"Other comments were made, including questions about whether Miss Topping was, in fact, going to keep the baby and whether that would be a good idea, and reference was made to Miss Topping's partner or father of the baby at the time."

As the Covid-19 pandemic hit days later and Stepping Stones Nursery became worried about finances, Miss Topping was told her hours needed to be cut but was the only worker to have her shifts formally cut.

She was placed on sick leave initially but then placed on furlough as well as other members of staff. However, she was the only one to receive 80 per cent of wages for 20 hours a week, rather than 37. Despite things being 'stable' at the nursery, she was made redundant out of the blue while on furlough, leaving her 'very upset'. Ms Costello even suggested she 'might be better off on benefits' during the telephone call.

"Miss Topping was by then on furlough with other employees at no cost to the nursery. What happened then was that Ms Costello simply rang up Miss Topping and announced her dismissal as (redundancy).

Employment Judge Marion Batten said: "The Tribunal concluded that the decision to make her redundant was a decision targeted at her alone - she was pregnant and in light of the paucity of the evidence, it was apparent that was the only difference.

"There was no other credible explanation offered by the nursery."

### 3. 2022/23 Statutory Payment Rates

<b>From 3<sup>rd</sup> April 2022</b>	
<b>Shared Parental Pay (ShPP)</b> Statutory rate of £156.66 or 90% of employee's weekly earnings if lower.	
<b>Maternity Pay (SMP)</b> 6 weeks at 90% of average weekly earnings. Then statutory rate of £156.66 or 90% of employee's weekly earnings if lower.	
<b>Adoption Pay (SAP)</b> 6 weeks at 90% of average weekly earnings. Then statutory rate of £156.66 or 90% of employee's weekly earnings if lower.	
<b>Paternity Pay (SPP)</b> Statutory rate of £156.66 or 90% of employee's weekly earnings if lower.	
<b>Parental Bereavement Pay (SPBP)</b> Statutory rate of £156.66 or 90% of employee's weekly earnings if lower.	
<b>From 6<sup>th</sup> April 2022</b>	
<b>Statutory Sick Pay</b> £99.35 pw for 28 weeks subject to earnings (average £123 per week)	
<b>Minimum Wage from 1 April 2021</b>	
Workers aged 23 and over (National Living Wage)	£9.50 an hour
Workers aged 21–22	£9.18 an hour
Workers aged 18–20	£6.83 an hour
Apprentices under 19, or over 19 and in first year	£4.81 an hour
<b>Cap on Weekly Pay for Calculating Redundancy Compensation £571 per week</b>	

### PROFILE

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