

CALCULATING HOLIDAY PAY WHAT'S CHANGED?

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Following previous guidance notes we have provided an overview for on updates on calculating holiday pay, specifically around the Harpur Trust v Brazel (2019) court ruling, there has been further updates on this situation that all employers should be aware of.

Harpur Trust v Brazel (2019) – A REMINDER

To recap, the Harpur Trust v Brazel case involved a music teacher on a zero hour contract who disputed her employer's calculation of her holiday pay. Initially, the school calculated her pay based on a fixed percentage of her earnings at the end of each term, which resulted in less holiday pay for her. The employee argued that her pay should be based on an average of her earnings over the previous 12 weeks (from 6 April 2020 this reference period was increased to 52 weeks), which would have resulted in a higher amount of holiday pay. The case was initially dismissed by the Employment Tribunal but was later reviewed by higher courts, including the Supreme Court, which ruled in favour of the employee. The courts concluded that part-time workers and those on zero-hour or casual contracts should receive a full 5.6 weeks of annual leave, calculated based on a 52-week average of earnings. This ruling caused concerns among employers, as it increased costs and impacted flexible working arrangements. The government then added this topic to a review they were completing to assess the ruling and determine if it should be overturned or made permanent legislation, taking into account the impact on employers and ensuring fair annual leave entitlement for all workers.

The outcome of this ruling

The long-awaited outcome was issued by Department for Business and Trade on 8th November 2023. The highlights of the outcome in relation to concerns around the Harpur Trust v Brazel case were:

- Introduce an accrual method for calculating holiday entitlement for part-year workers and irregular hours workers, and will be the method of calculation in their first year of employment and future years. Entitlement will be calculated as 12.07% of hours worked in a pay period. Other workers will continue to accrue leave at 1/12th of their entitlement on the first day of each month during their first year of employment. Workers will NOT be able to accrue more than 28 days statutory annual leave.
- Sanction rolled-up holiday pay (RHP) to be allowed for part-year and irregular hour workers only. This was previously found to be unlawful by the UK Government but following the review can be used by employer, it must be calculated at 12.07% of the worker's earnings during the pay period.
- To define in legislation what the government means by part-year workers and irregular hour workers. Stakeholders requested that the Government is clearer on who this captures in relation to the effect of the Harpur v Brazel judgment. WHAT'S NEXT?

GET IN TOUCH

If you have any questions, or would like further support, please get in touch with Georgia Wilson by calling 0141 221 2984 or by email at georgia.wilson@aab.uk.

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Calculating holiday pay – a reminder of the basics

It would be remiss of us to provide an update on calculating holiday pay, and to predict any changes which may come, without providing a roundup of the basic details every employer must adhere to when calculating holiday pay.

Further to the update to legislation in April 2020, employers must also ensure that if their employees receive “variable pay”, they complete a 52-week look back to confirm what the employee’s average weekly earnings would be. This pay should include any overtime, commission, bonuses or other regular payments. If an employee has not been with their employer for the full 52 weeks, you should assess from the start of their employment. It is important for employers to keep an up-to-date reflection of the average weekly pay to ensure employees are paid correctly when they do take annual leave. If you are unsure of how to calculate an employee’s pay if their hours fluctuate frequently or are not sure if a payment would be considered as a regular payment, please seek out professional advice.

Our advice and recommendations

Calculating holiday pay should be relatively straightforward. However, tribunal cases such as *Harpur Trust v Brazel*, changes to employment case law and changing work patterns continue to give employers additional factors to consider.

It is unclear at this point when the government will formally make the aforementioned changes to legislation or introduce new legislation following recommendations as appropriate. This will likely take time to be implemented, if the changes are likely to take place prior to the next general election should be confirmed in coming months. Employers should stay up to date with developments in this area and seek legal advice to ensure compliance with any changes to the law.

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