

# #64 HR Newsletter

## July 2015

### **Holiday pay may soon need to include voluntary overtime.**

In a recent Tribunal case in Northern Ireland, the Court of appeal has ruled that there is no reason that voluntary overtime cannot be included in holiday calculations. They stated that when this overtime constituted "normal remuneration" then it should be included. So the court of appeal referred the case back to a Tribunal to make a determination on what the meaning of "normal remuneration" is. Although this case is in Northern Ireland and not necessarily admissible in England and Wales, it is a sign of the things to come.... **Watch this space for updated information on holiday pay calculations.**

### **Is travelling for mobile workers classed as working time?**

The European Court of Justice has stated that peripatetic workers (those who leave home each day for work and make a series of sales calls at a variety of locations, or engineers who make a set of maintenance stops at various clients sites and hence have no fixed place of work) their "working time" should start from when they leave home for their first call. Working time in this instance is when the clock should start for working out their working time for their working time directive 48 hour rule calculations and for the qualification for breaks and rest periods.

### **What can you do if staff refuse to take their annual holidays?**

As we know under the Working time regulations, employers must give their staff at least 28 days paid holiday per year. But what happens if the staff don't want to take holidays? are the holidays forfeit? can you "pay them up"?

The answer is simple; if you have given ample opportunity for the staff member to take holidays in the year and they have not done so - then the holidays are lost (forfeit).

It is good practice for employers to remind staff of this fact if they are nearing the end of the holiday year and still have holidays to take. You can "dictate" staff to take holiday by instructing them to do so and if you give e.g. 2 weeks' notice you can make an employee take 1 weeks holiday (whether they agree or not) it is a little harsh ... but worth knowing.

It might only be reasonable to allow carry-over of holidays in a situation where the employee has made repeated requests for leave and these have been refused due to business reasons. But this is a tricky choice as not allowing staff to take their holidays in the holiday year is illegal but so is allowing carry over unused holidays!

### **Apprentices - a special breed... now even more special.**

The Government announced 2 weeks ago that "apprenticeships" are to gain more protection under the law, and furthermore the Government has committed to create a further 3 million places based in all public sector establishments. They have also stated that apprenticeships will have equal status to degrees (*but it is not clear how that will work in practice*).

Remember that if you engage an apprentice for a course of 1 or 2 years - you are committed to complete that course and ensure the apprentice becomes qualified. You cannot terminate these agreements early; if you do (e.g. for competency or redundancy) you need to pay-up the balance of the contract.

## **Disciplinary procedures - some common mistakes that will come back to bite you.**

When carrying out disciplinary procedures that end in dismissal; you must be careful not to fall into simple traps that might result in you losing your subsequent Employment Tribunal case.

The common traps to avoid are:

1. **Not following the ACAS code of Practice.** This is the standard process against which a judge will measure how you have carried out the disciplinary procedure.
2. **Not carrying out a proper investigation.** If there is data that identifies a potential allegation, you must carry out an investigation to establish the facts and the validity of any allegations prior to going forward to a disciplinary hearing. This investigation must be carried out by a different person from whoever holds the disciplinary hearing.
3. **Not issuing a written letter of invitation** to the hearing and not outlining the right to be accompanied and the possible sanctions that may be imposed.
4. **Adding new allegations into the mix after the investigation is completed.** If you investigate a set of circumstances and proceed to a hearing, do not add in more allegations without first investigating them and alerting the employee.
5. **Ensure the sanction or penalty imposed** is consistent with previous disciplinary hearings held in your company.
6. **Ensure that you follow your company's disciplinary procedures** including things like: which level of manager is authorised to issue which level of warning, how long will the warnings last, are you permitted to downgrade or issue financial penalties.
7. **Decide on the correct reason for dismissal and stick to it.** The permissible reasons are: misconduct, capability, redundancy, legal reason and some other substantial reason.

## **Dress codes - some benchmarking**

In a recent HR survey, 94% of have vetoed the wearing of shorts by men or crop-tops by women. 50 % have dress-down Fridays and relax normal dress codes during particularly hot weather.

Tattoos are allowed in 40% of companies and 30% place no restraints on body piercings.

## **Fees for Tribunal claims**

Statistics released show that the number of single person claims has fallen to approximately 25 % of pre-fee claims, however multiple claims (usually presented for groups of staff by Trade Unions for e.g. equal pay) has risen by 50%.

Unison's high court legal claim against the tribunal fees is being heard this month and we will expect to see an answer in the autumn. The word on the street is that the Government may be planning to reduce the fees, but keep some level of payment instead of abolishing them altogether.

## **Whistleblowing policy - who are the "Prescribed bodies"**

The whistle blowing policy was distributed 2 months ago in the April 2015 newsletter and in a timely release the Government's business department (BIS) has released a full list of the "Prescribed bodies". These are government bodies to whom a person wanting to report unsavoury activity by their employer can make a disclosure.