

#65 HR Newsletter

Sept 2015

Unison fails in their challenge of Employment Tribunal fees.

Unison's legal challenge to overturn the introduction of tribunal fees has been rejected for the third time after the Court of Appeal said there was insufficient evidence that claimants could not afford to pay the costs.

The union has long-argued that the introduction of fees, which require claimants to pay up to £1,200 to bring a case, is directly responsible for the dramatic decline in the number of cases reaching tribunal.

According to figures from the Department for Business, Innovation and Skills (BIS) the total number of claims brought before an employment tribunal has fallen by almost 70 per cent since the introduction of fees. The number of claims were down from 340,000 in the first three months of the 2013-14 financial year to just over 110,000 in the third quarter of 2014-15.

While Lord Justice Underhill, the judge overseeing the hearing, said the drop in cases was "troubling", he added, "the case based on the overall decline in claims cannot succeed by itself". "It needs to be accompanied by evidence of the actual affordability of the fees in the financial circumstances of (typical) individuals. "Only evidence of this character will enable the court to reach a reliable conclusion that that the fees payable under the order will indeed be realistically unaffordable in some cases," he added.

Unison have appealed again

Pay due on annual leave.

As the dust is now settling on the holiday payment debate - Rebecca Harmer as Wright Hassal produce the best summary:

"Under the Regulations, workers are entitled to be paid during the annual leave at a rate of a week's pay calculated in accordance with the complicated "week's pay" regime under the Employment Rights Act 1996. Examples that should be included:

- Commission payments;
- Incentive bonuses;
- Overtime that workers are required to perform, regardless of whether it is guaranteed;
- Productivity/performance bonuses;
- Shift allowances and premiums (additional rates for working particular shifts, such as "time and a half");
- Standby payments and payments for emergency call-out duties; and
- Travel and other allowances that are treated as taxable remuneration.

The following elements of remuneration should not be included;

- Benefits in kind;
- Bonuses not linked to workers' performance;
- Expenses (including travel expenses) which reimburse workers for costs incurred; and
- One-off bonuses and occasional payments
- Voluntary overtime"

Tax treatment of exit/severance payments to departing staff.

The Government is consulting on simplifying the tax treatment of termination payments.

Proposals include removing the distinction between contractual and non-contractual payments, aligning tax and NICs and abolishing the £30,000 tax free sum (which would be replaced with an allowance that only applies to redundancy and increases with length of service).

The consultation periods is now running and closes on 16 Oct 15.

Carry forward of unused holiday pay if sick - 18 month limit.

The Employment Appeal Tribunal (EAT) has clarified two issues affecting the rights of workers on long-term sick leave to carry forward untaken annual leave under the Working Time Regulations 1998 (WTR).

Firstly, the EAT has confirmed that a worker on sick leave can carry forward untaken leave into a new holiday year under the WTR even if the worker was capable of taking annual leave. It follows that the principle set out by the Court of Appeal in the case of NHS Leeds v Larner applies to those who are unwilling to take annual leave during sickness absence as much as those who are unable to do so. (But only applies to the first 4 weeks leave).

Secondly, the EAT says that such untaken leave cannot be carried forward indefinitely and limited to a period of 18 months of the end of the leave year in respect of which the annual leave arose. Consequently, the WTR are to be read as permitting a worker to take annual leave within 18 months of the end of the leave year in which it is accrued where the worker was unable or unwilling to take annual leave

Sikh men can wear their turbans instead of a safety hard hat.

The exemption of turban-wearing Sikhs from wearing a safety helmet on construction sites is to be extended to all workplaces from 1 October 2015. This employment law change means that Sikhs will be able to wear a turban, and not a safety helmet, in workplaces like warehouses, factories and vehicles involved in transportation.

There are some limited cases where Sikh workers will still need to wear head protection, but these are mainly restricted to those working in emergency response or members of the armed forces.