

# #93 HR Newsletter

## Oct 2016: Holiday Pay

### Holiday Pay Calculations need to change

#### News from Court on Friday 7 Oct 2016

Holiday pay must include commission, the Court of Appeal has confirmed in its judgement in the long-running Lock vs. British Gas case – but key questions remain around the timescales involved for back-dating pay claims, and the situation regarding bonuses and other forms of variable pay.

Employment lawyers agreed that employers offering a regular commission scheme which is intrinsic to the job their employees do – including overtime or stand-by payments – must include this in holiday pay as a result of the latest ruling, though there remains the possibility of a further appeal.

#### What does this mean in practice?

If you have staff on fixed hours (e.g. 9-5 - Mon-Fri) with a salary type method of payment (e.g. pay not based on piece work)

And you allow staff to earn commission payments when they make a sale (or install a meter in this British gas case)

And this is a regular payment (e.g. occurs each month) although the £ will vary depending on how many meters are installed

Then you must calculate the holiday pay to be an average of the previous 12 weeks' pay and include the commission payment into the 12-week average calculation.

So if they book a week's holiday the pay they receive will be a retrospective 12-week average calculation and NOT simply a week of their base rate of pay