Webinar

UK Employment Law Update – July 2015

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Presenters

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Agenda

1. In case you missed it…
2. Feature: holiday pay – what do the latest cases say?
3. Q&A
In case you missed it…

- **Budget – 8 July 2015**
  - “National Living Wage” to be introduced for employees aged 25 and over
    - £7.20 from April 2016
  - Consultation on “simplifying” tax treatment of termination payments
  - HMRC to review IR35
  - Government to “actively monitor” salary sacrifice schemes
In case you missed it… (cont.)

- Trade Union Bill published
  - 50% of eligible members must vote in favour of strike action (and at least 50% of those voting must vote in favour)
  - “important public services” such as health, workers, teachers, firemen etc must have 40% of eligible members voting in favour
  - 4 month “shelf life” – currently no limit
  - 7 day notice of industrial action to be increased to 14 days
  - separately, consultation on repeal of ban on use of agency workers during industrial action
In case you missed it... (cont.)

- Indirect discrimination: ECJ allows “associative discrimination” claim in relation to indirect discrimination (CHEZ Razpredelenie Bulgaria (-83/14))
  - N ran a shop in district of Bulgaria predominately populated by Roma, but N was not Roma herself
  - Electricity meters fixed higher than other (non-Roma) areas
  - N claimed indirect discrimination alongside Roma
  - ECJ allowed claim to proceed
  - Huge implications for UK law: s.19 Equality Act 2010 requires claimant to possess protected characteristic
  - Allows claimants to claim they are “suffering alongside” disadvantaged group
  - UK courts would need to apply this decision
Afghan interpreters employed by British Army unable to claim discrimination in UK (R (Hottak and another) v. The Secretary of State for Foreign and Commonwealth Affairs and another (2015))

- H and A – Afghan interpreters employed by British government based in Camp Bastion and British Embassy in Kabul
- Contracts governed by Afghan law, paid in USD
- Challenged lack of scheme providing protection and benefits on grounds of discrimination
- High Court: claimants did not have a stronger connection with UK and British law than Afghanistan and Afghan law
- No connection or contract with UK, save for identity of employer
- Therefore fell outside of jurisdiction
Holiday pay – what do the latest cases say?

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Holiday Pay

- Employees are entitled to 4 weeks’ paid holiday under the Working Time Directive
- Also get an additional 1.6 weeks’ paid holiday under the Working Time Regulations 1998
- A “week’s pay”
Normal Working Week’s Pay

- *Williams and others -v- British Airways plc:*
  - ECJ held that payments which are linked to tasks that an employee might be required to carry out under his or her contract must be taken into consideration when calculating holiday pay

- *Wood and Others v Hertel (UK) Limited and others*
  - Tribunal held that productivity, attendance and performance bonuses were intrinsically linked to the performance of the workers’ duties and therefore formed part of their normal pay
Commission

- **Lock -v- British Gas Trading Limited:**
  - ECJ held that holiday pay should include any payments that are “intrinsically linked” to the performance of the employee’s tasks e.g. commission.
Overtime

- **Bear Scotland Ltd v. Fulton and Others**
  - EAT held that guaranteed and potentially non-guaranteed overtime should be included.
  - Also confirmed that shift and travel allowances and standby/on call payments can form part of workers’ normal remuneration.

- **Patterson v. Castlereagh Borough Council (Northern Ireland Court of Appeal)**
  - If voluntary overtime is “normally” carried out and intrinsically linked to the employee’s role, there is no reason in principle that it should not be included when calculating holiday pay.
  - Not binding in England and Wales but can be taken into consideration by tribunals.
Plumb v. Duncan Print Group Ltd

- EAT held workers are only allowed to carry over leave for 18 months after the end of the leave year.
- Workers do not need to show that they were physically unable to take holiday in order to carry it over
Practical Considerations

- To pay or not to pay
- Reference period
- When does holiday lapse?
- Update policies and contractual documentation
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