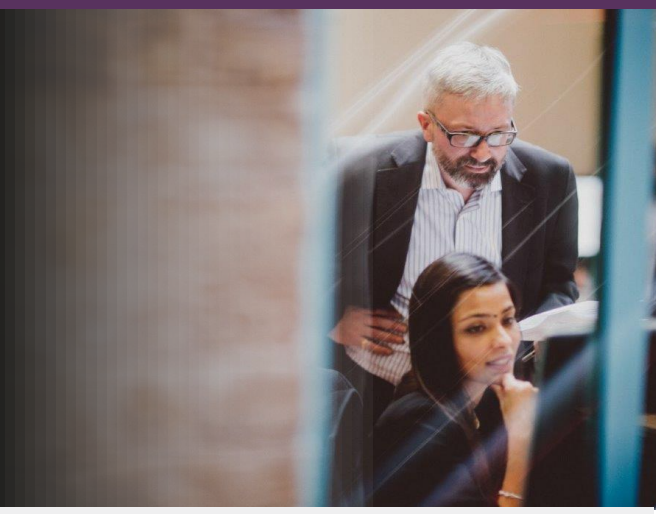
RIAA Barker Gillette

Always Available

Holiday pay ruling hit schools and colleges



October 2019

A case heard by the Court of Appeal earlier this year will affect many in the education sector; holiday pay for workers, who only work part of the year and have no contractually set hours, should not be calculated on a pro-rata basis.

In the case of The Harper Trust v Brazel, the Court of Appeal has ruled that part-year workers on a permanent contract but with no set hours, are entitled to have their statutory holiday pay calculated on the basis of their average earnings over the previous 12-week period before taking leave.

Many employers use a pro-rata calculation of annual pay to work out holiday pay for part-year workers without normal working hours. This ruling is likely to mean that higher holiday pay payments are due to part-year workers with no set hours, and employers risk claims for unlawful deductions where pro-rata calculations have previously been made.

The case was brought by music teacher, Lesley Brazel, who worked during term time at a school on a permanent contract of employment but was paid only for the hours she worked. These varied from term to term, depending on how many children were taking music lessons. Under the terms of her contract she was entitled to holiday of 5.6 weeks (in line with the statutory entitlement) and was required to take that holiday out of term time.

Under the Working Time Regulations 1998 (WTRs), holiday pay should be calculated at the rate of a week's pay for each week of leave.

For Ms Bezel, holiday pay was calculated by multiplying her pay for the hours she worked each term by 12.07 per cent, a commonly used set percentage to calculate holiday entitlement for those with irregular working hours and as set out in the ACAS guide to holidays and holiday pay.

$$\frac{5.6 \text{ Weeks Holiday Entitlement}}{(52 \text{ Weeks} - 5.6 \text{ Weeks Holiday Entitlement})}$$

The Court of Appeal has said there is no reason to pro-rata entitlement in this way, as the WTRs state that holiday pay should be calculated in accordance with the "week's pay provisions" of the Employment Rights Act 1996 (ERA).

Under the ERA's provisions, where a worker does not have normal working hours, holiday pay should be taken to be the worker's average weekly pay in the 12 weeks before leave starts (excluding any weeks in which no remuneration was payable).

Employment partner, Karen Cole, said:

"Holiday pay can be a real minefield for employers, but this ruling is clear on the treatment of part-year permanent contracts. Employers who engage workers on a permanent basis for part of the year, which may include zero-hour arrangements, should check their approach to holiday pay calculations to ensure they get it right going forwards.

Employers should also be aware that workers may bring a claim to recover under payments for the previous two-year period presented as an unlawful deduction from wages claim. It is, therefore, vital they check records retrospectively."

For information on holiday pay or other employment matters, contact Karen Cole today.

RIAA Barker Gillette

Always Available

Karen Cole
020 7299 6909
karen.cole@riaabg.com
www.riaabarkergillette.com

Click here to make an appointment