

**Holiday Pay Claims – Update November 2014**

On 4th November 2014 the Employment Appeal Tribunal decided 3 test cases on holiday pay claims.

The judge confirmed that regular additional payments such as overtime should be included in the calculation of holiday pay. The ruling only applies to holiday pay guaranteed under the Working Time Directive which covers the first 20 days of annual leave each year.

This means that going forward employers will have to work out what an employee has actually earned and reflect this in pay when the employee takes annual leave.

The judgement also contained a surprise ruling that significantly restricts the ability to claim back pay for previous underpaid annual leave.

Any claim for unpaid wages has to be made within 3 months of the underpayment. Claims can be made for a series of underpayments, but only if there is less than 3 months between underpayments.

The EAT decision may be appealed but for now any underpayments must be linked by gaps of less than 3 months in order to form a series for back pay claims.

Example 1

The employee has 30 days annual leave.

Holidays are taken in February 2014, April 2014 and August 2014 totalling 20 days. Payment is made at the end of each month. The underpayment in August is in time if a claim is made before the end of November 2014. However, the underpayment in April is more than 3 months before the underpayment in August, so no claim can be made for earlier underpaid holidays for this employee.

If the employee makes a claim for the August 2014 underpayment, any new underpayments in 2015 could be added to that claim.

Example 2

The employee has 30 days annual leave.

Holidays are taken in February 2014, April 2014 and July 2014 totalling 20 days and payment is made at the end of each month. The holiday payments are all within 3 months of each other but the last payment at the end of July 2014 is more than 3 months ago, so no claim can be made by this employee.

If there is a new underpayment in 2015, the employee can make a claim within 3 months.

As the examples show, each claim will depend on when each individual has taken their annual leave.

Members who consider that they have a claim should complete a Holiday Pay CASE form without delay.

The branch should forward Holiday Pay CASE forms to the Regional offices on the day they are received.

Thompsons Solicitors will then be instructed to assess the cases and will put claims into the Employment Tribunal were appropriate.

Thompsons Solicitors will write to members explaining the position in relation to their individual claim.

If branches have not done so already, they should lodge collective grievances in relation to underpayment of holiday pay for affected members.

Thompsons have been instructed to work closely with regional and branch officers in relation to ongoing local negotiations.

Any collective settlement proposals should be referred to Suzanne Craig, Legal Officer for advice.

**Suzanne Craig**

**Legal Officer – Solicitor**

**UNISON Scotland**

**12th November 2014**