

MASSERS

EMPLOYMENT LAW UPDATE

DECEMBER 2013

Holiday pay should include commission

The Advocate General has opined that where the a worker's remuneration is made up of both basic salary and commission, their holiday pay ought to include an amount which reflects the commission they would have been likely to receive were they not on annual leave.

In *Lock v British Gas Trading Ltd and others C-539/12* L was paid a basic salary together with regular commission payments for sales achieved in the previous period. The sales commission was paid several weeks or months after a sale was concluded, and made up around 60% of his total remuneration. L took holiday over Christmas 2011, and received his basic salary plus commission for the previous period. Owing to the fact he had not secured sales whilst on holiday, he was subsequently paid less in later months.

L brought a claim for unpaid holiday pay and the tribunal referred the matter to the Advocate General for his opinion as to:

- Whether L was entitled to receive a "normal" level of remuneration to negate the impact of taking holiday; and
- If so, how this ought to be calculated.

It was held that yes, L should have received an amount to reflect the commission he would have earned had he not taken annual leave. Were this not the case, workers may not take their holiday entitlement. So how to calculate "normal remuneration"? The Advocate General considered that taking the average amount received by the worker over a representative period, for example the previous 12 months, would be appropriate.

Shared Parental Leave consultation published

The Government has published the results of its consultation into shared parental leave, which is due to be introduced in 2015 under the Children and Families Bill.

From 2015, parents will be able to take time off together or in turns. At present, new mothers can take up to a maximum of 52 weeks' leave after the birth of their child, while fathers are entitled to take 2 weeks of statutory paternity leave. There will be increased flexibility from 2015. New mothers will be required to take statutory leave for the first 2 weeks, after which time parents will be able to share the remaining 50 weeks between them as they like. They will be able to take leave in turns, in different blocks or at the same time.

Couples will be required to give their employers proper notice of their intention to take leave, however the system is likely, at least initially, to cause a headache for employers. Parents will be required to give 8 weeks' notice of their intention to take leave to include a 2 week discussion period with their employer. A maximum of 3 notifications of a period of leave or 3 variations of a period of leave will apply.

Further guidance is anticipated over the coming months.

Out with the old, in with the new

Every year sees changes in employment legislation and practice, and 2013 was no exception. This year has seen the significant changes to the tribunal process, not least the introduction of fees and the cap on compensatory awards in ordinary unfair dismissal cases. There has been the introduction of "Employee Shareholder" status, and Settlement Agreements have replaced Compromise Agreements.

Further changes are afoot for the New Year, to be kicked off in January with amendments to the TUPE regulations. In 2014 we can expect:

- Mandatory pre-claim conciliation
- Introduction of penalties for employers who lose at tribunal
- A new way of dealing with sickness absence
- Extension of the right to request flexible working to all employees with at least 26 weeks' service.

So for now, enjoy the festive period and we look forward to seeing you in the New Year!

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