

AMENDMENT TO WORKING TIME REGULATIONS

You may have seen headlines in the Press last week concerning a recent European Court ruling which affects the UK's Working Time Regulations. The trade union BECTU raised a challenge to the validity of the 13-week qualifying period which needs to be reached by a "worker" before he/she is entitled to any holiday entitlement under the Regulations. No qualifying period appeared in the European Working Time Directive but the UK Government inserted it into the Working Time Regulations.

The European Court has now ruled that the 13-week qualifying period is contrary to the Directive and that it must therefore be removed. The Government has now issued a short consultation document which will remove the 13-week qualifying period and which will also introduce a system for accruing holiday in the first year of employment. The proposal is that throughout the first year of employment, holiday entitlement will accrue at the rate of one-twelfth of the entitlement per each month worked.

Under the current rules, a worker cannot take any days of leave during their first 13 weeks. This will now change but it does mean that the entitlement must have accrued before it can be taken. For example, a worker who has worked for one month will only be able to take one-twelfth of his holiday entitlement and cannot bring forward any holiday entitlement from the next month so as to take a longer holiday. (The curious position regarding this proposed amendment is that it appears to create a new qualifying period of one month in place of the old 13 week requirement - this may be picked up by the Dti in the final drafting!)

Since the proposed accrual system will affect the whole first year of work, the effect of the new rule will reach beyond the 13-week period and will affect employees who have worked for say 9 months. Previously, such a worker could have taken their entire four-week entitlement by the time they got to the ninth month of work. There were no rules to prevent this and the only way the employer could have stopped this was by serving notice to say that the timing of the holiday was not convenient. Under the new proposed rule, such an employee will only be able to take nine-twelfths of their holiday entitlement by such a point in time.

The rules are not set to be retrospective. It is proposed that the new Regulations come into effect very soon and the consultation period is limited to one month. The draft Regulations are presently a little vague but it seems that the new rules will only apply to workers who commence work on or after the date on which the new Regulations come into force.

The rules will clearly affect all temporary workers who are engaged on short term contracts. Holiday provision will need to be allowed for all workers, whether or not they work for over 13 weeks. The change relates to both the actual taking of leave and also affects payments in lieu should any workers leave before such time as they have worked for 13 weeks. It may previously have been possible to make no payment in lieu of holiday entitlement if a worker left prior to completing 13 weeks' service but, once the Regulations are in force, this will no longer be the case.

The final form of the Regulations is, of course, subject to change following any comments received during the consultation process and therefore if you have any concerns or questions about the Regulations, our Employment Group would be happy to answer these.

This guide is for general information and interest only and should not be relied upon as providing specific legal advice. In relation to any particular matter, readers are advised to seek advice. further information:

If you would like more information about any of Goodman Derrick's Employment Law services please telephone and ask to speak to a member of the Employment Group.

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