

Holidays and Holiday Pay

Labour & Employment Webinar

Wednesday 28 June 2023

Today's presenters



Bryn Doyle

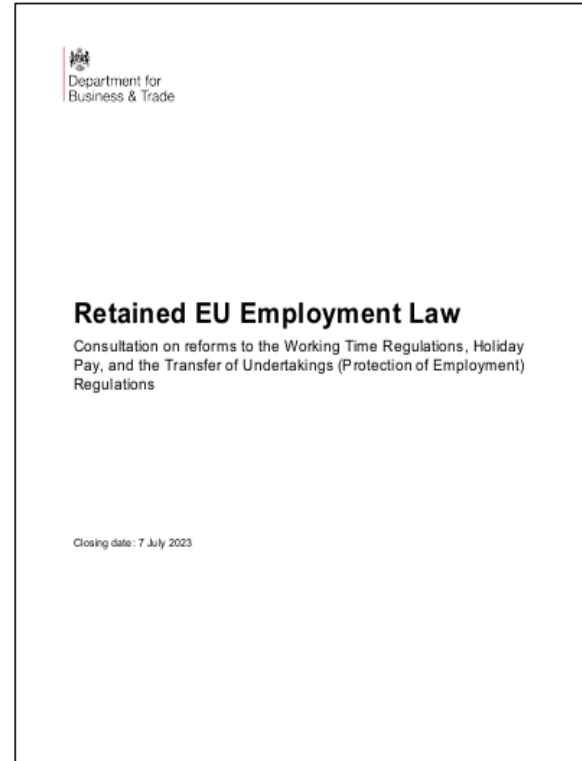
Partner, Manchester
Labour & Employment



James Pike

Partner, Manchester
Labour & Employment

- The law governing holiday entitlement and holiday pay has become increasingly complex, especially for workers with irregular hours, variable pay, etc.
- UK government has been carrying out a review of all retained EU law to determine whether it meets the needs of the UK going forward
- Two aspects of the Working Time Regulations 1998 that could benefit from reform:
 - Annual leave and holiday pay calculations
 - Recordkeeping requirements



A single annual leave entitlement of 5.6 weeks

The current position

	Reg 13	Reg 13A
Amount	4 weeks	1.6 weeks
Derived from EU law?	Implements minimum leave requirement by EU Working Time Directive	Additional leave above the EU's minimum leave requirement

The government's proposal

	Proposed single leave entitlement
Amount	5.6 weeks

Change to holiday pay rate

The current position

	Reg 13	Reg 13A
Amount	4 weeks	1.6 weeks
Derived from EU law?	Implements minimum leave requirement by EU Working Time Directive	Additional leave above the EU's minimum leave requirement
How is holiday pay calculated?	Workers should receive their "normal remuneration"	Basic pay rate unless contract, etc. provides otherwise

The government's proposal

	Proposed single leave entitlement
Amount	5.6 weeks
How is holiday pay calculated?	New rate of holiday pay to be defined in legislation – subject of the consultation

Other proposed changes to WTR

- Change to calculating leave in a worker's first year of employment – from accruing 1/12th of leave each month to 1/12th of leave each “pay period”
- Carrying over leave from one year to the next



Rolled-up holiday pay

- ECJ decision held rolled-up holiday pay was incompatible with WTD – disincentivises workers to take holiday
- UK government proposes to introduce rolled-up holiday pay as an option for all workers – to be paid at 12.07% of a worker's pay



Recordkeeping requirements

- Reg 9 WTR: Employers must keep “adequate” records showing whether weekly working time limits and night work limits are being complied with
- ECJ decision (2019) held that EU member states must ensure that employers have “objective, reliable and accessible” systems in place to enable them to measure the daily working time of their workers
- Proposed change to WTR to clarify that businesses do not have to keep records of daily working hours



In other holiday pay news ...

- ***Chief Constable of the Police Service of Northern Ireland v Agnew & Ors***
 - Whether a gap of more than three months breaks a series of unlawful deductions for holiday pay purposes – Supreme Court to decide

- ***Connor v Chief Constable of South Yorkshire Police*** (EAT) [2023]
 - Any payment on termination for accrued but unused holiday should reflect usual level of pay



What should employers do now?

- Monitor outcome/consider responding to consultation – deadline for responses – 7 July 2023
- Review existing arrangements – might they be suitable for change in light of government's proposals?



Questions



Bryn Doyle, Partner

T +44 161 830 5375

E bryn.doyle@squirepb.com



James Pike, Partner

T +44 161 830 5084

E james.pike@squirepb.com

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