

thackray williams  
solicitors

# Ins & Outs

## Employment Law Newsletter from thackray williams

Summer 2007

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Working time regulations and paid holidays

Age discrimination guidelines

DTI launch consultation

Update on facts & figures governing employment law



Dear Client,

This issue of *Ins and Outs* considers the impact of the Part Time Workers Regulations. If you employ staff on a part time basis this is essential reading. Employees or workers who feel they have been treated less favourably than a comparable full time worker can bring a claim against the employer in the employment tribunal.

With the summer holiday scene fast approaching, we take a look at the Working Time Regulations and paid holidays for workers. The

right to four weeks' paid holiday was introduced in 1998 however bank holidays could be included. The Government, in line with its 2005 election manifesto, pledged to introduce legislation to make sure that employers do not include bank holidays as part of the 4 weeks' statutory entitlement. The consultation closed on the 13/4/2007 and we will report in a future edition of *Ins and Outs*.

## PART TIME WORKERS REGULATIONS

In light of the increasing demand for part time work and flexible working patterns, this article considers, in brief, the impact of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 on both part time workers and employers.

The Regulations came into force on 1 July 2000 and were amended in October 2002.

The rationale behind the Regulations is to ensure that part time workers are not treated less favourably than comparable full time workers in order to support the development of a diverse and flexible work force.

### What protection do the Regulations provide to Part Time Workers?

Under the Regulations part time workers should:

- receive the same hourly rate as comparable full

time workers. A lower hourly rate must be justified on objective grounds;

- receive the same hourly rate of overtime as comparable full time workers, once they have worked more than the normal full time hours;
- not be excluded from training;
- have the same entitlement to annual leave, maternity/ paternity leave on a pro rata basis as full time workers; and
- have the same entitlement to pensions, bonuses, sick pay and shift allowances on a pro rata basis as full time workers.

Where a part time worker feels that they have been treated less favourably than a comparable full time worker, they can request a written explanation as to the reasons for the treatment. The request should be made in writing and the employer must respond within 21 days of receipt.

(continued on p2)

*The rationale behind the Regulations is to ensure that part time workers are not treated less favourably...*

# Ins & Outs

## Checklist

Hourly rate

Reorganising

Workloads

Profit Sharing/Share

Option Schemes

Health

Insurance/Company

Cars/ Staff

Discounts/Subsidised

Mortgage

Career Breaks

Bank Holidays

Redundancy

## What are the implications of the Regulations on Employers?

### Hourly rate

Part time workers must not be given a lower hourly rate, unless justified by objective grounds. A common justification is a 'performance related pay scheme'. Employers should however be able to demonstrate a consistent appraisal system that justifies variable rates of pay.

### Reorganising Workloads

When reorganising workloads employers should ensure that part time workers are not treated less favourably, unless this can be objectively justified. All types of jobs and levels of management should be open to part time workers.

### Profit Sharing/Share Option Schemes

Employers must not exclude part time workers from profit sharing or share option schemes, unless there are objective grounds for excluding them. These benefits should be pro rata to those received by comparable full time workers.

### Health Insurance/Company Cars/ Staff Discounts/Subsidised Mortgages

These benefits should where possible be divided on a pro rata basis. In circumstances where this is not possible employers must decide whether the costs of such a benefit to part time workers would be prohibitive. An employer's decision to withhold these benefits must be justified on objective grounds. The DTI advise that employers calculate the financial value

of the benefit to a full time worker and then apply that value pro rata to the part time worker.

### Career Breaks

Career break schemes should be available to part time workers in the same way as for full time workers, unless exclusion can be justified on objective grounds.

### Bank Holidays

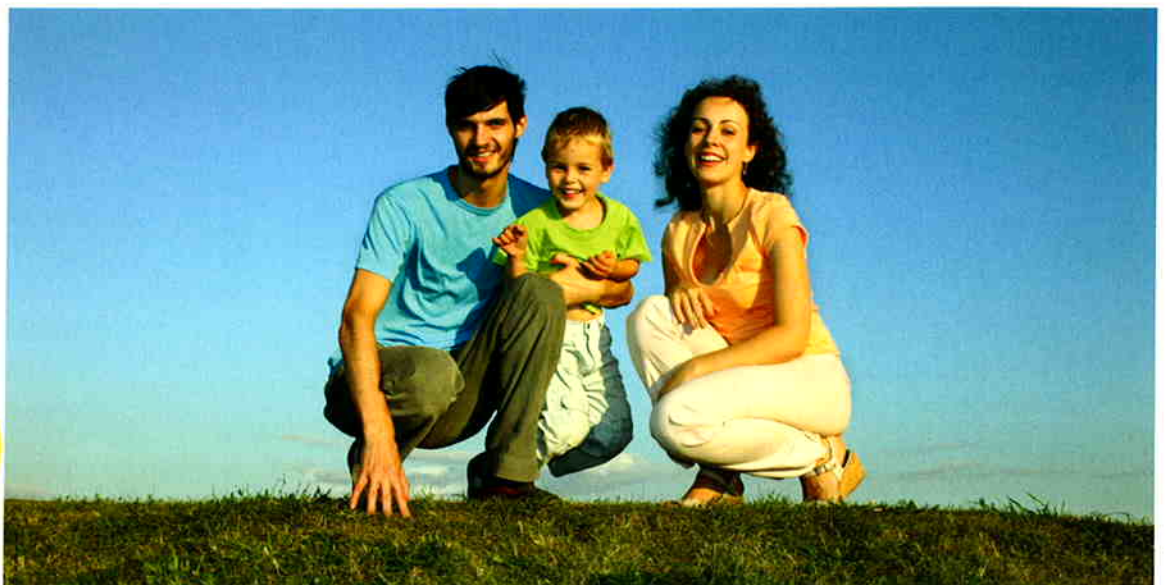
Whilst there is no statutory right to have bank holidays off as paid leave, the Regulations provide that part time workers should not be treated less favourably than comparable full time workers. It is often the case that a part time worker is not contracted to work on a Monday and is therefore disadvantaged when it comes to paid days off. An employer may wish to remove the disadvantage suffered by those staff by giving all workers a pro rata entitlement of days off in lieu according to the number of hours they work.

### Redundancy

It is no longer common practice to make part time workers redundant before full time workers. Employers must apply objective criteria when selecting jobs for redundancy. Failure to do so could result in a breach of the Regulations and an indirect claim of sex discrimination.

**In order to avoid the sting of a discrimination claim employers must justify less favourable treatment of part time workers on objective grounds. Whilst 'objective grounds' are not defined by the Regulations guidance provided by the DTI states that less favourable treatment will only be justified if it can be established that it is necessary and appropriate to achieve a legitimate business objective.**

*Where a part time worker feels that they have been treated less favourably than a comparable full time worker, they can request a written explanation...*



# Ins & Outs

## WORKING TIME REGULATIONS AND PAID HOLIDAYS

SUN	MON	TUE	WED	THU	FRI	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

If your workforce's thoughts are turning to summer holidays, as with most areas of employment law, legislation impacts on what the workforce is entitled to and what obligations an employer has.

The Working Time Regulations 1998 introduced the right for qualifying workers (not just employees) to have paid holidays. The definition of a 'worker' is wider than that of an 'employee' and would for example, encompass casual and temporary workers, but not the genuinely self-employed.

If an employer is simply not allowing a worker to take paid holiday, or, refusing to pay the worker for holidays taken, then the worker can make a claim in the employment tribunal. Not only can this be time consuming and costly for the employer, it can damage working relations and if the employee is successful, lead to 'piggyback' claims by other workers.

**Q** A worker started work two weeks ago and now wants to take a week's holiday – do I have to let him?

**A** No, during the first year you can limit the worker to taking the holiday as it accrues at the rate of one-twelfth of the annual entitlement at the beginning of each month. So a worker entitled to 12 days' holiday, will accrue holiday at the rate of one day per month.

**Q** A worker wants to take her holiday at our busiest time – do I have to let her?

**A** No, an employer can refuse a worker's request to take holiday, although you will have to agree to the worker taking the holiday at some point during the leave year.

**Q** I have a self-employed contractor working for me, who is now claiming to be a worker and therefore entitled to paid holiday – what do I do?

**A** This is a common problem for employers, particularly those who have individuals of different status working for them. Some individuals are quite clearly self-employed contractors, but there is a grey area and it can be difficult to establish an individual's status. You should take legal advice, as there can be complications. There can also be problems if there are other similar individuals of 'ambiguous' status and one is successful in establishing in the employment tribunal that they are a worker and therefore entitled to paid holiday. The result could be that the other individuals can make the same claim, which could end up being costly for the employer.

**Q** A worker has taken all of the paid holiday entitlement (4 weeks) and has now resigned 6 months into the holiday year – what do I do?

**A** If you have not dealt with this in the contract, there is nothing you can do under the Regulations. You can only make deductions from final pay if you have the contractual right to do so. The situation is different if a worker leaves and has accrued holiday, which they have not taken. You are obliged to compensate the worker using a calculation provided in the Regulations. The termination of a worker's contract is the only circumstance, under the Regulations, in which a worker can be paid in lieu of holiday.

The Working Time Regulations do create something of a minefield for employers as they give workers statutory rights, which they did not previously have. Some of the entitlements are not clear and are still being interpreted by the courts and tribunals so it is worth seeking legal advice.

*The definition of a 'worker' is wider than that of an 'employee' and would for example, encompass casual and temporary workers, but not the genuinely self-employed.*

# Ins & Outs

## For advice on...

- Unfair dismissal
- Redundancy
- Wrongful dismissal
- Discrimination
- Maternity/Paternity rights
- Flexible working
- Part-time Workers Regulations
- Working Time Regulations
- Equal Pay Act claims
- Employment contracts
- Minimum wage
- Advising directors/senior employees
- Health and safety
- Restraint of trade/confidentiality clauses
- Injunctions
- References
- Sickness and sick pay
- Compromise and severance agreements
- Transfer of undertakings (TUPE)
- Employment Tribunal claims
- County Court and High Court claims

## Age Discrimination Guidelines

The CIPD and TUC have published good practice guidelines for employers entitled - Managing age: A guide to good employment practice, which can be found at:

[http://www.cipd.co.uk/subjects/dvsequil/\\_mngagegd.htm?lsSrchRes=1](http://www.cipd.co.uk/subjects/dvsequil/_mngagegd.htm?lsSrchRes=1)

## DTI Launch Consultation

The DTI have launched a consultation following a review of the statutory procedures for resolving disputes in the workplace. The dismissal and grievance procedures, which were introduced in

2004 were found by Michael Gibbons who conducted a review, to: 'have had unintended consequences which have outweighed their benefits'.

Acas' chair, Rita Donaghy commented: 'we are encouraged that the issues surrounding dispute resolution are being taken seriously and new approaches are being considered'.

It is hoped that key recommendations from the Gibbons report, which include: repealing the statutory dismissal and grievance procedures, abolishing Acas fixed conciliation periods and simplifying the tribunal application forms, will be adopted.

The Government's consultation closes on the 20/6/2007 and details can be found on the DTI's website at:

<http://www.dti.gov.uk/consultations/page38508.html>

## FACTS AND FIGURES: an employment law update

### Compensation Limits (from 1 February 2007)

Week's pay (used to calculate redundancy)	£310
Maximum compensation award in Employment Tribunal	£60,600

### Statutory Pay (with effect from 6 April 2007)

Statutory Maternity Pay (basic rate)	£112.75 a week or 90% of normal weekly earnings if lower
Statutory Paternity Pay earnings if lower	£112.75 a week or 90% of normal weekly earnings if lower
Statutory Sick Pay	£72.55

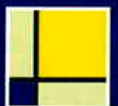
### New Law

1 April 2007	Maternity and Parental Leave etc and Paternity and Adoption Leave (Amendment) Regulations 2006: new regulations on leave for parents come into force.
6 April 2007	Information and Consultation of Employees Regulations 2004: duty on employers with at least 100 employees to consult with the workforce.

*This is only a general guide to aspects of employment law and should not be seen as a substitute for legal advice. In all cases legal advice should be sought to ensure your policies and practices are in line with current employment legislation.*

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