

Holiday Pay

A number of recent employment tribunal and court judgments have changed what was previously understood to be the legal position on holiday pay. Employers in the UK have typically paid only basic pay to an employee when they take leave.

The recent tribunal and court judgments suggest that they should now be including all elements of pay an employee normally receives when they are working - such as commission or overtime payments - in their holiday pay for the first twenty days' leave they take over the holiday year.

The legal position is still developing and it is important to note that there is some uncertainty over exactly what payments this covers. There are also ongoing cases appealing some of the judgments.

The CWU is seeking to deal with the issue collectively and we are currently in the process of trying to negotiate agreements with all of the employers across the union. The aim of the union in these discussions is to resolve the issue in relation to both backdated claims and to bring holiday pay entitlements into line with the law going forward.

The fact that the union is continuing to negotiate this on members' behalfs does not prevent you from making a claim yourself, should you wish to pursue this individually. However, because we are seeking to take a collective approach, and given the number of members across the CWU who may be affected by this issue, as set out in previous communications to members, the union will not be able to provide legal support to individuals who wish to make a claim themselves.

Below is some further information on making a claim, should you wish to take this forward individually.

Pursuing a claim for holiday pay individually

If members have not received what they were legally entitled to when they took leave in the past, they may also be able to make a claim for this. However, there are some important requirements for doing so under the current law:

1. any claim must be brought within three months of a single underpayment
2. a claim that is made for several underpayments, must be made within three months of the last underpayment in the series
3. in order to claim for several underpayments, there must not be a gap of more than three months between any two underpayments within the series.

If a claim satisfies the criteria above it may be possible to claim for underpayments of holiday pay going back to 1998, when the Working Time Regulations came into effect.

However, it is important to be aware that a two-year cap will be placed on all claims that are brought after 1st July 2015. Therefore, if a member thinks they satisfy these requirements and have over two years of underpayments for holiday pay, they should consider whether they want to make a claim before this date.

A member seeking to make a claim before this deadline will need to ensure that the ACAS conciliation procedure is completed and their claim is lodged with an Employment Tribunal on or before 30th June 2015. This ACAS process must be completed *before* a claim can be lodged.

Members will also need to ensure that they are able to pay the Employment Tribunal fees that are now charged for such claims. These fees are typically £160 for lodging the claim and a further £230 if the case proceeds to a full hearing. New holiday pay claims are being stayed at the moment, and if you lodge a claim it is unlikely that it will in fact go forward to a full hearing.

Northern Ireland

For members in Northern Ireland, the two year cap on claims brought after 1st July does not currently apply. Claims in Northern Ireland may therefore go beyond two years, even if they are brought after this date.

There is also some uncertainty over the exact legal position in Northern Ireland with regard to point (iii) above because of the different Tribunal system it has in place. The legal advice we have received suggests that point (iii) may be confirmed in Northern Ireland when this is decided upon, so members should be aware of this possibility and may wish to get further advice on the issue if they are thinking about pursuing a claim individually.

Starting the Early Conciliation (EC) process

Before a claimant/member applies to an Employment Tribunal it will be a mandatory requirement to enter into EC via Acas.

The time limits that apply for submitting an ET1 application to the tribunal office still apply but will be frozen once the application for early conciliation has been received by Acas. This is a protected period during which time the clock is stopped with regards to the 3 month period for submitting an ET1 application.

The ET time limit clock restarts once the conciliation process ceases and the appropriate Acas certificate has been issued and received by the claimant.

Individuals can complete the early conciliation form by contacting Acas via their on line web site (this is their preferred option) www.acas.org.uk/earlyconciliation

By telephone via their national helpline number **0300 123 1100**

By posting the form to Acas national headquarters at **EC Notifications, Acas (Phoenix), PO Box 10279, Nottingham, NG2 9PE**

Acas only require the name and contact details of the claimant and name and contact details of the respondent (the employer). These details will be processed by an Acas support officer.

Once the EC application has been registered with Acas it will be passed onto an Acas officer who will then take charge of the EC process.

If at any point the Acas officer concludes that settlement of the dispute is not possible then he/she will issue an early conciliation certificate confirming the position. The certificate will be issued to the claimant by e-mail or by post if no email address has been provided. If a settlement is reached the Acas officer will draft the necessary agreement (COT3).

Please note that if either party feels a settlement cannot be reached from the start of the process then Acas will end the process and issue the certificate accordingly.

The EC certificate will have an Acas EC reference number which the claimant must quote if they decide to proceed to an Employment Tribunal.