

## Holiday pay for 'part-year' workers

The *Harpur Trust v Brazel* [2019] EWCA Civ 1402: this is a recent decision from the Court of Appeal on the complex issue of calculating holiday for part-year workers with irregular hours.

Ms Brazel, a visiting music teacher at Bedford Girls School, was employed by the school on a zero-hours contract, and generally worked around 32 weeks a year. Ms Brazel contended that she lost out on holiday pay after the school changed the way it paid visiting music teachers by calculating her earnings at the end of each term and paying her one-third of 12.07% of that figure. This was a payment system that was in accordance with the method for calculating casual workers' holiday pay that was recommended by Acas. The figure of 12.07% is derived from  $5.6/46.4$  where 46.4 is the number of working weeks in the year when 5.6 weeks is deducted from 52 weeks.

After the original Employment Tribunal had rejected the Claimant's claims, she then appealed to the Employment Appeal Tribunal (EAT). It was held by the EAT that holiday pay should be calculated on a 12 week average of hours worked, making, on her hours, holiday pay around 17.5% of annual pay, rather than 12.07%. The Court of Appeal agreed with this approach and used the term 'part-year workers' to refer to those employed all year but not working the entire year. The Court decided not to apply a pro rata principle of the type highlighted above, which the school had sought to rely on (and which the original Tribunal had agreed with).

The decision does effectively mean that part-time workers with irregular hours are entitled to receive a higher proportion of their annual earnings as holiday pay than full time staff. This is a discrepancy that was addressed in the judgement by Lord Justice Underhill, who stated

"It may at first sight seem surprising that the holiday pay to which part-year workers are entitled represents a higher proportion of their annual earnings than in the case of full-year workers, but I am not persuaded that it is unprincipled or obviously unfair".

Finally, it is important to stress that the decision is limited to part-year workers, and not part-time workers in the sense that they only work part of a week. Acas have yet to produce updated guidance on this issue, and so until that comes, employers should analyse their exposure and look to take a pragmatic approach towards any 'part year' workers, and consider seeking advice on specific circumstances.

*13 August 2019 Alex Reid - Solicitor*

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