

Holiday Pay Ruling: What Does It Mean?

The Employment Appeal Tribunal (EAT) ruled on 4 November that companies should factor in overtime when calculating holiday pay, a controversial move that has been rebuffed by business leaders but celebrated by workers.

The ruling stems from the following three cases:

- Road maintenance company Bear Scotland v. Fulton;
- Engineering firm Amec v. Law; and
- Industrial services group Hertel v. Wood.

In each case, workers argued that although they consistently worked overtime, it was not included when calculating their holiday pay and, as a result, they received considerably less pay while on holiday compared to when they were working. The employees won their cases and the EAT rejected the companies' subsequent appeals, concluding, for now, that overtime should be considered part of an employee's normal pay. However, the ruling could still be brought to the Court of Appeal, meaning a final decision could be years away.

Under EU law workers are granted four weeks of holiday pay every year, but there were no specifics for calculating it. Therefore, until now, the UK government has been interpreting the law to mean that holiday pay should be an employee's basic rate of pay, which excludes overtime. But the EAT ruling suggests businesses and the UK government have been interpreting the law incorrectly and that companies should include overtime when calculating workers' holiday pay.

Impact for Employers

The ruling has far-reaching implications for companies where employees are required to work overtime as a routine part of their job—more than 30

million people work in the United Kingdom, and about 5 million of them work overtime, according to the Office for National Statistics.

Business leaders have attacked the ruling, claiming it will inflate payroll costs and generate a 'Pandora's Box' situation in which employees pursue large claims for underpaid holidays years in the past, which could bankrupt small businesses. To assuage fears of an oncoming barrage of massive, backdated holiday pay claims, the EAT ruled that employees cannot claim anything more than three months after their last underpaid holiday.

Companies that need staff to work habitual overtime will pay more for employee holidays, but, in the interim, the EAT has curtailed the potential for backdated claims.

Going forward employers should decide how to deal with any existing claims—all of which have been stayed pending the outcome of a likely appeal. Employers will also need to decide what constitutes normal remuneration in order to correctly calculate holiday pay. To cut overtime and holiday costs, employers may consider restructuring working arrangements or relying on bank or agency staff.

Impact for Employees

Employees who regularly work overtime—especially those in the manufacturing and construction industries—can anticipate potentially higher holiday pay in the future. But employers will likely trim overtime hours to limit holiday pay.

What's Next?

Business Secretary Vince Cable set up a task force with representative from business and the government to limit the ruling's immediate financial impact. For now, consult with a legal professional to decide what is best for your business.

