CHADWICK LAWRENCE LEGAL UPDATE

HOLIDAY PAY CHANGES

10 January 2024

WHO DO THE CHANGES IMPACT?

The changes are in relation to 'irregular-hours workers' and 'part-year workers' and will impact people who work hours which are varying, such as casual workers or some agency workers. This will include workers who under their contract have periods in the year of at least one week where they do not work and are not paid.

WHEN DO THE NEW RULES APPLY?

The new rules apply to leave years starting on or after 1 April 2024. However, the rules do not come into effect until 1 January 2025 for workplaces that run their leave years from 1 January to 31 December.

WHAT ARE THE CHANGES?

Holiday will be calculated in hours rather than weeks and will accrue on the last day of each pay period at the rate of 12.07% of the actual hours worked in that pay period. Where an employee is, for example, on sick leave or maternity leave, an average over a 52-week period will be used to calculate the amount of holiday accrued.

TWO METHODS OF PAYMENT TO CHOOSE FROM

Employers can now choose from two systems for paying holiday pay, these are:

- Employers can pay holiday pay when holiday is taken, calculated at the rate of a week's pay for each week's holiday. The pay will be the average amount of weekly pay over the previous 52 weeks. Therefore, a week's holiday will consist of the average number of hours worked in each week of the same period from the last year; or
- An Employer can now choose to pay rolled-up holiday pay which was previously ruled unlawful. Rolled-up holiday is an uplift of 12.07% to the worker's remuneration for work done in each pay period. Therefore, workers must be allowed to take their holiday but will not be paid at the time of taking it. There will be a 52-week average system to calculate rolled-up holiday pay in periods of sick leave or statutory leave.

WHAT ELSE DOES HOLIDAY PAY INCLUDE?

A week's pay for holiday now includes:

- payments linked to the performance of tasks which a worker is obliged under their contract to carry out which includes commission payments;
- payments for professional or personal status relating to length of service, seniority or professional qualifications; and
- payments, for example for overtime, which have been regularly paid to a worker in the 52 week period preceding the calculation date.

THE RIGHT TO CARRY OVER HOLIDAY

Under the amended legislation, workers have a right to carry over holiday if any of the following apply:

- If they are unable to take some or all of their leave as a result of taking a period of statutory leave, including maternity or other family-related leave;
- If they are unable to take some or all of their leave as a result of taking a period of sick leave. The carried over leave must be taken within 18 months of the leave year to which it relates;
- Any leave year the employer fails to;
  - recognise a worker's right to annual leave;
  - give the worker reasonable opportunity to take leave/encourage them to do so; or
  - inform the worker that leave not taken by the end of the leave year will be lost.

the right to take the carried-over leave will last until the end of the first full leave year in which there is no such failure by the employer.

If you have any questions in relation to this legal update, please do not hesitate to contact a member of the Chadwick Lawrence employment team.