



European Employment Law ALERT

Holiday Pay - a New Year's gift to employers from the UK Government

By Tessa Cranfield and Razia Begum

Holiday Pay - More good news...

The UK Government has now legislated to cap statutory holiday pay claims at two years of back pay. This is in response to the recent European Court of Justice ([Lock v. British Gas Trading Ltd.](#)) and Employment Appeal Tribunal ([Bear Scotland v. Fulton](#)) decisions, which held that the statutory holiday should include overtime and other job-related allowances. As we reported, these decisions opened the door for employees to bring claim for extra holiday pay going back several years. With the two-year cap, the Government will give employers welcome certainty, and save significant cost.

The change in detail

The change in the law takes effect on 8 January 2015. For claims lodged on or after **1 July 2015**, workers will only be able to claim statutory back pay for holiday for the two years immediately prior to the date they file their claim in the Employment Tribunal. (Recent cases have clarified that statutory back pay here can be for up to the European minimum entitlement of four weeks' holiday per year, not the more generous 5.6 weeks' UK entitlement.)

The legislation also prevents employees from bringing statutory holiday pay claims as a breach of contract claim, which could otherwise have allowed claims reaching back six years.

Watch this space

The Government has delayed the change until 1 July 2015, meaning that employees can still potentially lodge more far-reaching claims within the next six months. Individual employees are unlikely to bring freestanding claims in this window (unless as an add-on to existing litigation). We do however foresee that unions will take advantage of the window to bring group claims, in particular in ex-public sector industries where overtime and allowances make up a significant part of overall pay.

More to come...

Also expected in February of this year is the Employment Tribunal decision of the *Lock* case, which we anticipate will hold that holiday pay should also include commission. The UK Government's new "task-force" will try to limit the impact on employers, but European law will make it difficult to exclude commission and bonus from holiday pay.

Further Alerts will follow in this developing area.

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