
Employment Affairs Information Service

27 October 2017

Circular No: EA 174

Dear Member,

**CALCULATING HOLIDAY PAY
UPDATED GUIDANCE FOR EMPLOYERS IN RELATION TO VOLUNTARY
OVERTIME, STANDBY AND CALL OUT**

Circular EA 171 advised that employers are required to take into account certain factors when calculating an employee's holiday pay. At that time the Circular stated that "at the moment there is no requirement for employers to include voluntary overtime when calculating holiday pay". Since circulation, the EAT in *Dudley Metropolitan Borough Council-v-Willets & Others* has ruled in relation to voluntary overtime being included when calculating holiday pay.

This ruling confirms that payments for entirely voluntary duties, such as voluntary overtime, standby, call-out work and the SJIB Mileage Rate linked to that work, should be included in the calculation of a workers holiday pay.

This Circular is intended to provide Members with updated information in relation to holiday pay.

Key points

- **Voluntary** overtime payments, where worked consistently and regularly over a sufficiently settled period should be factored in when calculating an employee's holiday pay entitlement.
- **Additional Voluntary Duties**, including standby payments and payments for call-out where worked consistently and regularly over a sufficiently settled period should be factored in when calculating an employee's holiday pay entitlement.

Voluntary overtime

Although there is no contractual obligation on either side to offer or accept overtime, on 31 July 2017, an Employment Appeals Tribunal (EAT) found that voluntary overtime, where worked regularly over a sufficiently settled period of time should be factored in when calculating an employee's holiday pay entitlement.

In this particular case the claimants consisted of a group of 56 Quick Response Operatives (comprising plumbers, electricians, roofers as well as other trades) employed by Dudley Metropolitan Borough Council. In addition to set contractual hours, the claimants worked regular overtime on a purely voluntary basis.

The EAT found that these claimants could claim that their pattern of overtime, though voluntary, extended for a sufficient period of time on a regular and/or recurring basis to justify this becoming normal remuneration and therefore it should be included when calculating holiday pay.

The EAT stated that the rationale for including regular, voluntary overtime in holiday pay was that if it was not included, it might deter workers from taking holiday, as they would be financially disadvantaged when on leave compared to when they were actually at work.

Additional Voluntary Duties

In addition to voluntary overtime the claimants also volunteered to go on a standby rota every four weeks to deal with emergency call-outs and repairs.

The EAT found that under the European Union's Working Time Directive, there is no distinction between contractually required work and tasks that are performed voluntarily under other special or separate arrangements. Therefore, standby and call-out payments where worked on a regular and/or recurring basis over a sufficient period of time also formed part of the Operatives' normal pay and should be included in holiday pay calculations.

Euro Days

As with the previously established factors which should be taken into account when calculating holiday pay, the inclusion of these additional factors only applies to the 20 days of annual leave derived from the EU Working Time Directive; the remaining 10 days need only be paid at an employee's basic rate. For clarification, the SJIB has defined the Euro Days as the first 20 days of annual leave, inclusive of public holidays.

Summary

This decision confirms the position following similar judgments regarding guaranteed and non-guaranteed overtime and holiday pay. This means that Operatives who regularly work any type of overtime beyond their contractual hours may now have to have those payments included in their holiday pay calculations. Not all voluntary overtime will have to be included. Voluntary overtime which is sporadic and ad-hoc need not be included when calculating holiday pay.

Employers, who regularly offer employees the chance to work voluntary overtime and/or operate a voluntary stand-by/call-out rota, may need to review the way in which holiday pay is calculated.

Further information

SELECT will continue to monitor the situation, in particular when further guidance becomes available through the courts or as a result of Government reviews. Meanwhile any enquiries should be directed to fiona.cornwall@select.org.uk, michelle.courtney@sjib.org.uk and/or lynne.macdonald@sjib.org.uk

Members may also wish to seek legal advice depending on their individual circumstances.

Yours faithfully,



Fiona Harper
Head of Employment Affairs