



This week in Employment Law

Harpur Trust consultation outcome awaited

One month on since the government's consultation on the Supreme Court judgment in Harpur Trust v Brazel closed on 9 March 2023, HR professionals and employers continue to await the outcome.

- In January this year, the Department for Business, Energy and Industrial Strategy (BEIS) launched a consultation seeking views on proposals to pro-rata holiday entitlement for part-year workers based on the hours they work, following last year's judgment in Harpur Trust v Brazel.
- In this case, the Supreme Court decided that annual leave entitlement could not be pro-rated for part-year workers. As a result, workers on a term-time, zero-hours or irregular hours contract are entitled to receive 5.6 weeks' paid annual leave regardless of how many weeks per year they work.
- But, the government has recognised the anomalies this may bring so are now taking steps to review and potentially amend legislation. It is proposing calculating hours worked in the previous 52 weeks and multiplying them by 12.07% to find a part-year worker's annual statutory entitlement in hours. The reference period would be 52 calendar weeks, including any weeks in which no work was performed.
- Employers should continue to provide annual leave in line with the Harpur Trust judgment for the time being, but look out for the release of the outcome to the consultation and prepare to implement any changes to legislation.

Challenge to use of agency workers during strikes

On 21 July 2022, new legislation came into force lifting the previous ban on employers hiring temporary workers to cover for staff on strike. Now, the High Court is considering a challenge by trade unions against the government's decision to allow agency workers to cover for staff during strikes. Unions say allowing them to do so is unsafe and the law should be removed. It remains to be seen what the Court will decide.

Did you know?

It remains the responsibility of individual businesses to maintain safety standards and hire temporary workers with the suitable skillset and/or qualifications to meet the obligations of the role.

Police Scotland to introduce clean-shaven policy

Police Scotland plan to introduce a "no-beard" policy this month for all frontline officers to better protect their health and safety when wearing a FFP3 face mask. Exemptions will be granted for those who have religious or medical grounds for refusal. Employers who want to implement similar practices should remember the risk of indirect discrimination claims so consider what allowances will be permitted.

Did you know?

It is also useful to complete an equality impact assessment before introducing a policy like this, to ensure it's not discriminatory and to make sure it can be objectively justified.

Failure to comply with right to be accompanied

A trade union representative was deemed to act inappropriately, interrupted the meeting chair, was obstructive and rude. As such, the employer excluded him from the meeting and said to the employee that they could be accompanied by a different individual. But, the employee raised a claim to the Employment Tribunal for failure to comply with the right to be accompanied, and the claim was upheld.

Did you know?

The tribunal said the statutory right is the right to be accompanied by an individual chosen by the employee from within a specified class of individuals, the employer doesn't have a say over this.