



**ActifHR**

Where people matter...

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## November 2018 Update

Welcome to this month's update - where we discuss the latest guidance and legislation.

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In this Edition we report on:

- Holiday Pay – If an employee doesn't take it, what happens?
  - Harassment – Is calling an employee a 'fat ginger pikey' harassment?
  - Are your company meetings productive?
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### Holiday Pay – If an employee doesn't take it, what happens?

Employee Mr Shimizu brought a claim for unpaid holiday from 2011 and 2012 in a German company. Under German law, he unfortunately lost the right to carry over untaken leave to the next year.

The Working Time Directive states that if a worker fails to take paid annual leave in any year, their leave should not automatically be lost, unless the employer has 'diligently' brought it to the worker's attention that leave will be lost.

So, companies must inform employees accurately and in good time of their rights if they do not take their annual leave. Employees must be aware that they may lose their annual holiday entitlement.

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**Employers:** Establish if your employees have taken all their annual leave. If they haven't, make sure you are clear to them that they will lose it.

**Contact us:** We can advise on calculating holiday pay and annual leave.

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## Harassment – Is calling an employee a 'fat ginger pikey' harassment?

In the recent case of *Evans v Xactly*, it seems not. The employee was a sales executive with type 1 diabetes and links to the traveller community.

His employment was terminated due to poor performance. He brought several claims under the Equality Act 2010, including claims for harassment linked to disability, as the employer had called him 'fat' (comments which he linked to his diabetes) and race (for the 'pikey' comment which he said was linked to his traveller community association).

Although certain comments are highly offensive in some workplaces, the culture was very different at Xactly. The employment tribunal found that there was often banter amongst the sales team.

The said employee was also involved in this banter and was comfortable with the office culture and environment. The employee had also not complained at the time of the comments. They said he would have done so if he had felt offended. Because of this, the tribunal therefore found there had been no harassment.

It was appealed, and the Employment Appeal Tribunal agreed with the initial outcome. The context was key. The comments were not harassment as the employee was actively involved in the culture of banter between colleagues.

It did not create a hostile environment and was found to be light hearted and reciprocated banter. The facts showed that the employee was not offended at the time.

**Employers:** Ordinarily such comments may be classed as harassment, each case depends on its facts. It is advisable to address such banter in the workplace immediately.

**Contact us:** We can advise on harassment and discrimination issues and claims.

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## Are your company meetings productive?

Economist and workplace commentator Stephanie Hare has published ideas on why British productivity is so low. A majority of us know that meetings are a big problem... taking too long, unproductive and tedious half the time.

The worst offenders are conference calls and video conferencing when technical issues take up the first few minutes. Does this sound familiar? People get settled and then in comes the obligatory latecomer and the whole scenario starts over again.

Frequently meetings involve people who do not really need to be there. They are often badly organised, have a lack of any agenda and if they have an agenda, people rarely keep to it. They invariably run over time, people like the sound of their own voice and the meeting closes without any action points. It is left with no one knowing who is doing what.

Useful Tips...

Use the first 5 minutes for people to read the papers, as invariably they will not have done so.

Research shows that more women will speak up if the first question or comment is offered by a woman.

One last tip is to seek honest feedback on meetings from attendees. If feedback is poor, cut numbers, tighten up agendas and ensure everyone is heard.

**Employers:** Structure meetings correctly, stick to the agenda and don't invite too many people – it's simply a waste of time.

**Contact us:** We can assist to train your managers on how to hold effective meetings.

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**Caroline Robertson, CEO**

Caroline has a wealth of experience supporting business clients with practical hands on HR and Employment Law advice. Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations. She qualified as a Solicitor in 1999 and now acts as a specialist Human Resource / employment Law Consultant to business.



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