



ActifHR

Where people matter...

August 2019 Update

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

In this Edition we report on:

- Agency workers - are they entitled to the same hours as employees?
 - Right to Privacy - WhatsApp
 - Calculating holiday pay for term time workers
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Agency workers - are they entitled to the same hours as employees?

The Agency Workers Regulations state that after agency workers have been working in a firm for at least 12 weeks, they are entitled to the same basic conditions that have been given to permanent employees who carry out the same role.

A recent case, looked at whether agency workers have the right to be offered the same hours of work as employees, using 12 weeks as a reference period.

This was held by the Court of Appeal that employers did not. This was even though the 2010 regulations ensured that agency workers are offered the same basic rights as permanent employees, included but not just annual leave, rest breaks and basic pay.

There is no direct evidence to say that agency workers should be entitled to receive the same hours of work as a directly comparator.

Tel: 01327 317537

M: 07947567661

E: caroline.robertson@actifhr.co.uk/info@actifhr.co.uk

ActifHR Ltd, Innovation Centre, Silverstone Park. NN12 8GX

Employers: it is worth checking that agency workers receive the same basic terms after 12 weeks.

Contact us: we can help with advice on agency workers.

Right to Privacy - WhatsApp

After sending a private message to a WhatsApp group you expect that it goes no further than the recipients in the group and not end up with your employer. However, in a case involving the police force this was exactly what happened.

As part of an investigation involving a sexual offence charge, a detective uncovered WhatsApp messages on a suspect's mobile phone. These messages were described as "blatantly sexist and degrading, racist, anti-Semitic, homophobic, mocking of disability", when found by other officers. Due to this, the officers had internal misconduct charges brought against due to an infringement of privacy.

The court said that, despite the content, the officers had a reasonable expectation of privacy (even when using a group chat). But in this case, it involved police officers so this justified limiting their right to privacy, so the employer could rely on the messages to take action.

Does this result in employers having the right to look at private WhatsApp messages?

It all depends on the job the employee does and the facts of the case.

Employers: if your business involves codes of conduct you may need to issue guidance.

Contact us: we can help with guidance on social media.

Calculating holiday pay for term time workers

Should holiday entitlement for 'part-year' workers (for example visiting music teachers) be calculated on a pro rata basis at 12.07% of annual pay under the Working Time Regulations?

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No, found the Court of Appeal in the case of *Harpur Trust v Brazel*.

The Court held that a music teacher working term time only, but irregular hours (around 32 hours a week) and in permanent employment, should have holiday pay calculated based on a 12-week average of hours worked. The holiday pay was around 17.5% of their annual pay, instead of 12.07% for staff working for the full year (based on 5.6/46.4 weeks).

Therefore, the school argued that a pro rata principle should be applied to the accrual of leave for 'part- year workers', but this was rejected.

Employers: taking on permanent employees rather than freelancers may lead to higher holiday pay costs

Contact us: We can advise on holiday pay



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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Tel: 01327 317537

M: 07947567661

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