

# EMPLOYMENT NEWSLETTER

DECEMBER 2015

## CASE UPDATE



### Leave already taken does not need to be retrospectively calculated if hours increase

Mrs G was employed as a care worker with The Care Bureau Ltd (CB Ltd). She was entitled to 5.6 weeks annual leave and the leave year ran from 15 June. Originally she worked part time and her hours differed from week to week. In her final year with CB Ltd, before she left in May 2013, she took seven days leave. She took this all in July 2012 which, based on the fact she had worked one day a week in the previous twelve weeks, meant that she had effectively taken 7 weeks leave. Consequently she had exceeded her holiday allowance. From 12 August 2012, she increased her hours (12 days on 2 days off). She subsequently asked to take more leave but it was refused on the basis she had already exhausted her holiday entitlement.

Mrs G successfully brought a tribunal claim for pay in lieu of leave not taken but CB Ltd applied to the tribunal for its reconsideration of the judgment. The EAT stayed the appeal pending the tribunal's decision but the tribunal revoked its decision, partly because of a mathematical error and partly to make a referral to the ECJ. Mrs G claimed that her accrued leave should have been recalculated in line with her new working pattern even though the leave had already been taken. CB argued that no such adjustment was required under UK or EU law. ECJ held that:

- Leave must be calculated by reference to the days, hours and/or fractions of days or hours worked and specified in the contract of employment
- When a worker increases their hours, any statutory annual leave that has already accrued does not need to be recalculated retrospectively to take account of the new working pattern
- Going forward, though, any leave entitlement should be recalculated to reflect the new working pattern. Leave taken in excess of the entitlement under the previous working pattern can be deducted from the leave going forward
- The calculation of leave entitlement is the same whether the employment has terminated or is continuing

### Commentary

This reflects the settled position where an employee reduces their hours and moves from full time to part time hours. Where hours are reduced it has been held that the leave accrued already but untaken is unaffected. This is in line with the EC Framework Agreement on part-time work, which precludes a worker moving from full-time to part-time from suffering a reduction in his annual leave accumulated but which *"he has not been able to exercise while working full time"*.

An example of the full to part time situation is as follows: a full time worker working 5 days a week moves to being a part time worker working 3 days a week part way through the company's leave year and, at the time of the transition, has accrued but not been able to take a week's statutory leave. So that the worker is not treated less favourably as a result of becoming part time, he should be allowed the accrued week's leave as if he were full time, i.e. 5 days leave not the part time equivalent of 3 days. Entitlement to leave under the new working pattern going forward should be calculated separately.



## LEGISLATION

### MODERN SLAVERY AND SUPPLY CHAINS

We have previously referred to the Modern Slavery Act 2015, which came into force in October 2015. The Home Office has now published guidance.

#### Key points:

- Organisations in the UK with a turnover of of £36 million+ per annum must publish a modern slavery statement every financial year ending on or after 31 March 2016.
- Having a UK subsidiary will not, in itself, mean that a parent company is carrying on a business in the UK where the subsidiary acts completely independently of its parent or other group companies.
- A parent and a subsidiary may need to produce separate statements if they are both operating reasonably independently within the UK.
- A parent group may need to refer to a subsidiary if it falls within its supply chain.
- Turnover is calculated by the global turnover of an organisation and its subsidiaries.

MS statement **must** include;

- The steps taken by an

The current decision confirms that the reverse is true where hours are increased. The entitlement to annual leave during the period of reduced hours under the old working pattern does not need to be recalculated. The ECJ made the point that the purpose of statutory leave is to rest from the work undertaken under the contract. Consequently, annual leave should be calculated by reference to the working pattern under the contract. The entitlement to leave for each period should be considered separately. A new calculation must be performed for the period during which working time increased but retrospective recalculation was not required here and the employer was entitled to deduct from the leave going forward the leave taken in excess of the entitlement that had applied previously.

**Greenfield v The Care Bureau Ltd (C-219/14) 11 November 2015**



**WHAT'S AHEAD?\***

When Expected	Change
Summer 2016	A 12 week consultation is expected to start in November/December 2015 on the proposals to replace the Human Rights Act 1998 with a British Bill of Rights with a view to the new law receiving Royal Assent by Summer 2016.

\*To be read in conjunction with the ['What's Ahead' section of the November newsletter](#)

organisation to ensure that slavery and human trafficking is not taking place in any of its supply chains or in its business.

- That the organisation has taken no such steps.

The statement **may** include;

- Details of the organisational structure and supply chain.
- Its policies in relation to slavery and human trafficking.
- Its due diligence to prevent MS within its supply chain.
- Parts of the business or supply chain at risk of MS and steps taken to mitigate the risk.
- Effectiveness of preventative steps,
- The employee training relating to MS.

The statement must be approved by the board and signed by a director and published on the organisations website. It must be prominent and published as soon as reasonably practicable after the end of the financial year (within 6 months).

**Consequences of not publishing a statement**

The Secretary of State may enforce the duty to prepare MS statements via civil proceedings. However currently there are no financial or criminal sanctions. Therefore the requirement has no teeth. However non-compliance is likely to have an impact on public sector tenders, reputation, and corporate responsibility.

FOLLOW US ON TWITTER



CONNECT WITH US ON LINKEDIN



VISIT OUR WEBSITE

