

# PCS Personal Injury Legal Services

LONDON & EASTERN  
REGION

Autumn/Winter 2014



Public and  
Commercial  
Services Union

Legal Helpline 0800 328 3255

## Key changes in employment law

**FURTHER CHANGES to the employment tribunal process came into force recently, with the introduction of early conciliation.**

From 6 May 2014 employees are required to contact ACAS (Advisory, Conciliation and Arbitration Service) in the majority of cases to request early conciliation before their claim is lodged with an employment tribunal.

An employment tribunal cannot be progressed without ACAS issuing an Early Conciliation Certificate. (Sections 18A and 18B of the Employment Tribunals Act 1996).

### Employers flouting rights face new penalties

Employment tribunals now have the power to impose a financial penalty of between £100 and £5,000 against employers who breach employment rights where the breach has one or

more aggravating features.

This will hopefully have the desired effect and deter employers from flouting employees' rights within the workplace (Section 12A of the Employment Tribunals Act 1996).

### Flexible working reforms

From 30 June 2014 all employees with 26 weeks service now have the right to request flexible working.

The previous statutory procedure has been repealed and the duty is now on the employer to deal with the request in a "reasonable manner".

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## Poorly maintained car park causes injury

**A PCS member working for HMRC fractured her wrist when she tripped in a pothole in her workplace's car park, which was in a state of disrepair.**

Only after the accident did the employers finally have the pothole repaired.

It was the member's case that the hole was between one and two inches deep and was big enough for her foot to be caught in. However, her employers did not keep any repair documents so there was nothing to confirm the precise

dimensions of the pothole.

The member contacted the PCS who put her in touch with Thompsons Solicitors who investigated a claim on her behalf. The defendants vigorously defended the claim and court proceedings were issued.

The member was left with permanent restrictions in her movement and she had to reduce her working hours on account of her injuries. The matter was concluded before final hearing and compensation was settled to the sum of £50,000.

## Prison Service worker injured by faulty chair

**A PCS member working for the Prison Service secured £13,250 in compensation after he was badly injured by a faulty chair and had to take 13 weeks off work.**

The member sat on a chair at a desk in the staff room to complete paperwork but the chair suddenly tilted to one side, causing the member to fall and slam his head into the table.

He sustained a haematoma to his head, whiplash, and soft tissue injuries to his neck, shoulders, back, right arm, right knee and lower leg. He was taken to hospital where he was examined and given strong painkillers.

The defendant admitted liability and the matter was successfully concluded after the issue of court proceedings.

## DON'T FORGET

Whether it's you or a member of your family who has been injured, the PCS is here to help.



STANDING UP FOR YOU

# Holiday – how much and where from?

**IF YOU believed UKIP or the Conservatives you would think that the EU is all bad.**

In fact your employer doesn't give you holidays out of the goodness of their heart, your legal entitlement to holidays comes from the Working Time Regulations 1998 (the Regs) which the UK brought in because of an EU Directive – the Working Time Directive (the Directive).

Under the Regs, employees are entitled to a minimum of 5.6 weeks' paid holiday in each leave year (subject to a maximum of 28 days) and four weeks of that comes from the holiday entitlement under the Directive. The Regs override any contractual term.

Payment for each week of holiday and the rate of a week's pay is calculated in accordance with sections 221-224 of the Employment Rights Act 1996 (ERA).

In 2004 the Court of Appeal considered the position in relation to overtime. In the case of *Bamsey -v- Albion Engineering and Manufacturing plc*, the Court of Appeal held that an

employee's normal working hours for the purposes of calculating a week's pay (for the purposes of holiday pay) will only include overtime if there is a contractual obligation for the employer to provide the employee with overtime and for the employee to work that overtime.

Where either the employer does not have to provide overtime, or the employee does not have to work overtime, overtime will be discounted when calculating a week's pay and the "normal working hours" are then the remaining basic hours within the employment contract.

## Recent judgement

In a recent judgment of the European Court of Justice – another institution the Tories and UKIP would have you believe only deals with the shape of bananas or interferes with UK laws – it was decided that, for the four weeks' holiday that the Directive guarantees you (but not for the 1.6 weeks you get from the Regs), a week's pay is not limited to the worker's basic salary but should

include pay for tasks the worker is required to carry out under their contract of employment – and that includes commission payments.

There have been several first court decisions in relation to whether overtime payments should also be included in the calculation of what is owed when a worker goes on holiday. All those decisions are being appealed by the employers because they lost! The appeals were heard by the Employment Appeal Tribunal this summer and we await the judgement.

A worker not paid their holiday pay in accordance with their legal entitlement can bring a claim for breach of the Regs and/or unlawful deduction from wages. Both claims are made in the Employment Tribunal. The time limit to bring either claim is three months less one day from the date that the employer failed to pay the correct amount of holiday pay.

If you think you have been paid incorrectly while on leave, you should raise this with your PCS representative who will be able to give you further guidance on the issue.

## Did you know?

**As a PCS member you receive free legal advice and representation on:**

- Personal injury at work, on holiday or on the roads
- Industrial disease or illness
- Serious injury including brain & spinal cord injuries
- Employment law accessed via your PCS branch

**Your family receives free legal advice and representation on:**

- Personal injury away from work, on holiday or on the roads
- Serious injury including brain & spinal cord injuries
- Special terms for clinical negligence
- Reduced rates for conveyancing, wills and fixed fee probate

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## About Thompsons

**Thompsons Solicitors is the largest specialist personal injury firm in the UK with over 1000 staff in a network of offices nationwide.**

**We secure over £150m compensation each year for people who have been injured and suffered loss as a result of accidents caused by the carelessness of others. Thompsons only works for injured people, never for insurance companies or employers.**

Please email

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to let us know if this newsletter was helpful and what topics you would like covered in future.



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