



ActifHR

Where people matter...

February 2016 Update

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

Sunday Trading

The government is moving ahead with plan to loosen the restriction on Sunday trading hours in England and Wales, despite opposition.

At the moment, large shops in England and Wales (ie those with over 280 square metres of floor space) are allowed to open for only six hours on a Sunday, between 10 am and 4 pm.

The proposal is to allow councils to extend those hours, so retailers can have the flexibility to compete for trade. Councils will also be able to restrict the longer hours to certain zones, such as high streets and city centres, although there are fears that the additional hours will benefit large chains to the detriment of independent high street shops.

An additional proposal is to make it easier for those who work on a Sunday to opt out of doing so. At the moment, all employees can opt out of Sunday working by providing three months' notice. Under the new proposal, the required period of notice to opt out would be reduced to one month.

Employers: It remains to be seen whether the proposals will become law, given the strong likelihood of cross-party opposition in Parliament.

Contact us if you need any help with zero hours or part-time contracts

Employee fails to prove lower bonus was ‘irrational and perverse’

How much discretion does an employer really have when deciding the level of a bonus?

In the recent case of *Patural v DB Services*, a derivatives trader’s contract of employment stated he was entitled to be considered for a discretionary bonus.

The factors that were taken into account when assessing the level of bonus, such as the bank’s overall performance and the employee’s individual contribution, were described in his contract and the staff handbook. Both gave the employer a wide discretion - it could look at any number of factors it considered relevant. However, his contract also stated that his pay would be treated in a “*manner broadly consistent*” with his peers.

He received a bonus of €1,275,685, which he considered too low as it only amounted to around 1 per cent of the profits he had generated, whereas his two colleagues received bonuses that were a much higher percentage of their profits. He claimed this was a breach of contract, that the employer had acted perversely in setting his level of award and had breached the implied duty of mutual trust and confidence.

The High Court dismissed the claim. The colleagues’ bonuses, referred to by the employee were higher because their contracts provided a clear formula for their payment, unlike Patural’s whose level of bonus was at the bank’s discretion. The reason for the set formula was explained by various circumstances that applied at the time each of the colleagues had been hired, when there was a need to incentivise and retain their services. It was held this was a sound reason for the different bonus structure.

Employers: This case is a reminder that where a contract expressly states that an employer has discretion to decide on the amount of a bonus, it is very difficult for an employee to challenge the level of the bonus awarded.

An employee will only succeed if they can show that the level of bonus was perverse and it requires an overwhelming case to persuade a court to make such a finding.

Contact us if you need help with drafting bonus clauses in Employment Contracts

Latest Ruling on Holiday Pay and Commission

In November 2012, in the case of *British Gas Trading v Lock*, an Employment Tribunal (ET) referred Mr Lock's case to the European Court of Justice (ECJ) to assess whether holiday pay should include an add on of results-based commission. In May 2014, the ECJ confirmed it does.

The case then went back to the ET, which concluded in March 2015 that the Working Time Regulations should be interpreted so as to include non-guaranteed overtime in the calculation of holiday pay.

British Gas appealed to the Employment Appeals Tribunal (EAT) against the tribunal's decision in Mr Lock's case but was unsuccessful. We are waiting to see if British Gas appeals to the Court of Appeal.

Employers: we are waiting for clarity on whether commission payments should be added into the calculation for holiday pay.

We advise employers to adopt a "wait and see" approach to commission-based holiday pay, especially as there remains some other outstanding questions, such as the correct period to calculate holiday pay in.

Contact us if you need help with holiday pay calculations

Caroline Robertson, CEO

Qualified as a Solicitor in 1999.

Caroline has a wealth of experience supporting business clients with practical hands on HR advice.

Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations.



John Wade

John has successfully led several small and medium-sized businesses as Operations Director and COO. His experience includes managing businesses and coaching business owners through development. John has led redundancy, disciplinary and grievance procedures. He is renowned for solving problems quickly, efficiently and fairly.



You are receiving this e-mail from ActifHR Limited. To stop receiving these emails, please send a return email with 'unsubscribe' in the title.

Disclaimer: This newsletter is provided for general information only and does not constitute legal or other professional advice. If you require advice on a specific Human Resource issue please contact caroline.robertson@actifhr.co.uk.

ActifHR Limited accepts no responsibility for any loss which may arise from reliance on information contained in this newsletter.

Tel: 01327 317537
M: 07947567661
E: caroline.robertson@actifhr.co.uk/info@actifhr.co.uk

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