



**ActifHR**

Where people matter...

---

## August 2017 Update

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

In this Edition we report on:

- Tribunal Fees – Supreme Court rules that they are unlawful.
  - Voluntary Overtime – should or shouldn't this be taken in to account in holiday pay?
  - Suspension – Is it a neutral act?
- 

### **Tribunal Fees – Supreme Court rules that they are unlawful.**

Since their introduction in 2013, Employment Tribunal fees have been highly controversial. Many view them as unfair, especially as the number of tribunal claims have lowered dramatically since their introduction.

Unison, has challenged the fees rule and has suggested that it is an obstacle to access justice. Unison's challenge has been ongoing for quite a while, but was finally decided upon by the Supreme Court on 26 July 2017.

The Supreme Court has ruled that the Government acted illegally and unconstitutionally when implementing tribunal fees. The Court also found that the introduction of the fees regime was indirectly discriminatory on grounds of sex, as statistically more women than men would bring tribunal claims.

Tel: 01327 317537

M: 07947567661

E: [caroline.robertson@actifhr.co.uk](mailto:caroline.robertson@actifhr.co.uk)/[info@actifhr.co.uk](mailto:info@actifhr.co.uk)

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

The result of this is that the Government will now have to halt the fees regime and compensate those who have incurred costs in bringing tribunal claims (over the last 4 years).

In addition to this, the Tribunal will be staying applications by people who want to renew claims that were dismissed or struck out for non-payment of fees. Such is the case until the Ministry of Justice has decided on how to handle them.

**Employers:** be vigilant that grievance and disciplinary procedures are followed correctly after the lifting of fees, as applications can now submit claims on line without incurring a fee.

**Contact us:** if you need advice and assistance with performance and/or disciplinary issues.

---

### **Voluntary Overtime – should or shouldn't this be taken in to account in holiday pay?**

Just recently, the Employment Appeal Tribunal has issued its decision on a case dealing with whether or not voluntary overtime should be treated as forming part of a worker's normal pay, for the purpose of calculating holiday pay.

In this case the employees volunteered to perform additional duties which they were not required to do under their contracts of employment.

The question was should this fall within the principle of 'normal remuneration' for the purposes of calculating what a weeks pay is for holiday pay amounts?

What this now means is that as well as compulsory and guaranteed overtime needing to be taken in to account when calculating what is the right amount of pay for a day's holiday pay, employers should include voluntary overtime which is regular.

Voluntary overtime which is not regular may perhaps not be included. When calculating holiday pay amounts, the reference period is usually 12 weeks. However, this may be different depending on the commission, bonus or overtime payments.

**Employers:** in reality, the impact of this decision is that a worker should not be worse off financially for taking holidays, as to do so might deter the worker for taking annual leave.

**Contact us:** we can assist with calculating holiday pay amounts.

Tel: 01327 317537

M: 07947567661

E: [caroline.robertson@actifhr.co.uk](mailto:caroline.robertson@actifhr.co.uk)/[info@actifhr.co.uk](mailto:info@actifhr.co.uk)

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

---

## Suspension – Is it a neutral act?

The High Court held that suspension of a teacher amounted to a breach of the implied term of mutual trust and confidence.

At times, suspension may not be a neutral act, at least in the context of a qualified professional in a vocation, such as a teacher. A knee-jerk reaction should be avoided and that suspension must not be the default position.

In this case, the reason given for the suspension was not for child protection, but to "allow the investigation to be carried out fairly"<sup>2</sup>.

The Court found that suspension was adopted as the default position, it was a knee-jerk reaction and amounted to a breach of contract. This was not undermined by a resignation in friendly terms.

**Employers:** it can often be difficult to decide whether or not to suspend an employee in some circumstances. Make sure that the suspension is for valid reasons.

**Contact us:** we can assist you with all investigation and disciplinary procedures.

---

### Caroline Robertson, CEO

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. She qualified as a Solicitor in 1999 and is able to assist Businesses on all aspects of employment law and HR.



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](mailto: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](mailto:caroline.robertson@actifhr.co.uk)/[info@actifhr.co.uk](mailto:info@actifhr.co.uk)

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