



## A new shape of lawyer

**I run a small business and sometimes worry whether I am calculating my staff's holiday pay correctly. What sort of things do I need to bear in mind?**



Simon Crack

**Over the past few years the law relating to how holiday pay is calculated has been in a state of flux. It's therefore not surprising that small businesses have been finding it hard to keep up.**

The basic legal requirement is that employees should receive their "normal" level of pay when they take annual leave.

While this might initially seem straightforward, working out "normal pay" can become more complicated if your employees work irregular shifts, do extra duties or overtime.

The confusion over what is "normal pay" has led to a number of legal battles. The latest case of note is a dispute between Dudley Metropolitan Borough Council and over 50 members of its workforce.

The employees worked 37 hours per week and compulsory overtime. However they also did regular voluntary overtime each week and often performed other duties on a voluntary basis, including standby shifts and call-outs.

The employees claimed that they were earning in the region of £6,000 a year on top of their basic salaries, but this was not reflected when the council worked out their holiday pay.

The local authority attempted to argue that the work that its employees volunteered for should not be taken into account when calculating holiday pay as it was not compulsory.

Applying the principles of the European Union's Working Time Directive and the previous cases, the Employment Appeal Tribunal decided that any payment that has been made over a sufficient period of time becomes part of "normal" pay and should be part of holiday pay.

Employers must now look at what an employee is normally paid when at work and pay the equivalent when they are on holiday. That should include compulsory and voluntary overtime, call out payments, out of hours payments or any other payment normally paid when at work.

If you are unsure about whether you are calculating pay correctly, it is always best to seek clarification from a legal expert.

**If you would like advice please call Hethertons employment team on 01904 528 200 and speak to Jo Yeates or David Scott.**