

Bank Holidays

Employers do not have to allocate the increase to any particular fixed days in the year, whether they are for Bank Holidays or any other time. Of course it is open to any employer to stipulate when there will be a company shut down and it is always best to state in advance what the arrangements will be for Bank and public holidays.

It is worth emphasising that, although the additional eight days' entitlement is being introduced because some employers were counting Bank Holidays towards the statutory minimum of four weeks' holiday, which the Government thought unreasonable, the new Regulations do not give workers the right to take Bank Holidays as holidays. When holidays are to be taken remains a matter for the employment contract, or for agreement between employer and worker.

Rounding up and paying in lieu of notice

It will still be possible during the first year of service for leave to accrue on a 1/12th basis on the first day of each month, if the employer wishes to allow holiday to accrue in that way. If the calculation of annual leave results in a proportion of a day, the amount of leave is rounded up to the next half day. This is set out in Regulation 15A of *The Working Time Regulations 1998* and is not changed.

If a worker ends up with a fraction of a day as a result of the calculations at any other time during the employment, there will be no obligation on an employer to round up the fraction to a half or a full day, although an employer could choose to do so for convenience. An employer cannot round down or pay in lieu for the fraction.

The only time an employer can pay in lieu for any annual leave is on the termination of the employment.

Changes to the calculation of working time

Currently, when calculating a worker's weekly working time in a reference period (usually 17 weeks), any holiday taken as part of the statutory minimum holiday entitlement of four weeks' leave has to be added to the sum total of working time but any extra contractual holiday does not have to be added in this way. The Government's proposal is that the additional annual leave will be treated in the same way as contractual annual leave.

Unfair dismissal

The enforcement procedures by the HSE if there are working time breaches and the risks of Employment Tribunal claims remain unchanged. From the perspective of the Employment Tribunal, the greatest risk employers face is the fact that an employee can claim automatic unfair dismissal with under a year's service, if the employee can show that he was dismissed for alleging that the employer had infringed his statutory rights under *The Working Time Regulations 1998*.

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Fishy Business

Julie Butler looks at an interesting case on the VAT treatment of fishing rights

The European Court of Justice (ECJ) recently helped define 'immovable property'. The case reinforced an earlier decision that a piece of land is immovable property even if it is underwater. This test was applied in relation to permits to fish in a river.

The case before the European Court

In *Heger Rudi GmbH v Finanzamt Graz-Stadt* (Case C-166/05) a German company had purchased permits to fish in Austria and then sold those permits on to customers in other EU countries. The company later applied to the Austrian tax authorities for a VAT refund under the Eighth Directive, on the grounds that it was a taxable person not established in Austria, and that its onward supplies of fishing permits had not been made in Austria.

The Austrian tax authority did not allow the refund of VAT, claiming that the onward supply by the company of the permits was a supply of services connected with immovable property, within Article 9(2)(a) of the Sixth Directive. This provides that: 'The place of the supply of services connected with immovable property shall be the place where the property is situated.' The place of the onward supplies was deemed to be Austria, where that property (the right to fish) was located.

An earlier case, *Fonden Marselisborg Lystbådehavn v Skatteministeriet* (Case C-428/02) had established that a section of land was actually immovable property even though it was under water. This case related to mooring fees for boats. The Court ruled that, as fishing rights could only be exercised on particular stretches of a river, they were attached to certain areas of land and so the transmission of fishing rights by means of fishing permits, granted for a consideration, did constitute a supply of services connected with immovable property.

Implications for shooting and fishing

The Court ruled that an essential characteristic of immovable property was that it was attached to a specific part of the earth's surface. It follows that the decision should therefore also apply to shooting rights – indeed, perhaps this concept is easier to understand than fishing rights?

The permit to fish, or the right to shoot, is deemed to be located in the country where the fishing or shooting rights are situated, the country indeed where the fish or game are to be found. It does not matter where the person who buys the rights lives. With the current 'tax attack' on shooting spearheaded by the Norwich Shoot Project Team, this will have some interesting impacts upon the shooting rights in the United Kingdom.

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