

## Extended Rights to Holiday Pay

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Back in 2018, the Supreme Court issued its judgment in the case of Pimlico Plumbers Limited and another v Smith, finding that Mr Smith undertook to personally perform services and therefore fell within the definition of a worker. Mr Smith's case then returned to the Employment Tribunal to consider his holiday pay claim. At both the ET and the EAT, Mr Smith was unsuccessful, with his claim being held to be limited to claims for pay in respect of leave taken (rather than also including unpaid leave), and being found to have been presented out of time.

The Court of Appeal has now issued its judgment, with far reaching consequences for holiday pay claims where status is disputed. The CoA held that there was one composite right – the right to paid leave – rather than a right to leave and a separate right to pay. Where an individual takes leave but is not paid for it, this leave does not therefore amount to leave within the meaning of the Working Time Directive. The purpose of the four weeks of Directive leave – rest, relaxation and leisure – would not be met where an individual was worrying about whether they would be paid or not.

Although not required to decide the point, the CoA also gave its “strong provisional view” that the decision in Bear Scotland Limited v Fulton (that a three month gap would break a series of deductions) was incorrectly decided and that the approach taken in Chief Constable of the Police Service of Northern Ireland and others v Agnew (that such a gap did not break a series) was to be preferred.

As a result of this decision, individuals who are prohibited from taking leave and individuals who are only allowed unpaid leave will be treated in the same way – both will carry forward and accumulate the right to claim for paid leave on the termination of their contract. The time limit for bringing such a claim will start to run from the termination of their employment, and not from the date they should have been paid for each period of unpaid leave taken. This decision will therefore have particular importance in cases where worker status is disputed and could prove costly – in Mr Smith's case, he was claiming around £74,000 in holiday pay.

## Contact



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