

"I DON'T LIKE MONDAYS"

Specialising in Employment Law, Maxine Orr, a Partner with Worthingtons Solicitors, discusses the proper procedures for dealing with part-time workers and Bank Holidays.

It's that time of year again... when the barbeque is smoking, holiday season is at its best and the children are (probably) at their worst. The time when employees sit back in their deck chairs and worryingly calculate what's left of their annual leave. This is particularly relevant to those working part-time hours. There has often been a query over what holiday entitlement accrues to part-time workers, especially in relation to Public or Bank Holidays. A recent decision of the Employment Appeal Tribunal in Edinburgh considered the position of part-time employees in relation to Bank Holiday Mondays.

Mr McMenemy was employed on a part-time basis by Capita Business Services Ltd in one of its call centres. As with many call centres, the hours of business were seven days a week. All employees in the call centres, regardless of their working hours, had identical terms in their contracts of employment stating that an employee is only entitled to the benefit of public holidays where these fell "on the normal working day". Mr McMenemy had previously worked full-time; however, in April 1999 he had applied for part-time hours due to childcare arrangements, and thereafter he worked on a Wednesday, Thursday and Friday. Therefore he did not get time off in lieu of public holidays which fell on a Monday.

Mr McMenemy issued proceedings in the Employment Tribunal on the grounds that he had received less favourable treatment than a comparable full-time worker contrary to Regulation 5 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2001 as he did not get the benefit of public holidays which fell on a Monday.


The Tribunal, in considering Mr McMenemy's complaint found that he had suffered a detriment compared with a full-time

employee; however, the reason for this was not that he worked part-time but that he did not work on a Monday. They stated that "it seems to us that if the claimant had resumed full-time working on a Tuesday to Saturday basis, he would still not have been afforded the benefits of statutory holidays". Therefore they dismissed his claim. He appealed to the Employment Appeal Tribunal.

He argued before the Tribunal that he was entitled to the additional holiday on a pro rata basis when public holidays fell on a Monday. Firstly he submitted that the tribunal erred in comparing the claimant to a hypothetical full time employee; it should have been confined to an actual comparator. Secondly he argued that the pro rata principle was built into the Regulations and that the employer was not entitled to simply say that they were applying their policy.

The Tribunal did not accept this. It maintained that after determining that there was less favourable treatment, the issue for the tribunal was "the reason why" - that is, whether or not the treatment was on the grounds that the claimant was a part-time worker. When looking at this issue, the tribunal was entitled to consider a hypothetical comparator as it did.

This decision will without doubt be much welcomed by those employers who operate their businesses with a seven day week; however, what about those who operate over a 5 day week from Monday to Friday?

Employers with concerns should always seek advice to avoid costly and time consuming court appearances after the event. 



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INSIDE THIS ISSUE

P162



• Civic Pride

P164



• Newry Business Awards

P170



• Appointments