

Rolled-up holiday pay – changes to DTI guidance

The DTI has this week updated its guidance on the issue of rolled-up holiday pay (RHP), the practice of spreading payments in respect of workers' annual leave over the period of work, rather than paying the worker at the time that annual leave is taken.

RHP is most commonly found in the entertainment, construction and manufacturing sectors, where workers tend to operate on short-term contracts. The fact that a worker is not paid for a specific period of annual leave often acts as a disincentive to take leave at all, and payments spread over the period of work in effect become payments in lieu of annual leave.

In March 2006, the European Court of Justice ruled that the payment of RHP was unlawful, but said that sums which were paid "transparently and comprehensibly" in respect of annual leave, in the form of part payments staggered over the period of work, could be set off against the payment for leave actually taken by the worker.

Following this judgment, the DTI confirmed that the payment of RHP was unlawful, and urged employers, where necessary, to renegotiate the terms of workers' contracts as soon as possible. They allowed for a grace period, of an unspecified length, whilst employers implemented the new guidance, during which time payments of RHP which had already been made could be off-set against any future payments for leave made at the proper time.

One year on, the DTI has brought this grace period to an end. Employers are now required to ensure that payment for annual leave is made at the time when leave is taken, and the off-set of payments made throughout the period of work against payments made when annual leave is taken is no longer lawful.

Hopefully by now employers who previously operated a system of RHP will have renegotiated contracts with their workers to ensure that they comply with the guidance. For those who have not yet discontinued the use of RHP, the DTI's announcement this week serves as a convenient prompt to take immediate action.

This e-briefing is sent to you by Anderson Strathern's Employment Department. We hope you find it useful. If we can help with any matters arising from this e-zine, or any employment law matter please contact [Neil Maclean](#), or any other member of [our team](#).