

THE NEW REC LEGAL BITESIZE BRINGS YOU A BRIEF SUMMARY OF LEGAL AND TOPICAL NEWS

Legal *bitesize*

JOBS TRANSFORM LIVES

COURT RULES: WORKERS DO NOT NECESSARILY LOSE THEIR HOLIDAY IF THEY FAIL TO TAKE IT BEFORE THE END OF YEAR

RECENTLY THE COURT OF JUSTICE FOR THE EUROPEAN UNION (CJEU) GAVE ITS VERDICT IN THE CASE OF MAX-PLANCK-GESELLSCHAFT V SHIMIZU. THIS CASE WAS EXAMINING THE APPLICATION OF THE WORKING TIME DIRECTIVE IN REGARDS TO WHETHER THE RIGHT TO UNDERTAKEN ANNUAL LEAVE IS LOST AT THE END OF THE LEAVE YEAR.

The case concerned Mr Shimizu, an employee of the Max-Planck Institute in Germany, who brought a claim against the Institute for unpaid holiday that he was owed from 2011 and 2012. Under German national law Mr Shimizu's right to untaken leave from one year lapsed at the end of the year which it was to be taken and as a result of this he was not entitled to convert his leave entitlement into an allowance in lieu. Mr Shimizu brought an action against Max-Planck in December 2013 to seek an order that the Institute be required to pay an allowance corresponding to 51 days leave that was outstanding from his time working at the company.

The CJEU agreed with Mr Shimizu, holding that the Working Time Directive requires that the right to any paid leave not taken by an employee within the leave year should not




automatically be lost unless the employer has taken steps to bring the potential that this leave will be lost to the worker's attention.

Employers are not required to force employees to take leave but must 'be able to show that it has exercised all due diligence in enabling the worker actually to take the paid annual leave to which he is entitled under EU law'.

Where the worker has 'refrained from taking his paid annual leave deliberately and in full knowledge of the ensuing consequences' then the employer will not be required to carry over the leave or pay an allowance in lieu for this.

What this means for employers, and in particular for employment businesses who supply temporary workers, is that there is a need to consider taking additional steps to enable workers to take their leave and not lose it.

 The right to any paid leave not taken by an employee within the leave year should not automatically be lost unless the employer has taken steps to bring the potential that this leave will be lost to the worker's attention.

Employment businesses are already required to provide 'details of any entitlement to annual holidays and to payment in respect of such holidays' in the written agreement provided before commencing work-finding services. Employers of staff engaged on contracts of employment (including employed agency workers) must provide them with a written statement of particulars including terms about 'entitlement to holidays, including public holidays, and holiday pay'.

It is also recommended that employment businesses remind workers part way through the leave year to take any remaining leave before the leave year ends. This would need to be done in good time to adhere to the CJEU ruling.

It should be noted that part of Mr Shimizu's claim relied on the application of the Charter of Fundamental Rights of the EU. However, as part of the UK's withdrawal from the European Union (EU) after Brexit, this charter will cease to be applicable in UK law and this case may have less impact on private sector employers in the future, depending on how employment tribunals interpret EU judgments moving forward.

All workers should be informed of:

- What their holiday entitlement is (how many days);
- When the leave year starts; and
- The procedure required for them to book annual leave.



TALKING POINT



Data Protection: UK Watchdog issues first fines under new laws for failure to pay data protection fee.

The Information Commissioners Office (ICO), has issued a [press release](#) about action it has taken against organisations across a range of sectors including construction and finance for failure to pay their data protection fees. All organisations, including recruitment businesses, are required to pay the [Data Protection](#) fee unless exempt.

The press release states: *These first organisations have been fined for not renewing their fees following their expiry and more fines are set to follow. More than 900 notices of intent to fine have been issued by the ICO since September and more than 100 penalty notices are being issued in this first round.*

Organisations holding a current registration with the ICO under the old data protection laws (before 25 May 2018) are not required to renew and pay the data protection fee until that registration expires. Fines for non-payment are up to a maximum of £4,350 depending on the size of the business.

[Check your ICO registration expiry date](#)

This publication is not a substitute for detailed advice on related matters and issues that arise and should not be taken as providing legal advice on any of the topics discussed.

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REC Dorset House 27-45 Stamford Street London SE1 9NT
t: 0207 009 2199 e: legal@rec.uk.com w: www.rec.uk.com/legal

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