Commission should be included in statutory holiday pay

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Commission should be included in statutory holiday pay

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In a recent case, the Court of Justice of the European Union (CJEU) held that statutory holiday pay should include commission if this is received by the worker. The CJEU held that if commission were not paid, then the worker would be put at a financial disadvantage when taking statutory annual leave which was against the purposes of the Working Time Directive.

Mr Lock was an internal energy sales consultant at British Gas. He earned a basic salary which was approximately 40% of his total income. Commission on sales made up approximately 60% of his income. The commission element of Mr Lock's salary was always paid some months after it had been earned. Mr Lock went on annual leave for two weeks between 19 December 2011 and 3 January 2012 and received his salary and commission as normal whilst on holiday. However, some months after this, he suffered a dip in pay as he had not generated commission whilst on holiday. Mr Lock argued that this breached the Working Time Regulations.

The matter was referred to the CJEU who found that workers should receive their 'normal remuneration' whilst on annual leave; Mr Lock had incurred a financial disadvantage some weeks after his holiday; if holiday pay is reduced, it is likely to deter individuals from taking annual leave; and commission payments were linked to the performance of Mr Lock's tasks and therefore should be taken into account when determining his statutory holiday pay.

When this matter is remitted to the Tribunal, it will decide whether the UK Legislation can be interpreted in line with the European Court's decision. The CJEU did not offer any guidance as to how the commission payment should be calculated, although the usual reference period under the legislation is 12 weeks.

This case could have big implications for employers who make commission based payments.

Lock v British Gas Trading Limited C-539/12

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