



Bulletin 132

October 2008

"RELEVANT AGREEMENT TO VARY WTR"

No breach of WTR to require holiday to be taken during notice provided "relevant agreement" in place

In *Industrial & Commercial Maintenance Limited -v- Biffa EAT 22 July 2008* the EAT held that the employer was not in breach of the WTR when they gave Mr Biffa a weeks notice and required him to take his 4 days outstanding holiday during his notice period.

Mr Biffa had argued successfully at the Employment Tribunal that this was in breach of Regulation 15 WTR stipulated that an employer must give notice of holiday dates double the amount of time to be taken – in this case 8 days. The EAT overturned this decision and found that the Tribunal had failed to take account of Regulation 15(5) WTR which provides:

"any right or obligation under paragraphs (1) to (4) may be varied or excluded by a relevant agreement."

The EAT held that a variation to Mr Biffa's terms and conditions of employment as follows;

"If an individual gives or receives statutory notice and is not required to perform physical work during that period of notice, the employee shall be regarded as being on holiday during the period of notice"

was a "relevant agreement" for the purposes of the WTR.

The EAT also reiterated the policy behind the WTR was to ensure workers take sufficient paid holiday. In this case Mr Biffa could have been required to work during his notice – instead, his employers gave him the week off thus the purpose of the WTR was fulfilled.

👉 Practical Tip

Make sure there is provision in the employment contract if you wish to retain the option of requiring employees to take accrued holiday during their notice

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact a member of the Employment Team on 0151 600 3000. If you no longer wish to receive the bulletin please let us know by return email.

This bulletin is for general guidance purposes only and should not be used for any other purpose.

Brabners Chaffe Street is listed in The Sunday Times 100 Best Companies to Work For

Brabners Chaffe Street is a Limited Liability Partnership



LIVERPOOL 0151 600 3000

Horton House, Exchange Flags, Liverpool L2 3YL
Fax: 0151 227 3185
MDX 14118 Liverpool
email: law@brabnerscs.com

MANCHESTER 0161 836 8800

55 King Street, Manchester M2 4LQ
Fax: 0161 836 8801
MDX 14431 Manchester
email: law@brabnerscs.com

PRESTON 01772 823921

7-8 Chapel Street, Preston PR1 8AN
Fax: 01772 201 918
MDX 17118 Preston
email: law@brabnerscs.com