

## When is a letter a grievance letter?

Since the introduction of the Statutory Grievance Procedures in October 2004 it has become increasingly important for employers to be able to identify a “grievance letter”. Employees are unable to bring certain Employment Tribunal claims if they have failed to set out their grievance in writing. Once the grievance letter has been received, an employer must hold a meeting to discuss the grievance or risk the Tribunal increasing compensation due to the employee by up to 50%.

The Employment Appeal Tribunal has recently given the following guidance:

- i) employees do not have to confirm in the letter that they are raising a formal grievance;
- ii) the written grievance can be contained in a letter of resignation;
- iii) a written grievance includes email correspondence;
- iv) a letter written by a solicitor can amount to a written grievance;
- v) there is no need to follow a contractual grievance procedure.

Following this guidance, employers must be extremely vigilant when dealing with complaints from employees. Indeed, it is advisable for employers to err on the side of caution when any written correspondence is received which could constitute a “grievance” and hold a meeting with the employee.

## “Rolled up” holiday pay is unlawful!



The European Court of Justice has now held that “rolled-up” holiday pay arrangements are unlawful. “Rolled up” holiday pay is when an employee's wage includes an element of “holiday pay” and, therefore, when the employee takes holiday he does not receive any wage for that period of annual leave. A Court of Appeal had previously held that “rolled up” holiday pay was lawful, however, the European Court of Justice has held that such arrangements do not accord with European law. This may have major implications for a large number of employers.

## New TUPE Regulations

After years of waiting the new Transfer of Undertakings (Protection of Employment) Regulations 2006 came into effect from 6 April 2006. The intention is that “ideally, everyone should know where they stand...that employers can plan effectively in a climate of fair competition and affected employees are protected as a matter of course”.

Save for limited exceptions, all contracting-out exercises, changes of service provider and contracting-in exercises are covered by the legislation. The new Regulations also clarify the effect of TUPE on transfer related dismissals and changes to employees terms and conditions. The Regulations also introduce a requirement on the transferor to supply information about transferring employees to the transferee.



### Pregnant women only entitled to bonus on pro-rata basis

Following the recent decision in *Hoyland v Asda Stores Ltd* a court has held that an employer is entitled to make a pro-rata reduction in an employee's annual bonus in respect of the period when she was absent from work on maternity leave.

### Part-time employees are given a lift!

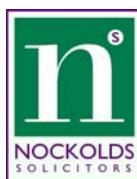
The House of Lords has recently breathed new life into the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations.

The case involved part-time fire fighters who were seeking equal treatment with full-time fire fighters with regard to pension scheme access and other pay benefits. Their claims had previously been dismissed by the Court of Appeal in that the part-time employees were considered not to have been employed on “the same type of contract” as the full-time employees.

The House of Lords has overturned this decision and lowered the threshold for claims under the Regulations by stating that differences in terms and conditions are irrelevant. If both part-time and full-time employees are undertaking *broadly similar work*, the part-time employees are entitled to equal treatment. This may open the door for more part-time workers to acquire parity of treatment with their full-time counterparts.

**If you would like to discuss any issues raised in this Update or any other employment related matter please do not hesitate to contact our Employment Team on:-  
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