



More holiday pay claims – the Court of Justice allows worker to claim 13 years’ unpaid holiday.

By **Kate Potts** - 30 November 2017

The Court of Justice for the European Union (CJEU) has ruled that a worker is entitled to holiday pay he accrued over a period of 13 years of self-employment.

In *King v The Sash Windows Workshop Limited* an individual was engaged as a self-employed contractor. An employment tribunal found that, while the individual was not an employee, he was a “worker” and therefore entitled to holiday pay. The employer had not paid him any holiday pay, and Mr King had only taken some leave (all of which had been unpaid). The case was appealed and cross appealed, and the Court of Appeal referred the decision to the CJEU.

The CJEU held that workers must be allowed to carry over their annual leave until termination of employment if their rights have not been exercised because the employer refused to pay holiday pay. Employees do not lose their right to bring a claim for unpaid holiday simply because a new holiday year begins – they can look back through consecutive holiday periods and amalgamate the unpaid holiday all the way back to 1996 (when the EU’s Working Time Directive came into force).

The decision is bad news for employers with self-employed workforces who may seek “worker” status following the highly publicised “gig economy” decisions affecting Uber, CitySprint, Pimlico Plumbers and others. So far, despite the large number of decisions on worker status in this area, we have seen little guidance on the financial impact for affected businesses. The implication of this decision is that any wrongly categorised member of staff could be entitled to 4 weeks’ pay per year for the last 20 years.

The court’s decision has also cast serious doubt on whether employers will be able to rely on the usual limitations that apply to holiday pay claims. At present, employers can take considerable comfort from legislation that imposes a maximum two-year lookback period for holiday pay claims (and other limits imposed by case law). This new judgment opens the door to both limits being overturned. The dam of holiday pay claims that employment lawyers have long warned about could finally be about to burst.

