

Insights

NEW DEVELOPMENT IN RELATION TO UNDERPAYMENT OF HOLIDAY PAY

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There has been much case law in relation to the underpayment of holiday pay in the context of overtime and commission. That case law has reinforced the position that although claims must be issued within 3 months of an underpayment, it is possible to link a series of underpayments as long as the most recent underpayment in that series was within 3 months of the claim.

In the latest development in this area, the UK Supreme Court has found (in the case of Chief Constable of Police Service of Northern Ireland v Agnew) that where an employer has made a series of underpayments and those deductions are all because the employer has breached its legal obligation to properly calculate holiday pay, it is not relevant as to whether each of those deductions were within a 3 month period. What is relevant is the nature and the character of those deductions.

On the face of it, this is a decision which employers will need to carefully consider when assessing contingent liabilities in relation to underpayment of holiday pay. However, employers do have the benefit of the maximum 2-year backstop in relation to the recovery of unlawful deductions.

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