



TRIBUNALS  
JUDICIARY

**JUDGE BRIAN DOYLE**  
PRESIDENT  
EMPLOYMENT TRIBUNALS (ENGLAND & WALES)



TRIBUNALS  
JUDICIARY

**JUDGE SHONA SIMON**  
PRESIDENT  
EMPLOYMENT TRIBUNALS (SCOTLAND)

## **Revocation of Practice Directions dated 11 December 2014 in connection with the calculation of Unpaid Holiday Pay and substitution of new Practice Directions regarding the same matter**

### **Accompanying Note**

Having issued Directions in identical terms on 11 December 2014 regarding the amendment of claims brought in respect of the calculation of unpaid holiday pay (following upon the various decisions to which reference is made in the Directions), a number of practical issues have arisen thereafter which have led us to consider whether it would be of benefit to parties for the Directions to be amended in minor respects.

These issues can be summarised as follows:-

1. A large number of applications to amend have been received since the Directions were issued. These applications have often been made in circumstances where cases are stayed (in Scotland, sisted). It is common for respondents' representatives, on being copied into such applications, to simply respond by asserting that the case is stayed/sisted and that they are acting on the basis that the application to amend will not be dealt with until after the stay is lifted (sist recalled). However, mindful of the provisions of the overriding objective (rule 2 of the Employment Tribunals Rules of Procedure), we have concluded that it will normally be appropriate to deal with applications to amend when they are made. Accordingly, paragraph 5 of the amended Directions sets out how such applications will be dealt with and makes it clear to parties that they should make representations in connection with any such application to amend, if they see fit to do so, at the time when the application is made.
2. A large number of claims have now been received across Great Britain. Some representatives are dealing with thousands of claims. While we consider it eminently reasonable, in normal circumstances, to ask for specification of the amount that is claimed in respect of the period of time which the amendment application seeks to add at the time when the application is made, we also appreciate that specification of the "amount claimed" at this stage may require significant investigations to be undertaken by or on behalf of the claimants. This could also give rise to requests for information from respondents, thereby putting them to expense. In the circumstances we have reached the view that it would be reasonable to minimise the need for claimants' representatives to routinely undertake enquiries **at this stage** in connection

with quantification of the sum claimed in respect of any amendment. We also consider that it is in accordance with the overriding objective to minimise the work which might be required on the part of respondents who may be asked to produce information in connection with payroll matters and the like.

Having taken account of the foregoing matters, the words “and the amount claimed” have been deleted from paragraph 3 of the previous Directions. However, this alteration to the Directions does not preclude an Employment Judge making an order in a specific case or group of cases for information to be provided about the “amount claimed” at any point in time.

The new Practice Directions also go on to make it clear that an Employment Judge, if the interests of justice so require, can permit a claim to be amended even if the application to amend does not comply with the terms of the Direction. However, in such a case, the application to amend must explain why it has not been possible to comply with the Direction and why, nonetheless, it would be in the interests of justice to allow the amendment.

The foregoing note has been produced in order to assist parties to identify the changes that have been made to the previous Practice Directions and why it was considered appropriate to make them. To minimise the scope for confusion we have concluded that the appropriate way to proceed is to revoke the Directions issued in December 2014 and to issue new Directions which incorporate the amendments to which reference is made above.

Judge Brian Doyle  
President,  
Employment Tribunals (England and Wales)

Judge Shona Simon  
President,  
Employment Tribunals (Scotland)

27 March 2015