



EMPLOYMENT TRIBUNALS (SCOTLAND)

DIRECTION OF THE PRESIDENT

In the matter of claims brought in Employment Tribunals (Scotland) in respect of the calculation of unpaid holiday pay

HAVING REGARD TO the European Union Working Time Directive (No. 2003/88);

AND having regard to the decisions of the Court of Justice of the European Union in *British Airways plc v Williams* [2012] ICR 847 and in *British Gas Trading Ltd v Lock* [2014] ICR 813;

AND having regard to the decision of the Employment Appeal Tribunal in *Bear Scotland Ltd and others v Fulton and others; Hertel (UK) Ltd v Woods and others; and Amex Group Ltd and others* (4 November 2014);

AND having regard to regulations 13, 13A and 30 of the Working Time Regulations 1998;

AND having regard to Part II and Part XIV (Chapters II and III) of the Employment Rights Act 1996;

AND having regard to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and the Employment Tribunals Rules of Procedure, as set out in Schedule 1 of the Regulations;

AND having regard to the decisions of the Employment Appeal Tribunal in *Okugade v Shaw Trust* (EAT 0172/05) and in *Prakash v Wolverhampton City Council* (EAT 0140/06)

THEN

ACTING in accordance with my powers under regulations 7 and 11 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and under rules 2 and 29 of the Employment Tribunals Rules of Procedure

IT IS ORDERED THAT

1. A claimant or group of claimants who have previously presented a claim or claims in respect of a complaint of alleged non-payment of holiday pay may, if so advised, apply to amend the claim or claims so presented in order to add a

further complaint or complaints of alleged non-payment of holiday pay that have accrued or arisen after the presentation of the original claim and which could not have been included in the original claim or claims.

2. They may do so, if so advised, instead of presenting a new claim to the Tribunal.

3. Any such application shall identify clearly the original claim that is sought to be amended by case number, claimant(s) and respondent(s). It shall also set out the amended particulars of the claim to include the additional dates or periods of alleged non-payment of holiday pay and the basis of the complaint.

4. Any such application shall be copied to the respondent(s) by the claimant(s) at the same time as making the application. The claimant(s) shall invite the respondent(s) to provide any written comments upon the application to the Tribunal within 7 days.

5. After that period of 7 days the application to amend will then be considered by a judge in accordance with the usual principles for the amendment of a claim. In the event that the claim affected is sisted at the time of the application, the sist will be recalled to allow for such consideration. Accordingly, parties should make such representations in connection with the application as they see fit at this stage.

6. An Employment Judge, if the interests of justice so require, may permit a claim to be amended even if the application to amend does not comply with the terms of this direction but in such a case the application must explain the reason for non compliance and why, nonetheless, it would be in the interests of justice to allow the amendment.

7. Any party or representative wishing to make representations for the further conduct of such claims should do so upon application to the President.

8. A copy of this Direction shall be sent to ACAS and to all known interested parties, and shall be published at <http://www.judiciary.gov.uk/publications/directions-for-employment-tribunals-scotland>.

9. The Direction of the President dated 11 December 2014 "In the matter of claims brought in Employment Tribunals (Scotland) in respect of the calculation of unpaid holiday pay" is hereby revoked.

SIGNED:



**Judge Shona Simon
President**

DATED: 27th March 2015