

Employment E-Brief No. 101

For further
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“ROLLED UP” HOLIDAY PAY – UPDATE

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E-Brief No's 33 and 54 deal with rolled up holiday pay. The case featured in No. 54 is currently awaiting a hearing by the European Court. In the meantime the EAT has tightened the guidelines on rolled up holiday pay suggested in that case.

Principally whether rolled up holiday pay meets the requirements of the Working Time Regulations 1998 comes down to whether there is mutual agreement for genuine payments for holidays, representing a true addition to the contractual rate.

A mere provision in the contract dealing with rolled up holiday pay is not sufficient. It has to be backed up by genuine agreement. The Tribunal must also be satisfied that holidays are actually being paid for. The best way of achieving this (until we hear further from the European Court) is to:

Make sure a rolled up holiday pay provision is clearly included in the contract.

Ensure the percentage or amount allocated to holiday pay can be identified, both in the contract and if possible in the payslips.

Keep records of holidays used as well as the practical steps in place to ensure that they are actually taken.

Further updates will follow. However, in the meantime if anybody uses rolled up holiday pay they ought to take legal advice to ensure that they continue to comply with the law which is in a state of flux.

29th March 2005