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EMPLOYMENT LAW BULLETIN

NOVEMBER 2020

Welcome to the Wrigleys Employment Law Bulletin, November 2020.

The beginning of this month was a busy time for employers trying to keep up with Government announcements following the imposition of a further national lockdown. In our first article this month, we covered the Chancellor of the Exchequer's extension of the Coronavirus Job Retention Scheme (CJRS) through the lockdown period. Since then, the CJRS has been extended to the end of March 2021 with a review of the current level of support to be undertaken in January.

Further guidance has now been published on the support which employers can apply for under the CJRS. We consider the interaction between furlough and redundancy and the change to the rules which means that employers cannot rely on CJRS funding for employees who are serving notice of termination for any reason from the beginning of December onwards.

The Government strengthened its advice for clinically extremely vulnerable people at the beginning of November. We look at the impact on employers of Government advice that clinically extremely vulnerable people should not currently attend work.

We report on the decision of the High Court in the recent case of ***Chell v Tarmac Cement and Lime Limited*** which considered whether an employer was vicariously liable for damage caused by an employee's practical joke.

We also cover the important recent decision of the High Court in ***R (Independent Workers' Union of Great Britain) v Secretary of State for Work and Pensions*** on the question of whether workers should be protected against detriment for taking action on health and safety grounds in the same way as employees.

I hope you can join us on 1 December for our last employment law webinar of the year. We look back at some of the most interesting and important case law decisions of 2020 and at recent and upcoming changes to employment legislation. If you miss the live webinar, you can always register on our website to access our recorded webinars at a time convenient to you. (See the links below).

We are always interested in feedback or suggestions for topics that may be of interest to you, so please do get in touch.

Forthcoming webinars:

- **1 December 2020, Webinar**
  Employment Brunch Briefing
  What's new in employment law?
  Speakers: *Michael Crowther and Alacoque Marvin, solicitors at Wrigleys Solicitors*
  Click here for more information or to book

Recorded employment law webinars:

- **Employment law update series: Flexible working: Part I - building a balanced society**
  16 June 2020, Webinar
  Click here for more information or to view webinar

- **Employment law update series: Flexible working: Part II - re-organisation and flexible working**
  7 July 2020, Webinar
  Click here for more information or to view webinar

- **Charities & social economy webinar series: Restructuring your organisation from the inside out**
  22 July 2020, Webinar
  Click here for more information or to view webinar

- **Employment law update series: Equality in the workplace - transgender discrimination**
  4 August 2020, Webinar
  Click here for more information or to view webinar

- **Employment law update series: Equality in the workplace - disability and reasonable adjustments**
  1 September 2020, Webinar
  Click here for more information or to view webinar

- **Employment law update series: Equality in the workplace - atypical working, zero hours and ethical issues**
  6 October 2020, Webinar
  Click here for more information or to view webinar

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Furlough scheme extended due to planned lockdown in England: JSS launch delayed

Government announces furlough support as previously available at 1 August.

On 31 October the Prime Minister announced a new lockdown will come into effect in England from Thursday 5 November and that the Coronavirus Job Retention Scheme will be extended to cover this lockdown period (CJRS Extension).

So far, limited information has been made available online by HM Treasury. Further guidance is expected imminently. We look below at some immediate questions.

What has been extended?
In essence, the furlough scheme did not end on 31 October as originally intended. It is being extended to cover the lockdown in England which will start on 5 November and is expected to last until 2 December, with some amends to the level of support being provided.

What can be claimed?
The government will provide funding to employers for up to 80% of the cost of a worker's unworked hours up to a cap of £2,500 per month. However, employers will need to pay all National Insurance and pensions contributions on whatever is paid to the worker.

In effect, this puts the CJRS Extension in the position the furlough scheme was in on 1 August (see our previous article on the scheme on our website here and note the section 'upcoming changes'). Eligible employers will be able to furlough staff full time or on a flexible basis.

Who is eligible?
CJRS Extension is open to UK employers who have a UK bank account and are registered on PAYE online with HMRC. As per previous iterations of the furlough scheme, the government does not expect organisations funded by public money to claim under the CJRS Extension, though organisations with a combination of private and public funding may do so where their private revenues have been disrupted.

Employers can make claims for grant funding in respect of staff they place on reduced hours, or who are furloughed full time, provided those staff have been included in the employer's Real Time Information submissions to HMRC on or before 30 October. The employment status of the individual (i.e. worker, employee or self-employed contractor) does not matter for these purposes.

This represents a significant widening of coverage of the furlough scheme, which had previously required staff to be on HMRC systems on or before 19 March (first version of the furlough scheme) or to have been furloughed for 3 consecutive weeks prior to 1 July (flexible furlough scheme). Employers do not need to have used the furlough scheme previously to use the CJRS Extension.

Can I still use JSS?
The launch of the JSS has been delayed, with plans for it to be brought in once the CJRS Extension has ended. At present the CJRS Extension is expected to run into December.

In the meantime, the JSS is not available. Many employers will no doubt have already written to staff to place them on the JSS. Unfortunately, those employers will now have to communicate with staff to clarify that the JSS arrangements are no longer coming into effect and/or communicate how they will move forward using the CJRS Extension, where relevant.

The terms of the CJRS Extension are more generous than the options provided for in the JSS

and even more generous than the terms of the furlough scheme in October, as the government covered 60% of the cost of unworked hours up to a cap of £1,875 per month.

Is flexible furlough still an option?
Yes, the flexible elements of the furlough scheme are carried over to the CJRS Extension. This means staff can work part-time and be paid for the hours they work in the normal way, with up to 80% of their unworked hours being paid. It remains open to the employer and employee to agree to work part-time or be furloughed full time.

What else should I know?
Full guidance on the CJRS Extension is expected in the coming week and the scheme is likely to operate in much the same way as the furlough scheme did in August. However, there are a few points which appear to need clarifying:

The precise period being covered

The lockdown in England is scheduled to run from 5 November to 2 December. The implication is that the CJRS Extension, with a return to 80% funding on unworked hours, is linked to the planned lockdown. It is unclear precisely when these terms will apply – e.g. do they start 1 or 5 November? If it starts on 5 November, this raises the question of what funding options, if any, are available for employers between 1 and 5 November.

Can staff be re-hired and placed on furlough if they were dismissed on or before 30 October?

Employers may have had to dismiss staff ahead of the start of the JSS because the terms of this scheme were less generous and putting staff on to the JSS was not a viable option.

When the first iteration of the furlough scheme was launched, employers were permitted to re-hire staff they had dismissed before the scheme was brought in, provided they were on the employer's payroll on or before 19 March. It is not clear if this will be an option for the CJRS Extension.

When can claims for funding be submitted?

One feature of the furlough scheme which is more advantageous to employers than the JSS was that employers could claim for costs upfront. The JSS was designed to pay employers in arrears.

Although the CJRS Extension claim period is yet to be precisely defined (see above), employers are likely to have to claim at least some funding in arrears. More details about when employers can submit a claim are pending.

Placing staff on to the CJRS Extension

It is possible that some employers will be new to furlough when they look to use the CJRS Extension and that the staff they wish to claim funding for have not been furloughed before.

If so, employers need to ensure that the appropriate changes to staff contracts are agreed with those affected staff in writing in advance. In particular, employers must get the written agreement of staff to lower their pay, as otherwise they risk claims for unlawful deductions from wages claims, which we have previously covered in an earlier articles (available from our website, here). Where a collective agreement with a trade union is in place, employers should follow the proper procedures to seek to reach collective agreement to change terms.

Will this change employers' redundancy plans?
In addition, it is worth re-iterating that for employers who were in the middle of redundancy consultations, the CJRS Extension will now have to be factored into the employer's business case for making redundancies. It should also be considered as an alternative to redundancy, a way of reducing the number of redundancies or a means of mitigating their impact. Whilst an additional month's support is unlikely to prevent redundancies from happening, it may delay their requirement.

Under the proposed JSS, employers could not claim funding support from the government if the member of staff they were claiming for was on notice of dismissal. If the CJRS Extension carries over the same furlough rules, employers will be able to provide staff with notice of dismissal (including for redundancy) and claim funding under the scheme for those staff during their notice period.

Furlough funding was not previously available for employers to pay in lieu of notice or in respect of statutory redundancy payments. This is expected to be carried into the CJRS Extension.

Calculating redundancy payments for employees who have been furloughed

Redundancy payments should be based on pre-furlough pay but what happens where employees have no normal hours?

Despite the various efforts made by the Government to support employers through the pandemic, many will be faced with the unfortunate need to make staff redundant. Redundancies are not straightforward, but they will be complicated further where the employee is entitled to a statutory redundancy payment, has variable hours, and has been furloughed in the weeks leading up to their redundancy.

Employers need to also be aware that from 1 December 2020 they cannot use Coronavirus Job Retention Scheme (CJRS) funding to support notice pay for staff (whatever the reason for termination of employment). This change in the rules could have a significant impact on employers' finances where they have not budgeted for this in their plans.

<u>Calculating redundancy pay for employees with no normal hours</u>

Provided an employee is entitled to a statutory redundancy payment (SRP), an employer needs to know three key things to calculate how much SRP is due: 1) the employee's age at the date of termination of employment; 2) the employee's length of service at the date of termination; and 3) the value of the employee's weekly pay (which is subject to a statutory cap).

Calculating weekly pay for these purposes can be complicated by atypical working patterns. If an employee has no normal working hours, then weekly pay is calculated using a 'reference period'. The reference period is the last 12 weeks prior to the date of redundancy in which the employee was entitled to remuneration. This includes paid non-working weeks (e.g. for paid leave such as holiday) but does not include weeks where no remuneration was due. If any weeks are excluded, then the employer must go back further in time to find the last 12 paid weeks. The weekly pay is the average of the total remuneration in those weeks, divided by 12.

How is this applied to furlough leave?
Firstly, it is important to note that furloughed hours are counted as hours in which the employee is entitled to remuneration for the purposes of the 12-week reference period. A key question is what value those hours are given.

When applying to the CJRS for funding, employers must calculate 'reference pay' to work out the value of furloughed hours. It is this reference pay, calculated in accordance with CJRS rules, which is applied to furloughed hours for the purposes of working out weekly pay for the SRP. However, it is important to note that the CJRS cap on pay (i.e. the £2,500 monthly cap) does not apply for the purposes of calculating weekly pay.

Remuneration for any worked hours during the reference period is also included in the calculation of weekly pay.

Example

Tom is employed by OJ Ltd. Tom has minimum contracted hours, but the actual amount of work varies considerably depending on business needs. Work has diminished as the effect of the pandemic and lockdown has continued, and Tom agreed to go on to the flexible furlough scheme.

Unfortunately, OJ is now no longer viable and they must make all staff redundant. OJ need to calculate Tom's weekly pay for SRP purposes.

Tom was flexibly furloughed during the 12-week period prior to his redundancy. In those 12 weeks he worked a total of 63 hours and was furloughed for 189 hours. Tom's hourly pay is £10.90 and his hourly reference pay for the purposes of his furloughed hours was calculated by OJ to be £10.73, in accordance with CJRS guidance.

For the purposes of the statutory redundancy payment, OJ calculates Tom's weekly pay to be:

- 63 hours worked x £10.90 = £686.70
- 189 furloughed hours x £10.73 = £2,027.97
- £2,027.97 + £686.70 = £2,714.67
- £2,714.67 ÷ 12 = £226.22 per week*

**Note that in this example the weekly pay is calculated to be under the statutory cap on a week's pay (currently £538), but the cap would need to be applied if this were exceeded.*

Selecting the correct reference period
Employers should note that the end of the reference period is determined to be the last 12 'full' weeks (where remuneration was paid) prior to termination. If the termination takes place midweek, the end of the reference period is the end of the last full week before termination takes place.

Serving notice or being paid in lieu?
It is important for employers to understand that the pay reference period for SRP purposes depends on how they go about terminating staff employment contracts.

If someone is dismissed with immediate effect and paid in lieu of notice, then the end of the reference period is the date on which the unworked notice period (i.e. the greater of their contractual or statutory notice) due from the employer should have ended.

If the employee works their notice, the end of the reference period is the last date on which statutory notice should have been given by the employer. This is subject to the full week rule noted above. However, in this case, because the employer must look back to the last 12 weeks in which the employee was paid, these rules may not make a difference to the calculation.

Comment

Rules for calculating the right redundancy payment were brought in to ensure that employees are not penalised by being on furlough leave.

Unfortunately, those rules add to the complexity of calculating the redundancy entitlement and employers need to ensure that they are not under-valuing their redundancy pay calculations. An employee who is underpaid may seek to recover the value of the underpayment and, although the value of underpayment may not be significant itself, the administrational time involved in correcting any errors can add up to significant sums which employers will want to avoid incurring.

New Government advice for clinically extremely vulnerable workers

Formerly shielding individuals advised not to attend work during lockdown.

The Government published on 4 November updated guidance for protecting people who have been categorised as clinically extremely vulnerable (CEV) to Covid-19.

The guidance "strongly advises" CEV workers to work from home if they can and to "not attend work" during the national lockdown period (currently expected to continue until 2 December). This goes further than previous advice which suggested CEV people could attend work where they could not work from home as long as Covid-19 risk control measures were in place and stringently implemented.

Many CEV people will have received a letter or email from the Department of Health and Social Care in the last few days reiterating this advice not to attend work. The letter states that it can be provided as evidence to employers to show that the recipient cannot work outside their home until 2 December. It states the expectation that following that date guidance will once again be region-specific, suggesting a return to the 3-tier system.

We look below at the options for employers of CEV workers during the lockdown period.

Working from home or on leave?
It is important that employers give serious consideration to the option of CEV staff working from home as a first resort. In that case, they will be paid their normal pay (unless short-time working arrangements are agreed).

If they are not able to work from home, they may need to take a period of leave. The options for this leave are as follows:

A period of sick leave?
CEV workers will (subject to eligibility) qualify for Statutory Sick Pay if they cannot work from home and do not attend work because of Covid-19. Whether this leave will qualify as contractual sick leave for the purposes of the employment contract will depend on the wording of that contract. Employers could decide to designate the leave as sick leave under the contract and pay contractual sick pay in line with that decision.

Discretionary paid leave?
Employers could decide as a discretionary measure to allow the CEV worker to take leave while being paid in full. Employers who take such decisions should be aware of the risks of setting a precedent and of discrimination claims where there is a lack of consistency of approach which could be argued to be founded on a protected characteristic.

Furlough leave?
The Government announced this week that it is extending the Coronavirus Job Retention Scheme (CJRS). See our article on this announcement, Furlough scheme extended due to planned lockdown in England: JSS launch delayed, here. The new guidance for CEV people states that employers will again have the option of putting CEV workers on furlough and claiming support for their wages under the CJRS. To be eligible, workers need to be on payroll and notified to HMRC by their employer on or before 30 October.

It is expected that the extension to the CJRS will be similar to the way the scheme worked in August. It will be possible for workers to be fully furloughed or to work short-time hours and for employers to claim for Government support towards employment costs for unworked hours. Where there is not sufficient work to employ CEV workers at home on their normal hours, but there is some work which they can do from home, this may be a good solution for employers.

However, it should be noted that the CJRS is not intended for use by organisations which are publicly funded (save where they have partial non-public funding which has been disrupted because of the pandemic).

Attending work?
The new guidance does not create a legal requirement for CEV people to stay at home or not to attend work. It is advisory only in nature.

Health and Safety Executive guidance on protecting vulnerable people at work states that, where it is not possible for CEV workers to work from home and they attend the workplace, employers must regularly review their risk assessment, and do everything 'reasonably practicable' to protect CEV workers from harm.

In some cases, CEV workers may wish to attend work despite the views of their employer and Government guidance. In that case, employers should review their risk assessments, taking into account the specific risks to the CEV worker and putting in place measures to mitigate those risks where possible. Where workers are determined to attend work contrary to such risk assessments, employers may need to consider a period of medical suspension on full pay. Employers should consider contacting their insurers in specific cases.

Avoiding claims and complaints
Employers should be aware of the risks of disability discrimination claims arising from any decisions about how to manage and pay CEV workers, who may well qualify as disabled for the purposes of the Equality Act 2010. Any decision based on a worker's health condition or something connected to it should be proportionate and clearly justifiable, for example on the grounds of health and safety or business need. This could include both arrangements to stay away from the workplace and to attend the workplace.

Where CEV workers are asked to attend work, they refuse to do so on health and safety grounds, and are then subjected to a detriment or dismissal because of that refusal, there is also a risk of claims. Additionally, workers might decide to report their health and safety concerns to the Health and Safety Executive (HSE) who may take action to investigate the concerns. Employees who have raised health and safety to concerns with their employer or HSE could be protected as whistleblowers if they are dismissed or disadvantaged because of their disclosure.

Employers also have an overall duty to act reasonably when making decisions of this kind. Acting in a way which could damage the trust and confidence between employer and employee without good reason could lead to constructive dismissal claims.

Employers who can evidence the sound business or health and safety reasons for their decisions will be in a far stronger position should they in future face claims. However,

explaining these reasons to their staff at the outset and discussing any issues or concerns with particular CEV workers will help to maintain trust and reduce the likelihood of grievances and claims. Seeking legal advice at an early stage where issues arise will also help to minimise the legal risks.

Employer found not liable for employee's practical joke

Recent case considered whether an employer could have prevented a practical joke that caused injury.

We have published a number of articles looking at the issue of an employer's vicarious liability for the acts of its employees which lead to loss, damage or injury of others both inside and outside of the workplace.

See **Employer vicariously liable for managing director's attack at post-Christmas party drinks**, **Was an employer negligent or vicariously liable for injury sustained during an office party at work premises?**, **Employer not vicariously liable for the vengeful act of an employee**, and **Was an employer vicariously liable for workplace harassment via social media?**.

Employers can be held vicariously liable for the wrongful act of an employee where there is a sufficiently close connection between what the employee is employed to do and the wrongful act.

It remains difficult for employers to know in exactly what circumstances they are at risk of being found liable for the acts of their employees, as each case will be decided on the specific circumstances. The key question will be whether the wrongful act was part of the "field of activities" carried out by the employee as part of their role. This will often depend on such nuances as where and when the incident took place, whether the employee was representing or advancing the purposes of the employer at the time, and what was said at the time of the incident.

A recent case in the High Court has considered whether an employer was vicariously liable for a practical joke which led to a permanent injury.

Case details: ***Chell v Tarmac Cement and Lime Limited [2020]***

Mr Chell was employed as a site fitter and his employer contracted his services out to Tarmac to work on one of their sites. Tarmac also engaged its own fitters to work alongside Mr Chell, one of whom was Mr Heath.

On site, tensions arose between the two sets of fitters, with the Tarmac fitters appearing to fear that their jobs were in jeopardy and that they would be replaced by contractors such as Mr Chell. Mr Chell raised the issue with the Tarmac site supervisor about it, but no further action was taken.

About a month later Mr Chell was working on site when he bent down to pick something up. Mr Heath put explosive pellets on a bench close to Mr Chell's ear and then hit them with a hammer causing a loud explosion. This resulted in Mr Chell suffering a perforated ear drum, noise-induced hearing loss and tinnitus. Tarmac dismissed Mr Heath.

Mr Chell later brought proceedings in the county court alleging negligence directly against Tarmac and that Tarmac was vicariously liable for the actions of Mr Heath.

At first instance, the county court dismissed the direct negligence claim on the basis that there

was no reasonably foreseeable risk of Mr Chell's injury, that Tarmac's health and safety procedures were adequate, and that increased supervision to prevent horseplay or ill-discipline was not a reasonable step for the employer to take. The county court also found that Tarmac was not vicariously liable for Mr Chell's injury because hitting the pellet targets was not within the field of activities of Mr Heath's employment and so there was not sufficient connection between this action and what Mr Heath was employed to do.

Mr Chell appealed to the High Court.

Appeal

The High Court dismissed the appeal, agreeing that Tarmac was not vicariously liable for its employee's wrongful act. This was on the basis that the action of striking the pellets was not within the employee's field of activities because:

- the pellets that were struck had been brought to the site and were not work equipment;
- it was not part of Mr Heath's work to use or hit pellets;
- what Mr Heath did was unconnected to any instruction given to him in connection with his work;
- Mr Heath had no supervisory role regarding Mr Chell and at the time of the incident should have been working elsewhere on site;
- hitting the pellets with the hammer did not advance the purposes of Tarmac; and
- in all circumstances, work merely provided an opportunity for Mr Heath to carry out the prank he played, rather than the prank in any sense being in the field of activities that Tarmac had assigned to him.

The High Court agreed that the judge was entitled to find that the uncomfortable atmosphere reported to the site supervisor was not serious enough to suggest a risk of physical confrontation which might have suggested a sufficiently close connection between the wrongful act and Mr Heath's employment.

Comment

This case gives some useful guidance to employers on the circumstances in which they might be found directly liable or vicariously liable for injury caused by a practical joke at work.

In this case, Tarmac was not liable because the injury was not foreseeable and Tarmac could not reasonably have been expected to put measures in place to prevent such a practical joke taking place or causing injury. The court commented that a risk assessment would not have prevented the incident.

Interestingly, however, the county court judge commented that he might have been more likely to find Tarmac vicariously liable if the tensions created between the fitters had been so serious as to suggest the possibility of violence or physical confrontation: in that case, there might have been sufficiently close connection between the employment and the wrongful act.

Employers who are aware of serious issues between staff which could foreseeably lead to confrontation, or who are aware of a workplace culture of practical jokes could find themselves liable for injuries caused by their employees and would be well advised to address these issues proactively.

Are workers protected after refusing to work because of health and safety fears?

High Court: UK has failed to implement EU law protecting workers from detriment on health and safety grounds.

Refusing to work on health and safety grounds
Employees who act in the reasonable belief that they would be in serious and imminent danger at work are protected under UK law from suffering negative consequences or being dismissed because of that act. This applies when someone leaves work early, refuses to attend work, or when they take or propose to take appropriate steps to protect themselves or others.

This protection originally came from the EU Health and Safety Framework Directive (the Framework Directive) in 1992, which applied to "workers". The UK implemented this protection through Sections 44 and 100 of the Employment Rights Act 1996 (ERA 1996). However, the ERA 1996 limited these protections to employees rather than extending them to workers.

What is a worker?
The question of whether someone is an employee or a worker is a complicated one which has been the subject of many court and tribunal cases. In general terms, in UK law employees work under a contract of employment (usually but not always in writing) and a mutual obligation where the employer will provide work which the employee must accept to do. Employees must perform the work personally, and are subject to a high level of control over how and when they perform the work and a high level of integration into the employer organisation.

Workers will usually be distinguished from employees by the fact that they have no guaranteed hours of work and can turn down work when it is offered. They will usually be subject to a lower level of control by and integration into the employer organisation. However, they must still perform the work personally and they are subordinate to their employer, having no bargaining power or client/contractor business relationship with them (as a self-employed person would).

There are a number of definitions of a "worker" under EU law depending on the rights and obligations in question. In general terms, a worker under EU law is someone who performs services for and under the direction of another person in return for wages.

Should workers be protected in the same way as employees if they refuse to work because of fears about their safety?

The High Court has recently determined that the UK failed properly to implement the protection against detriment under the Framework Directive by failing to apply it to workers who do not work under a contract of employment.

The High Court also decided that the UK had failed properly to implement the EU Personal Protective Equipment (PPE) Directive by not extending its protection to workers. The PPE Directive sets out minimum requirements for PPE used by workers at work and requires PPE to be used in certain circumstances when risks cannot be avoided by other means.

Case details: ***R (Independent Workers' Union of Great Britain) v Secretary of State for Work and Pensions***

The Independent Worker's Union of Great Britain (IWUGB) union represents gig-economy workers including couriers, private hire and van drivers. During the first wave of the Covid-19 pandemic, many of its members sought advice on concerns about their safety at work, including a lack of PPE and a failure to enforce social distancing at work. Couriers engaged to deliver Covid-19 tests as part of the testing regime expressed concerns about inadequate packaging of contaminated samples.

The IWUGB brought proceedings in the High Court seeking a declaration that the UK had failed to implement the Framework Directive and the PPE Directive because the protections set out in UK law were limited to employees. The High Court agreed and made a declaration to that effect.

Comment

This decision is very important as it extends to workers protection from detriment for refusing to work or taking other steps to protect health and safety. This will apply to those on zero hours contracts, to bank workers and casual workers. This decision may give rise to claims, for example where workers have suffered reduced pay due to a refusal to work because of a reasonable belief that they are in danger when working. Workers (along with employees) will also be entitled to be provided with PPE where this is necessary to mitigate risks.

However, this does not extend protection to those who are genuinely self-employed, that is those who are in business on their own account and who have a client/contractor relationship with the contracting organisation. Of course, the line between worker status and self-employed status will continue to be the subject of legal battles to secure rights for individuals.

Workers' rights include statutory minimum paid holiday, statutory sick pay (if eligible), National Minimum Wage and protection against discrimination. This decision may well increase the number of individuals who bring claims on the basis that they are in fact workers, despite being nominally self-employed.

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