

REMOVAL OF QUALIFYING PERIOD FOR PAID ANNUAL LEAVE / INTRODUCTION OF ACCRUAL SYSTEM

PUBLIC CONSULTATION – SUMMARY OF RESPONSES

Introduction

The European Court of Justice (ECJ) delivered its final judgement on the case between the Government and the Broadcasting Entertainment Cinematograph & Theatre Union (BECTU) on 26 June 2001. The ruling requires an amendment to the Working Time Regulations to remove the 13-week qualifying period before the minimum 4-week paid annual leave entitlement is activated.

A short consultation period on the draft regulations and guidance (including Regulatory Impact Assessment) ran from 28 June to 27 July 2001. The consultation document dealt with two main issues:

- **Removal of qualifying period.** This must be removed to bring domestic law into conformity with the ECJ's interpretation of the Working Time Directive.
- **Introduction of an accrual system.** The draft amending regulations would introduce a system for the taking of the leave entitlement to accrue during the first year of employment, at the rate of one-twelfth of the entitlement per month worked.

The Consultation

The consultation document was published on the DTI website and around 500 copies were despatched to a variety of organisations using the Employment Relations consultation list. 88 official responses were received. Several general responses have also been submitted via e-mail/phone calls.

Responses on the removal of qualifying period /system of accrual

Of the 88 official responses received, 30 were broadly in favour of the removal of the qualifying period for paid annual leave (or recognised that it was a necessity given the ruling) and 10 were opposed. 20 were broadly in favour of the introduction of accrual and 16 were against. The other respondents either expressed no preferences as to the introduction of accrual or mistakenly concluded that the 13-week qualifying period had been replaced by a month's qualifying period.

Breakdowns

<u>SECTOR</u>	<u>No.</u>	<u>FOR</u> Removal of qualifying period	<u>AGAINST</u> Removal of qualifying period	<u>FOR</u> Accrual system	<u>AGAINST</u> Accrual system	<u>REQUEST</u> for guidance
Employers organisations	20	2	5	4	0	14
Employers	15	4	3	3	2	9
Trade Unions	13	12	1	7	5	6
Trade Associations	10	1	0	2	0	9
Lobby Groups	9	8	0	2	6	4
Legal	8	0	0	0	1	6
Government	6	1	1	1	0	1
Academia	3	1	0	1	1	1
Consultants	2	1	0	0	1	2
Charities	1	0	0	0	0	0
Others	1	0	0	0	0	1

The qualifying period

It was noted by most respondents that the Government has had no choice in the removal of the qualifying period for paid annual leave and accept the decision made by the ECJ.

Those organisations opposed to the removal of the qualifying period argued that it restricts the operational freedom of management. It was also thought that the introduction of the amended regulations would impose many onerous burdens and increased costs for employers.

Those organisations that welcomed the Government's decision to comply with the ECJ ruling stated that the qualifying period of 13 weeks is detrimental to many workers in sectors where their employment is less than 13 weeks.

The system of accrual

This seemed to cause some confusion. Whilst some bodies were pleased that a system of accrual was being introduced, some were against it. Some organisations felt that this represented an added complication for employers. Unfortunately the majority of respondents mistakenly thought that the intention was for the entitlement rather than the ability to take leave to be accrued on a monthly basis. This led to accusations that the 13-week qualifying period was being replaced by a 1-month qualifying period.

The "rounding" of leave

Concern was expressed that the rounding of leave could encourage employees to claim their holiday when they have accrued entitlement to half a day as this would be rounded to a full day. It was suggested that the concept of disregarding fractions of a day if less than a half would have the effect of denying a worker the right to paid leave that he had accrued. In a number of instances the point was raised that the rounding system dealt with the taking of leave and not the entitlement due.

Leave years

The point was made by a number of respondents that accrual could introduce an arbitrary distinction between workers whose leave year begins on the first date of employment and workers whose employment begins later than the date on which their first leave year begins, by virtue of relevant agreement. The former would be subject to accrual; the latter would not.

Casual workers

It was noted by some organisations that keeping track of holiday accrual for casual workers would be very time consuming and could lead to possible disputes on record keeping. There were also some points raised on part-time workers. A part-time worker's "day" should be defined as the worker's normal working hours.

RIA and the cost of compliance

It was suggested that the estimate for the number of affected workers in the hospitality sector appears too low and that agriculture should have been included in the table listing the most affected sectors. Costs would involve the reprogramming of computer systems, retraining of staff etc. There was also comment that the RIA did not mention implementation costs. The RIA has been updated following the consultation period.

Guidance

Overall there have been 53 calls for guidance reflecting the proposed changes to the Directive. Most respondents have asked for clarification on the qualifying period i.e. has this been replaced by a short period of one month. A number of organisations have asked for examples on how to calculate the leave entitlement for casual workers and how to round up/down leave.