

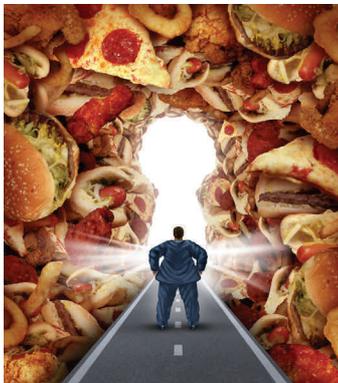
## HOLIDAY PAY: WHAT'S GOING ON...?

**E**arlier this year, the European Court of Justice held that holiday pay should be calculated to include commission, not just basic salary, where a worker's remuneration includes commission determined with reference to sales achieved. This has raised questions about the way in which holiday pay should be calculated under the Working Time Regulations 1998. Workers in the UK are currently challenging calculations of holiday pay that are based on basic salary only and exclude elements such as commission, overtime pay, attendance bonuses and travel allowances. The Employment Appeals tribunal is currently considering the issue of overtime pay.



## SEVERE OBESITY MAY BE A DISABILITY

**T**here is no general principle of EU law prohibiting discrimination on grounds of obesity. However, severe or morbid obesity might fall within the definition of 'disability' under the Equal Treatment Framework Directive if it hinders a worker from full and effective participation in their professional life on an equal basis with other workers. Obesity is not an impairment itself but the effects of obesity may result in an employee being disabled.



## NEW ACAS GUIDANCE ON TUPE

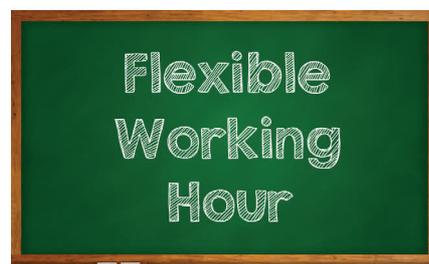
**A**CAS has issued new guidance to help employers handle transfers of their business. The guidance explains when TUPE applies and provides advice on the process, information and consultation requirements.

ACAS recommends that employers consult as extensively as possible, engage with trade unions where relevant, and check that all contract information is up to date and that it reflects what happens in practice. ACAS also suggests setting up an employee forum and management team responsible for handling the transfer.

## NEW ACAS CODE ON RIGHT TO REQUEST FLEXIBLE WORKING

**T**he right to request flexible working has been extended to all employees with at least 26 weeks' continuous service with effect from the 30th June 2014. ACAS has published a new *Code of Practice: Handling in a reasonable manner requests to work flexibly* and *The right to request flexible working: an ACAS Guide*.

The ACAS Code of Practice will be taken into consideration by Tribunals when appropriate. The Code provides detailed steps for managing flexible working requests "in a reasonable manner" and good practice tips for employers when implementing flexible working policies and considering requests, and sets out "business reasons" for refusing requests.



## HR LETTER BINDING ON EMPLOYER

The Employment Appeals Tribunal has held that an employer was bound by rates of pay set out in a letter from an HR officer who had investigated a grievance about an employees' pay. The critical principle was whether it was intended that the letter would set out what had been decided by the employer and whether the HR officer was held out by the employer as authorised to make that communication.



## WHEN ARE EMPLOYEES TRANSFERRED UNDER TUPE

The Employment Appeals Tribunal has held that an Employment Tribunal made a mistake when it decided that a transfer occurred when a transferee "assumed" responsibility for employees. The Tribunal should have asked when or at what point did responsibility for the relevant business pass from one entity to another. The transfer of employment contracts takes place by operation of law automatically as a consequence of the relevant transfer.



A duty or obligation upon one moral, or legal accountability in to behave correctly in respect of ability or authority to act or decide take decisions independently.

## CONTRACTUAL DISCIPLINARY PROCEDURE DID NOT ALLOW FOR INCREASED PENALTY

The Court of Appeal has held that an employer could not increase the disciplinary sanction it imposed following an employee's appeal. The NHS Trust (employer) had incorporated a formal and detailed disciplinary procedure into the employee's contract. The employee appealed against the imposition of a written warning and the Trust contemplated increasing the severity of that sanction, which would lead to the employee's dismissal. The Court held that the contractual procedure did not allow for increased penalty on appeal, and if the Trust wished to reserve its right to increase the disciplinary sanction on appeal, that should have been made explicit in the procedure.

## DECEASED WORKERS AND HOLIDAY PAY

The European Court of Justice (ECJ) has held that if a worker has accrued but untaken statutory annual leave at the time of his death, his estate is entitled to a payment in lieu for the untaken holiday, and that payment for the accrued holiday should not depend on an interested party making application for the payment on the deceased employee's behalf.

This means that the death of a worker does not extinguish their right to payment in lieu of untaken statutory holiday and payment should be made to the worker's estate.

If a worker dies whilst still employed, employers should seek to establish the identity of the personal representatives responsible for administering the worker's estate and then pay them any amounts due in respect of accrued untaken statutory holiday.



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