Green Book Changes Relating to Term Time Only Employees

An update to the Green Book has been published as a result of some recent employment case law. This identified some recommended changes to the calculation of annual leave for workers contracted to work less than fifty-two weeks per annum. The reason for the recommendations are to ensure that the pay and conditions of term time only employees are transparent, consistent and fair and they are treated no less favourably than employees on all-year-round contracts.

Case Law - Brazel v The Harpur Trust

In light of the case of Brazel v The Harpur Trust (UKEAT/0102/17), the Green Book advises that the annual leave entitlement for term-time only employees should not be less than 5.6 weeks (the statutory entitlement under The Working Time Regulations). It states, that if, when applying the relevant formula, the entitlements equates to less than 5.6 weeks, an allowance for the additional days’ pay should be added to the employee’s pay. This ensures that they receive the minimum annual leave entitlement set out in the Working Time Regulations.

This does not mean that Schools and Employers should automatically change their formula for paying employees working less than 52 weeks or start paying an allowance. However, it is advisable that pay formulas are reviewed to ensure they are non-discriminatory against part-time employees. For example, where a term-time only employee is receiving less than 5.6 weeks paid leave, a relevant allowance can be added to compensate for this rather than amending the pay and leave formula for all employees.

The Green Book provides a model formula for calculating pay and annual leave entitlement but states this is advisory and it should not supersede local arrangements where these are more favourable.

Cambridgeshire County Council

We have reviewed the formula that is used for centrally employed term time only employees, and as this is more favourable than the Green Book formula, pay calculations will continue on the same basis. Where an employee is working less than 52 weeks per year, the pay calculation will account for any additional days pay required to ensure that they receive no less than 5.6 weeks paid leave.

Schools

We recommend that schools review the formula currently used for calculating pay to ensure it is no less favourable than the Green Book guidance. In addition, schools should review the annual leave entitlement paid to employees and particularly those working less than fifty-two weeks per year to ensure that no less than 5.6 weeks leave is paid.

Remember the outcome of the review of your approach may have a cost implication that will affect your budget.