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## Holiday pay

UNISON's head of legal services, Shantha David, explains what the union's recent Supreme Court victory means for workers



## Could you be entitled to thousands in unpaid wages?

**Many UK workers could be entitled to thousands of pounds unfairly taken from their pay following a landmark Supreme Court ruling in a successful challenge brought by UNISON.**

The case was between police workers (officers and staff) and their employer: the Northern Ireland police force. Formally titled Chief Constable of Police Service of Northern Ireland v Agnew, the case was about underpayment of holiday pay over a period of 25 years.

UNISON intervened in the case and the workers won. Here, the union's head of legal services, Shantha David, explains exactly what happened - and what this means for all workers.

### How did this case end up in the Supreme Court?

In short, police workers in Northern Ireland who were regularly working overtime had not seen pay for their additional hours reflected in their holiday pay.

In 2018, when the workers took their case to an employment tribunal, the judge ruled that the Police Service of Northern Ireland had made unlawful deductions from the holiday pay of almost 4,000 officers and civilian staff

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since 1998.

While the Police Service accepted the workers had been underpaid, they disputed the period of time (and back pay) for which the staff could recover the money. This was the focus of UNISON's challenge in the case.

Employment law requires that claims for wage deductions are brought to a tribunal within three months, and that other previous similar deductions can also be claimed. For example, if regular overtime was omitted in a person's recent holiday, and this was also previously the case, then this was a series of linked deductions, and they could both be claimed at a tribunal.

However, a piece of case law, from an Employment Appeal Tribunal in 2016 (*Fulton v Bear Scotland Ltd*), said that, if the incorrectly calculated holiday pay deductions were broken by gaps three months or more, it would break the link between these deductions (and so workers wouldn't be able to claim past the most recent underpayment).

### **Why did UNISON get involved?**

We saw that this was an opportunity to correct this bad piece of case law (*Fulton v Bear Scotland Ltd*), which could have a huge impact on workers across Britain, not just Northern Ireland.

Our argument was that a gap of three months or more between deductions would not break the chain between them, and that in effect, the police staff were entitled to recover all of their historic underpayments, not just the most recent.

### **What was the outcome?**

The Supreme Court agreed with us that gaps of three months or more would not break the chain between underpayments. This now means that workers in Northern Ireland can make back-dated claims for indefinite periods of underpayment, and workers in Britain can also make back pay claims, but only going back up to two years.

### **So what does this mean now?**

Thanks to UNISON, who led the arguments in the UK Supreme Court, workers can challenge ongoing, linked underpayments in their

wages, even if there is a gap of three months or more between the underpayments.

### **Who does this impact?**

All workers, regardless of the type of contract you're on. It's not just salaried employees, it includes people on zero-hours contracts too.

### **How do workers identify underpayments?**

People need to check their pay slips and see whether any element of pay has not been reflected in their holiday pay. If someone does regular overtime and this hasn't been reflected in holiday pay, or you receive commission pay or bonuses that also haven't been reflected, this could mean you have a claim.

Every worker is entitled to a minimum of 5.6 weeks paid annual leave. Some contracts may say employees get more than that. If, week on week, you do overtime and get bonus payments, and that isn't included in holiday pay, you may have a claim. In the police service case, they all did regular overtime and that wasn't included in their holiday pay.

Another way this might be identified is if you see that your employer suddenly corrects your holiday pay.

### **If I see I have been underpaid, or my employer suddenly corrects my holiday pay, how can I claim this money back?**

Speak to your UNISON rep and local branch about it, to see whether you can bring an unlawful deduction of wages claim through an employment tribunal.

You must act quickly because, to bring the claim to an employment tribunal, the last deducted payment must have been in the last three months - but you may be entitled to claims that go much further back.

### **How much can you claim back?**

For workers in Britain, claims can go back up to two years. For Northern Ireland, claims can go back indefinitely. It's estimated that the police workers in Northern Ireland are owed around £40m in total.

### **Does it only apply to holiday pay, or any other types of underpayment?**

It's not just about holiday pay. It can also apply

to maternity and paternity pay, commission pay, bonus pay or even one-off payments for trade union activities.