

**RE: ARTICLE 7 THE WORKING TIME DIRECTIVE / ORGANISATION OF WORKING TIME ACT, 1997**  
**IMPLICATIONS OF PAYING HOLIDAYS ON A ROLLED UP OR STAGGERED BASIS OVER THE YEAR**

It is the policy of many businesses including the retail industry to pay holiday pay on a rolled up basis. This is done by incorporating 8% of the hours worked per week as an element of weekly pay and paid each week in the weekly pay. There have been several cases brought before the Rights Commissioner, the Labour Court and the European Court of Justice whereby it has been determined that this method of payment constitutes a serious breach of employment rights. It has been stated in these decisions that is contrary to the provisions of the Organisation of Working Time legislation and the provisions of Article 7 of the Working Time Directive to pay holiday pay on a staggered basis over the year.

The amounts that have been awarded by the Rights Commissioner and the Labour Court have been substantial with the average award totally approximately €5,000 per breach. The reasons why the Labour Court and the European Court of Justice have been so against these practices being incorporated into businesses is that they feel that the Directive and the legislation are Health and Safety initiatives put in place to ensure that employees actually take the annual leave prescribed in the Act, to have a break from work.

Therefore, we would advise you that if it is your practice to pay rolled up pay on a weekly basis regardless whether the employee has their annual leave or not to desist immediately and only pay the holiday pay when the employees have actually requested to take their annual leave and it is then paid in advance at the normal weekly rate. Furthermore, we would advise every employer to issue an annual Memo to all members of staff and to place it on the notice board of all shops advising them that it is imperative that they take their annual leave within the requisite year and that payment in lieu of holidays is not an option, as you as a prudent employer are under an obligation to ensure that all employees take adequate breaks from work. Ideally, try and get your members of staff to sign a document stating that they have received the Memo regarding the importance of taking their holidays.

The exception to the rule regarding holiday pay is on termination of employment when outstanding holidays may be compensated in the form of a payment.

We trust that you will take the above advices seriously and alter your practices accordingly.