

## Bank Holiday Mondays and Part Time Workers

It is the time of year when we enjoy a number of bank holidays. However, as confirmed by the decision of the Court of Session in *McEnemy v Capita Business Services Ltd [2007]*, not everyone is automatically entitled to time off in respect of bank holidays.

### The Facts

In 1999, Mr McEnemy reached agreement with his employers, Capita Business Services Limited, to work part-time. The agreement reached allowed Mr McEnemy to work Wednesday to Friday. However, it was agreed that thereafter he was not entitled to time off in lieu of public holidays, which fell on the days he did not work.

In an application to the Employment Tribunal, Mr McEnemy claimed that he was being treated less favourably than comparable full-time workers in his department, who worked Monday to Friday. As, unlike them, he did not receive the benefit of public holidays, which fell on Mondays.

### Employment Tribunal

The Employment Tribunal, having considered Capita's policy document on public holidays, held that "on the basis of the policy... the benefits of statutory holidays only applied to those who worked them", irrespective of whether they were full or part-time workers.

### Employment Appeal Tribunal

The Employment Appeal Tribunal upheld the Employment Tribunal's decision.

Furthermore, it held that Mr McEnemy did not have an independent right to *pro rata* days off work to reflect Monday bank holidays.

### Court of Session

On appeal to the Court of Session, the Court confirmed the approach to be taken when considering whether a part-time worker is subject to less favourable treatment than comparable full-time workers.

The Court's approach can be split into two questions:

1. Has the part-time worker been treated less favourably than a comparable full-time worker?
2. If so, was this for the sole reason that the worker worked part-time?

In Mr McEnemy's case it was held that he had received less favourable treatment, because by working part-time he did not receive the benefit of statutory holidays, which fell on Mondays.

However, having considered Capita's policy document on public bank holidays, it was recognised that any employee, whether they are part or full-time, would not receive the benefit of statutory holidays which fell on the days they did not work.

On this basis it was held that the less favourable treatment of Mr McEnemy could be justified as it was not solely on the grounds that he worked part-time.

Accordingly, in practice if you have a policy dictating how the benefits applied, then it is unlikely that you will be discriminating against part-time workers provided that the policy is worded correctly.

If you have any questions then please do not hesitate to contact Sejal Raja on [sejal.raja@rlb-law.com](mailto:sejal.raja@rlb-law.com) or Rebecca Gowling on [rebecca.gowling@rlb-law.com](mailto:rebecca.gowling@rlb-law.com).

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If you would like any information on any of these or other employment matters, then please contact Sejal Raja ([sejal.raja@rlb-law.com](mailto:sejal.raja@rlb-law.com)) or Lara Crane ([lara.crane@rlb-law.com](mailto:lara.crane@rlb-law.com)) or telephone on 020 7222 7040.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.