

## MORE THAN 3,000 TRIBUNALS POSTPONED AT SHORT NOTICE IN JUST EIGHT MONTHS



**The postponement figures appear to back other data which suggests the tribunal system has been strained since tribunal fees were abolished last year. Thousands of employment tribunal hearings are being pushed back at short notice with what experts warn as increased stress for all involved.**

Data obtained showed 3,365 employment tribunals were postponed within 48 hours of the hearing being scheduled to begin between 1 August 2017 and 31 March 2018. Figures published by the Ministry of Justice (MoJ) in June reveal the number of single claims (claims brought by a single person, rather than a group action) received in the first quarter of

2018 increased by 118 per cent, to 9,252, compared with the previous year.

In June, the Wales Employment Tribunal user group reported that tribunals often listed more hearings than they could accommodate because of the high number of settlements and withdrawals. However, it added that the Wales Employment Tribunal now provided information sheets to solicitors and barristers in advance, which flagged when hearings were at risk of short notice cancellation, to mitigate some clients' frustration.

**Last month, the Judicial Appointments Commission closed a recruitment drive for 54 employment tribunal judges.**

## POWER OF ATTORNEY FEE REFUND SCHEME LAUNCHED

**Refunds are being offered to those who may have been charged more than was necessary for lasting or enduring powers of attorney between 1 April 2013 and 31 March 2017.**

During this period, the Office of the Public Guardian's (OPG) operating costs came down as more people applied to register a power of attorney and the process became more efficient, but the

application fee charged was not reduced in line with this.

The Ministry of Justice, which sets OPG's fees, reduced the application fee with effect from 1 April 2017, and has now launched a refund scheme for those who paid a higher fee in the qualifying period.

Making a claim is quick and simple using the online service. Only one form

needs to be completed for each donor and OPG will find all power of attorney application fees paid by the donor during the qualifying period.

**Full guidance for those applying is available online, and there is a dedicated refunds service helpline for those who need it. Call OPG's contact centre on 0300 456 0300 and select option 6 to be put through to the refunds team.**

**Lines are open Monday, Tuesday, Thursday and Friday from 9am to 5pm and Wednesday from 10am to 5pm or visit [www.gov.uk/power-of-attorney-refund](http://www.gov.uk/power-of-attorney-refund) for more details and to make a claim.**

To register a new claim or for any legal advice call UnionLine on:

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## GMB SLAMS COURT OF APPEAL RULING ON 'SLEEP-IN' SHIFTS FOR CARE WORKERS



The issue concerned two care workers who were contractually obliged to spend the night at, or near, their workplace and were expected to sleep for most of the period but could be woken if their assistance was required. Regulation 32 of the National Minimum Wage Regulations 2015 (NMWR) provides for a worker who is not actually working could be treated as working if they are available at or near a place of work for the purpose of undertaking their work, with two exceptions:

1. Where the worker's home is at or near the place of work, time the worker is entitled to spend at home is not treated as working time.
2. Where the worker sleeps by arrangement at or near a place of work and is provided with suitable facilities for sleeping, time during the hours they are permitted to use those facilities for the purpose of sleeping shall only be treated as working time when the worker is awake for the purpose of working.

Recently the Court of Appeal determined whether the entire period of on-call time should be taken into account for the purposes of the NMWR, even if the worker was

sleeping for most of it. It was found that the care workers, were available for work rather than actually working. Accordingly, they were only entitled to be paid the NMW for the time that they were required to be awake for the purpose of working, rather than for the entirety of the sleep-in shift.

*Rehana Azam, GMB National Secretary said: "This is a backward-facing judgement for low paid, mostly women, care workers who look after the most vulnerable in our society."*

*"The Employment Tribunal, Employment Appeal Tribunal both ruled that employees should be paid on an hourly rate basis when undertaking this type of work."*

*"We would hope that any appeal to the Supreme Court will see that common sense approach to the issue restored; so that where a job requires you to sleep in at a premises so that you can be on hand to help a service user, you should be paid a proper hourly rate for those hours."*

*"Care workers should be paid at least the NMW for time spent being on call whilst on so-called sleep-ins."*

## VOLUNTARY OVERTIME AND SHIFT OVERRUNS ARE TO BE INCLUDED IN HOLIDAY PAY CALCULATIONS

In a recent case against East of England Ambulance Trust, the Employment Appeal Tribunal (EAT) had to decide if voluntary overtime should be included in the calculation of holiday pay.

The claimants worked for the ambulance service. They were occasionally required to work non-guaranteed overtime or shift overruns, for which they received extra payment. The tribunal concluded that a distinction was to be drawn between the two types of overtime:

- **non-guaranteed overtime** should be taken into account in the holiday pay calculation as it was a contractual obligation and formed part of the claimants' pay, but
- **voluntary overtime** was not a contractual obligation and therefore did not need to be included.

In terms of Directive 2003/88 Article 7, the EAT had to consider whether overtime would amount to "normal remuneration" under the Directive.

Since the initial decision of the Employment Tribunal held that payments for voluntary overtime did fall within the concept of "normal remuneration" under the Directive if an employee was paid over a sufficient period of time.

The EAT reversed the original decision and agreed that non-guaranteed overtime or shift overruns and voluntary overtime payments made should be regarded as part of normal remuneration for the purposes of calculating holiday pay, provided that shifts were worked regularly.

## Record 22,400 minimum wage workers to receive millions in backpay

**The names of 239 employers found to have underpaid 22,400 UK workers by a total of £1.44m have been published by the government.**

- Nearly 240 employers who underpaid the National Living and Minimum Wage named today
- £1.44m in back pay has been identified for 22,400 workers, with the employers fined additional £1.97m
- Employers underpaid workers by taking deductions from wages for uniforms, underpaying apprentices and failing to pay travel time

The back pay identified by HMRC was for more workers than in any previous single naming list and has generated record fines of £1.97m.

The earliest underpayment dated back to 2011, with the most recent happening this year.

The top 5 reasons for National Minimum and Living Wage underpayments in this round were:

- taking deductions from wages for costs such as uniforms
- underpaying apprentices
- failing to pay travel time
- misusing the accommodation offset
- using the wrong time periods for calculating pay

Funding for minimum wage enforcement has more than doubled since 2015, with the government set to spend £26.3m in 2018/19.

The scheme is in its fifth year and calls out employers who have fallen foul of minimum

wage laws, so far identifying £10.8m in back pay for around 90,000 workers, with more than 1,900 employers fined a total of £8.4m.

The government is currently running a campaign to raise awareness of the National Living Wage and National Minimum Wage rates, which increased on 1 April 2018, as well as encouraging workers who have been underpaid to complain to HMRC. The campaign website has had more than 600,000 visits since the campaign kicked off on 1 April.

Employers who pay workers less than the minimum wage have to pay back arrears of wages to the worker at current minimum wage rates and face financial penalties of up to 200% of arrears, capped at £20,000 per worker.

**UnionLine are here to help you – call us on: 0300 333 0303**



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