

CONSTRUCTION INDUSTRY JOINT COUNCIL (CIJC)**RESOLUTION AND PROMULGATION****WORKING RULE AGREEMENT****Changes in the Calculation of Holiday Pay: effective immediately**

On the 4th November 2014 the Employment Appeal Tribunal in London handed down a Judgement in the case of Bear Scotland & Ors -v- Fulton & Ors relating to the calculation of holiday pay under the provisions of the EU Working Time Directive.

The Judgement applied only to the 4 weeks (20 days) of annual paid holiday entitlement under the EU Directive and not the additional 1.6 weeks (8 days) holiday under the provisions of the UK Working Time Regulations or any additional holiday provisions.

As a result of this Judgement it is necessary to amend the calculation of holiday pay for certain of the holidays under the provisions of the CIJC Working Rule Agreement to include average overtime arising from WR.4 and certain other taxable allowances. It is acknowledged that the UK Government will, after the general election, amend the provisions of the UK Working Time Regulations and as such the changes contained in this promulgation could be subject to amendment.

The parties to the CIJC Working Rule Agreement have agreed to the following clauses in the May 2013 CIJC Working Rule Agreement be amended as below:-

WR.18.4 Payment for Annual Holidays (21 day's each full year)

Payment for annual holidays, which shall be made on the last pay-day preceding the commencement of each holiday period, shall be made as follows:

18.4.1 Calculation of pay for Annual Holiday.

A week's pay is the average of the previous 12 complete weeks including overtime in accordance with WR.4, taxable travel allowance in accordance with WR5.1, Bonus in accordance with WR2 and regular allowances in accordance with WR's 6, 7, 8, 9, 10, 11 & 13. Weeks during which the operative is absent due to sickness are to be excluded.

18.4.2 One day's pay is calculated by dividing a week's pay as defined by WR.18.4.1 by the contractual hours in the normal working week and multiplying by the contractual hours in the particular day.

18.4.3 Becomes 18.4.2 above.

19.2 Payment in Respect of Public/Bank Holidays

Payment for days of public/bank holiday recognised under this Rule shall be made by the employer to an operative in his employment at the time of each such holiday on the pay day in respect of the pay week in which such holiday occurs, except that payment for Christmas, Boxing Day and New Year's Day shall be made on the last pay day before the Winter Holiday. The amount of payment for each day of public/bank holiday shall be in accordance with either:

19.2.1 Where the operatives pay does not vary with the amount of work done.

A week's pay is simply the normal weekly wage for the contractual weekly hours as defined by the contract of employment, including, where appropriate, any fixed bonus and regular payments and/or allowances made under WR's 6, 7, 8, 9, 10, 11 & 13 but excluding overtime in accordance with WR.4.

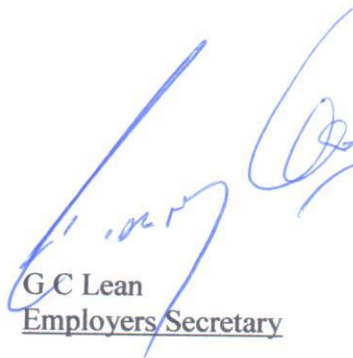
19.2.2 Where the operative's pay varies with the amount of work done.

Where earnings vary because of piecework or productivity bonus arrangements, then a week's pay is arrived at calculating the earnings during the normal working week as defined by the contract of employment, averaged over the 12 complete weeks worked immediately prior to the holiday week, including, where appropriate, any fixed bonus and regular payments and/or allowances made under WR's 2, 6, 7, 8, 9, 10, 11 & 13 but excluding overtime in accordance with WR.4. Weeks during which the operative is absent due to sickness are to be excluded.

19.2.3 *One day's pay is calculated by dividing a week's pay as defined by either by WR.19.2.1 or 19.2.2 by the contractual hours in the normal working week and multiplying by the contractual hours in the particular day.*



S Murphy
Operatives Secretary



G C Lean
Employers Secretary

March 2015