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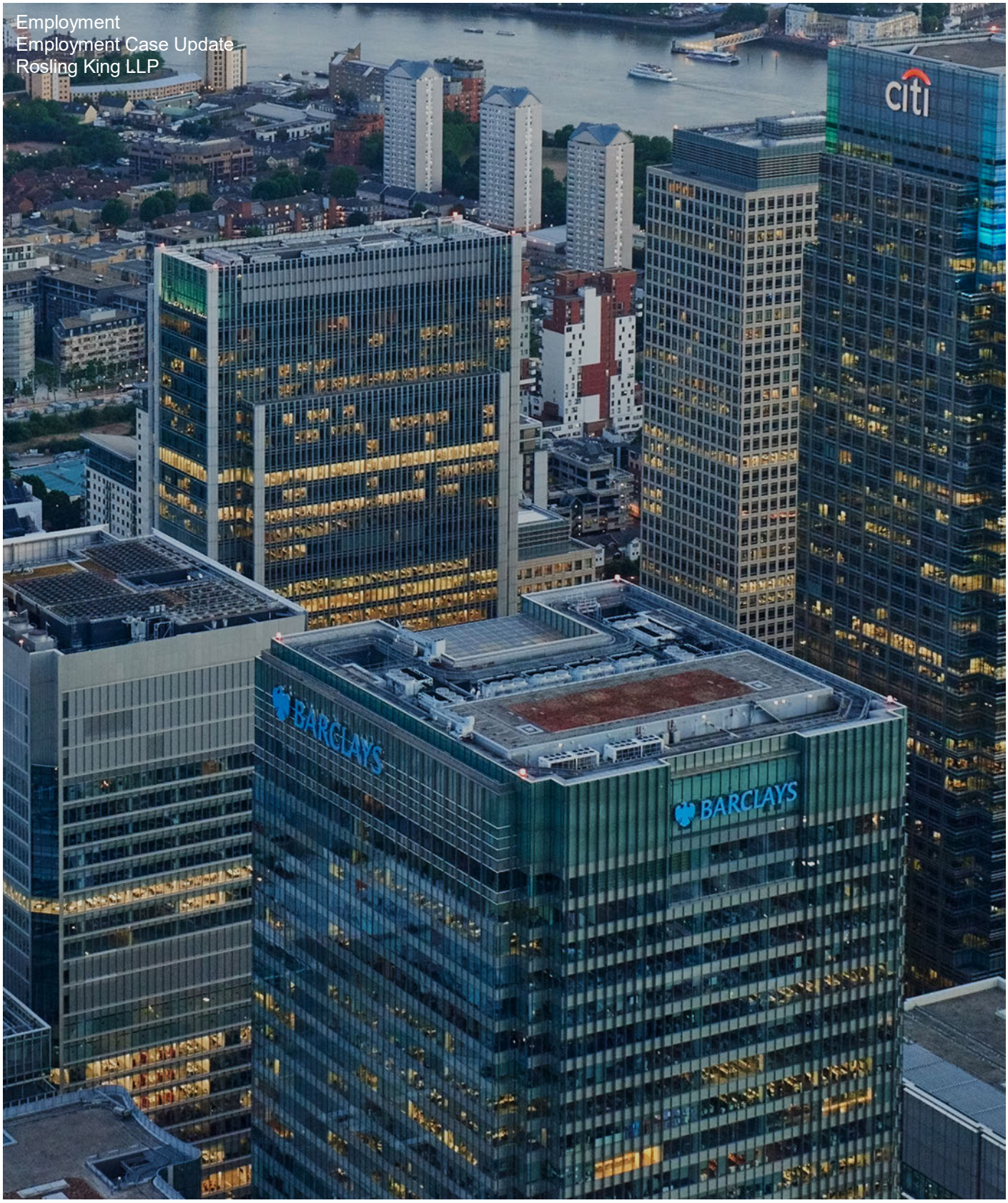
Employment
Employment Case Update
Rosling King LLP



The recent decision of the Employment Appeal Tribunal (EAT) Wood v Hertel (UK) Ltd & Fulton v Bear Scotland Ltd has thrown holiday pay back into the spotlight. Here employees argued that they consistently worked overtime but this was not considered when their holiday pay was calculated, meaning it was an unfair calculation of what they actually earned.
The EAT ruled in their favour, judging that overtime should have been considered, but what does this mean for UK employers? Head of Employment at law firm Rosling King, Jacqueline Kendal explains.
This case has shown that employers may have to rethink their holiday pay policy or face potential claims in the Employment Tribunals. There is deep concern that the decision could be hugely detrimental to UK businesses and the fact that Business Secretary Vince Cable has announced he is setting up a taskforce to look into limiting the impact of the ruling signals that the government is also worried.
Employers should take advice now as a continuing failure to pay the correct amount of holiday pay may mean that an employee with, for example, five years service, could claim for the difference in holiday pay for the last five years depending on the circumstances.

Here are some points for businesses to consider regarding their policy:

1. Workers are entitled to be paid a sum of money to reflect normal non-guaranteed overtime as part of their annual leave payments – annual leave calculations should be based on what the worker normally receives in their pay.

2. This decision states it applies only to the basic 4 weeks' or 20 days leave granted under the Working Time Directive and not the additional 1.6 weeks or 8 days for public and bank holidays.

3. Claims for arrears of holiday pay will be out of time if there has been a break of more than three months between successive underpayments (subject to the reasonable practicability test). Depending on the factual scenario it may be that the series of deductions could be broken by the 8 days of UK bank holiday pay which would not be underpaid, according to the decision.

4. Travel time" and "on site" payments which were normally paid and directly linked to work should also be reflected when calculating holiday pay, subject to a deduction which recognised the non-taxable element of such payments if applicable.

This decision has followed a number of recent cases that have reinforced the concept that workers need holidays for their health and safety, this underpins everything in European employment law and is becoming more apparent in the UK also.
Employees have won recent cases where the courts have allowed untaken holiday to be carried over at the end of the year where it had not been taken because of illness, as well as holiday plans to be cancelled and taken as sick leave instead.

For further information, please contact Jacqueline Kendal or the Partner with whom you usually deal.