**Sent on behalf of Simon James, Service Director: Education**

**Important update: Brazel holiday pay implementation and new Government consultation**

Dear Colleagues

I am writing to advise you that following the launch of a government consultation on 12th January 2023, we have taken the decision to  pause the work on the Brazel Holiday Pay implementation project.  The Government consultation seeks to understand the implications of the judgment on different sectors including agency workers who have complex contractual arrangements.  In the light of this consultation and because the outcome and the consequences are unknown we have decided that it is sensible to pause the implementation project until more information is known.

**Background**

As previously advised, the recent judgment in the Harpur Trust vs Brazel case changes the calculation of statutory annual leave and holiday pay entitlement for workers who work for varying hours during only certain weeks of the year but have a contract throughout that year (“part–year workers”). Schools are particularly impacted as they employ part-year workers, in particular employees who work Term Time Only.

**Government Consultation Development**

The government has launched a public consultation on 12th January 2023 which closes on 9th March 2023 to address an inconsistency caused by this ruling where part-year workers are entitled to a larger holiday entitlement than full-year part-time workers who work the same total number of hours during a year.

The Government is considering introducing legislation to resolve this anomaly by allowing employers to pro-rate holiday entitlement for part-year workers so that they receive leave in proportion with the total annual hours they work. The simplest way to do this would be to introduce a 52-week holiday entitlement reference period for part-year workers and workers with irregular hours, based on the proportion of time spent working over the previous 52-week period. This would bring the holiday pay and entitlement of part-year workers in line with the pro rata holiday entitlements received by part-time workers who work the same number of hours across the year.

A link to the government consultation is below:

[https://www.gov.uk/government/consultations/calculating-holiday-entitlement-for-part-year-and-irregular-hours-workers.](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.uk%2Fgovernment%2Fconsultations%2Fcalculating-holiday-entitlement-for-part-year-and-irregular-hours-workers&data=05%7C01%7Cnatasha.how%40buckinghamshire.gov.uk%7Ca60efb1b52cd4136716e08dafa037cb4%7C7fb976b99e2848e180861ddabecf82a0%7C0%7C0%7C638097190147462827%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=hc3ukRlTq3csuYYw9%2BEAoXc%2B4HxMSlMZbRRou3dC6Yc%3D&reserved=0)

A link to the online government consultation survey follows:

[Calculating holiday entitlement for part-year and irregular hours workers - Page 1 of 12 - Department for Business, Energy and Industrial Strategy - Citizen Space](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fbeisgovuk.citizenspace.com%2Flm%2Fholiday-entitlement%2Fconsultation%2Fsubpage.2022-12-08.4036367866%2F&data=05%7C01%7Cnatasha.how%40buckinghamshire.gov.uk%7Ca60efb1b52cd4136716e08dafa037cb4%7C7fb976b99e2848e180861ddabecf82a0%7C0%7C0%7C638097190147462827%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=9GqYNzVtLgElssJ7I72eEfmTzW102WdIZowzxxBv9%2BQ%3D&reserved=0)

**Impact on our project**

We currently pro rata contractual and statutory holiday entitlement according to hours worked for Term Time Only employees and Casual workers. The government consultation is proposing to change the implications of the Brazel judgment from not being able to pro rata statutory holiday entitlement to be able to pro rate holiday entitlement according to hours worked over the year. Therefore if we implement the *current* Brazel judgment, we risk having to reverse any changes we implement to Term Time Only employees holiday entitlement moving forwards (Phase 1) and potentially having to reclaim any overpayments. For this reason we have decided to pause our implementation project until more information is known about the proposals.

No overall Government timescale has been stated beyond the consultation closing date of 9th March 2023. We will update you as and when this is announced.

**Recommendation for Academies not using BC Payroll**

Any Academies planning to implement the current Brazel ruling now risk having to reverse their changes, reduce Term Time employees holiday entitlement and potentially reclaim any overpaid holiday pay paid from January onwards. For this reason, you may also wish to pause any changes pending the outcome of the Government consultation.

**Queries**

If you have any queries regarding this development please email them to the specific Brazel Holiday Pay mailbox, [brazel.harpur@buckinghamshire.gov.uk](mailto:brazel.harpur@buckinghamshire.gov.uk).

Kind regards,

**Simon James**

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