Employment Appeals Tribunal decision on holiday pay

What must pension scheme trustees do now?

The Employment Appeals Tribunal (EAT) has reached a decision that will increase levels of pensionable pay under some pension schemes. Affected schemes may face additional liabilities and administrative costs. Trustees will need to take action alongside those employers affected by the decision.

What did the EAT decide?

The EAT’s decision gives workers the right to nominal overtime during their holidays. According to the Working Time Directive, workers must receive their "normal pay" during their statutory holiday entitlement, and not just basic pay. The EAT has decided that employers, in calculating holiday pay, must take account of variable pay (such as overtime) that workers probably would have received if they had not gone on holiday.

Which pension schemes are affected?

The decision has an impact on those pension schemes that include variable elements of pay in their definition of pensionable pay. There is no impact on schemes that use only basic pay to calculate benefits and contributions. Both defined benefit and defined contribution schemes are affected.

What must pension scheme trustees do now?

Pension scheme trustees should take action now. They need to:

- check whether their scheme rules include any variable elements of pay in the definition of pensionable pay;
- discuss with the employer whether, in the light of the EAT decision, any holiday pay has been underpaid;
- ensure that all future pension benefits are calculated correctly;
- undertake due diligence on the extent to which any past benefits may have been paid incorrectly.
Should you have any further questions, please contact your usual Pinsent Masons adviser who will be able to assist you further.