STATUTORY EMPLOYMENT RIGHTS

Preparation:

In order to prepare for this seminar you should read from one or two of the textbooks in the general reading listed below. You should then look at and consider the four questions that will be discussed. For each question you should read any specific material cited and undertake any specific tasks set.

In this seminar, we will be considering:

- The National Minimum Wage regime;
- The Statutory Employment rights contained in the Employment Rights Act 1996; and
- The Working Time regime;

If we have sufficient time during class, we will also consider question 4 which reviews:

- The law of Maternity, Parental and Paternity Leave and Flexible Working for Families

General Reading:
Davies chapters 6 & 8*
Selwyn chapters 6, 7, 8, 13 & 14*
Deakin and Morris pp. 255-294, 330-338 and 637-654*
Painter and Holmes pp. 118-140 *
Honeyball & Bowers pp. 297-328*
Pitt, Chapters 6 & 7*
Smith & Wood chapter 4*

Advanced Reading:
D. Brodie, The Employment Contract: Legal Principles, Drafting, And Interpretation (Oxford: OUP, 2005) at 19-22*
P. Davies and Mark Freedland, Towards a Flexible Labour Market: Labour Legislation and Regulation Since the 1990s (OUP, 2006) pp. 42-53 and 60-71

Journal Reading:
J Stigler, "The Economics of Minimum Wage Legislation" (1946) 36 American Economic Review 358*
Aileen McColgan, "Family Friendly Frolics? The Maternity and Parental Leave etc. Regulations 1999" (2000) 29 ILJ 125
B. Simpson, "Implementing the National Minimum Wage – The 1999 Regulations" (1999) 28 ILJ 171
Grace James, “‘Enjoy Your Leave but ‘Keep in Touch’”: Help to Maintain Parent/Workplace Relationships” (2007) 36 ILJ 315
Lisa Rodgers, “The Notion of Working Time” (2009) 38 ILJ 80*

Question 1.
Critically Evaluate the National Minimum Wage regime under the National Minimum Wage Act 1998 and the National Minimum Wage Regulations 1999 (SI 1999/584). Is the statutory right to the be paid the national minimum wage enforceable by the employee on the basis of contract law? In other words, if the employer fails to pay an employee the national minimum wage, can the employee sue the employer for damages on the basis of a breach of contract?

Specific Reading:

British Nursing Association v IRC [2002] IRLR 480
Scottbridge Construction Ltd. v Wright [2003] IRLR 21
Walton v Independent Living Organisation Ltd. [2003] IRLR 469*
Leisure Employment Services Ltd v Commissioners for HM Revenue & Customs [2007] IRLR 450
Revenue & Customs Commissioners v Annabel’s (Berkeley Square) Ltd. [2009] 4 All ER 55
South Manchester Abbeyfield Society Ltd. v Hopkins [2011] IRLR 300
**Question 2.**
Can you list the statutory employment rights enjoyed by employees under the Employment Rights Act 1996 – do not include unfair dismissal and redundancy as we will consider these topics in greater detail later in the course. How are these employment rights enforced by an employee where the employer is in breach?

*Forster v Cartwright Black* [2004] IRLR 781

**Specific Task:**
Examine the case law cited below on the scope of the prohibition of unlawful deduction from wages in terms of Part II of the Employment Rights Act 1996. For each listed case, ensure that you can provide:

a) A summary of the relevant facts
b) The issue decided
c) The decision

**Specific Reading:**
ERA, ss. 1(1) & (2), 2, 3, 4, 8, 11, 13(1), 23(1), 44, 45A, 47, 47A, 47B, 47D, 48, 49, 50(1), (2), (3) & (4), 51, 57A, 57B, 61(1), 63(1), 86(1), 92(1) & 93(1)(a)

*Delaney v Staples* [1991] IRLR 112*
*Kent Management Services Ltd. v Butterfield* [1992] IRLR 394*
*Robertson v Blackstone Franks Investment Management Ltd.* [1998] IRLR 376*
*Farrell Matthews and Weir v Hansen* [2005] IRLR 160*
*Coors Brewers Ltd. v Adcock* [2007] IRLR 440*
*Atchoe v Camden Primary Care Trust* (2007) 151 S.J.L.B. 672
*Cooper v Isle of Wight College* [2008] IRLR 124
*Stringer v HM Revenue & Customs* [2009] IRLR 214*
*Mouradian v Tradition Securities and Futures SA* [2009] EWCA Civ 60
*HM Revenue & Customs v Stringer* [2009] IRLR 677*

**Question 3.**

What is ‘rolled-up’ holiday pay and is it lawful under the Working Time Regulations 1998?

What is ‘unmeasured working time’?

See ss. 45A, 48(1ZA) and 101A of the Employment Rights Act 1996. What is the effect of these sections?

Are these Regulations and the European Directive on which they are based, in need of reform? What is the current position with regard to the EU’s proposal to abolish the Working Time opt-out? In order to answer these questions, see the Deloitte “Study to support an Impact Assessment on further action at European level regarding Directive 2003/88/EC and the evolution of working time organisation” which is available from [http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205](http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205)

**Specific Reading:**
Lisa Rodgers, “The Notion of Working Time” (2009) 38 ILJ 80

Barber v RJB Mining (UK) Ltd. [1999] IRLR 308*
Sindicato de Medicos de Asistencia Publica (SIMAP) v Conselleria de Sanidad y Consumo de La Generalidad Valenciana [2000] IRLR 845*
R v Secretary of State for Trade & Industry, ex parte BECTU [2001] IRLR 559
Landshauptstadt Kiel v Jaeger [2003] IRLR 804*
Gallagher v Alpha Catering Services Ltd. [2005] IRLR 102
Pfeiffer v Deutches Rotes Kreuz [2005] IRLR 137*
Robinson-Steele v RD Retail Services Ltd. [2006] IRLR 386*
FNV v Staat der Nederlanden [2006] IRLR 561
Commission v UK [2006] IRLR 888*
Sayers v Cambridgeshire County Council [2007] IRLR 29*
Miles v Linkage Community Trust Ltd. [2008] I.R.L.R. 602
Stringer v HM Revenue & Customs [2009] IRLR 214*
Lyddon v Englefield Brickwork Ltd. [2008] IRLR 198
HM Revenue & Customs v Stringer [2009] IRLR 677*
Pereda v Madrid Movilidad SA [2009] IRLR 959*
Lyons v Mitie Security Ltd [2010] IRLR 288
Zentralbetriebsrat der Landeskrankenhaüser Tirols [2010] IRLR 631*
Russell v Transocean International Resources Ltd. [2011] IRLR 24
Fuß v Stadt Halle (No.2) [2011] IRLR 176*
Hughes v The Corps of Commissionaires Management Ltd. (No. 2) [2011] IRLR 100

Question 4.

Explain how the Additional Paternity Leave Regulations 2010 (SI 2010/1055) reform the law of maternity, paternity and parental leave.

What subordinate legislation applies for the purposes of maternity, parental and paternity leave?

Do you agree with the Government’s extension of the period of a father’s paternity leave from 2 to 26 weeks? In your opinion, do you believe that this new scheme is (i) feasible and (ii) desirable?

Outline the mechanics of the employee’s right to request flexible working under ss. 47E, 80F-I and 104C. What is the principal difficulty associated with such a right from the employee’s perspective?

Specific Reading:

ERA, s. 47C, 47E, 48, 55, 56, 57, 71, 72, 73, 75A, 75B, 76, 77, 80, 80A, 80AA, 80B, 80BB, 80C, 80D, 80F, 80H, 80I, 88, 89 and 99
Maternity and Parental Leave etc Regulations 1999 (as amended) (SI 1999/3312)
Parenterity and Adoption Leave Regulations 2002 (as amended) (SI 2002/2788)
Maternity and Parental leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2008 (SI 2008/166)
Additional Paternity Leave Regulations 2010 (SI 2010/1055)
Grace James, ““Enjoy Your Leave but “Keep in Touch”’: Help to Maintain Parent/Workplace Relationships” (2007) 36 ILJ 315

Hoyland v Asda Stores Ltd. [2005] IRLR 438
Rodway v South Central Trains Ltd. [2005] IRLR 583
Commotion Ltd. v Rutty [2006] IRLR 171*
Blundell v Governing Body of St. Andrews Catholic Primary School. [2007] All ER (D) 159 (May)
Department for Work and Pensions v Sutcliffe [2008] All ER (D) 171 (Feb) *
Atkins v Coyle Personnel plc [2008] IRLR 420
Shaw v CCL Ltd. [2008] IRLR 284
Wade v North Yorkshire Police Authority [2011] IRLR 393
Alvarez v Sesa Start Espana ETT SA [2011] 1 CMLR 861*
Question 1

Scottbridge Construction Ltd. v Wright [2003] IRLR 21
Security Guard
Held: Paid NMW as he was on premises for 14 hour shift.

“Held: The rate of pay was determined by applying the agreed hourly rate only to the number of hours worked. Remuneration was paid solely by reference to time.” (Cases & Materials, p.130)

Sleeping @ carers overnight – NMW V.
Being at the end of the phone – only when actually performing duties free to pursue own interests.

Travelling Time
• Paid hourly
• Difficult when worker is constantly travelling from one job to another.

Wage Dispute
• NMW enforcement
• NMW enforcement authorities serve notification upon employers
• Provides anonymity

NMW
• Costs V. foreign workers
  Ethical decisions
  Why employ British workers when foreign workers can do the same work for less?
• Work

Is the statutory right to the be paid the national minimum wage enforceable by the employEE on the basis of contract law?
In other words, if the employER fails to pay an employEE the national minimum wage, can the employEE sue the employER for damages on the basis of a breach of contract?
ENORECEMENT = s.17
Walton v Independent Living Organisation Ltd. [2003] IRLR 469

s.17 of the NMWA 1998 and Walton v Independent Living Organisation Ltd. [2003] IRLR 469 demonstrate that an employee’s right under s.1 of the NMWA 1998 is enforceable by raising an action for a breach of his contract of employment in the courts.
Hence, although a statutory provision, s.1 confers a contractual right upon an employee.

1.— Workers to be paid at least the national minimum wage.
(1) A person who qualifies for the national minimum wage shall be remunerated by his employer in respect of his work in any pay reference period at a rate which is not less than the national minimum wage.

17.— Non-compliance: worker entitled to additional remuneration.
(1) If a worker who qualifies for the national minimum wage is remunerated for any pay reference period by his employer at a rate which is less than the national minimum wage, the worker shall [at any time (“the time of determination”)] be taken to be entitled under this contract to be paid, as additional remuneration in respect of period, [whichever is the higher of—]
   (a) the amount described in subsection (2) below, and
   (b) the amount described in subsection (4) below.
(2) [The amount referred to in subsection (1)(a) above] is the difference between—
   (a) the relevant remuneration received by the worker for the pay reference period;
   and
   (b) the relevant remuneration which the worker would have received for that period had he been remunerated by the employer at a rate equal to the national minimum wage.

(3) In subsection (2) above, “relevant remuneration” means remuneration which falls to be brought into account for the purposes of regulations under section 2 above.
(4) The amount referred to in subsection (1)(b) above is the amount determined by the formula—

\[
\frac{A}{R1} \times R2
\]

where—
A is the amount described in subsection (2) above,
R1 is the rate of national minimum wage which was payable in respect of the worker during the pay reference period, and
R2 is the rate of national minimum wage which would have been payable in respect of the worker during that period had the rate payable in respect of him during that period been determined by reference to regulations under section 1 and 3 above in force at the time of determination.