Case Number: 6022446/2024

EMPLOYMENT TRIBUNALS

Claimant: **Nicola Terrett**

Respondent: **Bupa Occupational Health Ltd**

Heard at: Reading by CVP **On:** 3 September 2026

Before: **Employment Judge Findlay**

Representation
Claimant: In person
Respondent: Mr P Sangha, Counsel

JUDGMENT was sent to the parties on **3 September 2026,** and written summary reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. However, the Tribunal considers that it is appropriate to provide written full reasons and the following written full reasons are therefore provided:

FULL REASONS

Issues

1. At a preliminary hearing in these proceedings on the 1st of July 2026 before Employment Judge R Russell, the Judge determined that the claimant was not an employee of the respondent at the relevant time, but that the claimant was a worker for the respondent at the relevant time and her complaint of unauthorised deductions from wages relating to holiday pay could therefore proceed. This final hearing was therefore to determine whether, and if so how much holiday pay under the Working Time Regulations 1998 was due to the claimant.
2. Neither party contended that there was a contractual as opposed to statutory right to holiday pay and the claimant's claim is put in the alternative as a complaint of unauthorised deduction of wages – in other words, the only complaint under section 23 Employment Rights Act 1996 ("ERA") relates to non-payment of statutory holiday pay.
3. The claimant's contract for services with the respondent began on or about the 15th of December 2023. It was agreed between the parties that her leave year ran from the 1st of January to the 31st of December each year and that no annual leave was outstanding at the point she entered her agreement with the respondent, nor was any residual leave carried over into the 2024 leave year. So, consideration is limited to the leave year beginning on the 1st of January 2024.

4. There was **a dispute** between the parties as to whether the claimant's engagement with the respondent ended on the 21st of August 2024, 31 August 2024 or whether it was the 31st of October 2024. The claimant's original pleading claimed that it ended immediately on 21 August 2024, but she now argues that in accordance with a letter sent on the 19th of August 2024, reflecting a discussion on the 25th of July 2024, that her contract with the respondent came to an end on the 31st of October 2024 and therefore that annual leave under the Working Time Regulations 1998 should be calculated up to that date.
5. By contrast, the respondent argued that the claimant's contract was subsequently terminated immediately on the 21st of August 2024 by virtue of a letter of that date from Jenny Cooney, Regional Operations Manager and that annual leave under the working time regulations should be calculated up to the 21st of August 2024, or at the latest, 31 August 2024, the latest date of payment. So, I have to determine that dispute.
6. Both parties also agree that the claimant **took no annual leave** between the 1st of January 2024 and whichever is the appropriate termination date.
7. The respondent argued that the claimant should be treated as an "irregular hours" worker under regulation 15B of the1998 regulations. That regulation, however, states that it applies to **leave years beginning on or after the 1st of April 2024.** It is common ground that this claim relates to the leave year which began on the 1st of January 2024, so that, I find, regulation 15B of the 1998 regulations cannot apply. There is a **dispute about whether the claimant effectively had normal working hours** when engaged under her workers contract with the respondent.
8. In addition, there is a **dispute** as to whether in the calculation of her annual leave, it is appropriate to include a monthly payment received by the claimant between January and August 2024 (but not in December 2023) referred to as an IR 35 payment. In the claimant's words (in her witness statement for this hearing), the IR 35 uplift, an additional £10 per hour, was introduced to compensate her for the financial effects of her engagement being treated as falling within IR 35 for taxation purposes.
9. The claimant accepts that a monthly payment for Bupa PMI, private medical care, should not be included in the calculation.

Findings of Fact

10. Employment Judge Russell made some findings of fact about the claimant's contract with the respondent, and I am bound by those findings, which are findings about disputed issues between the same parties in respect of the same cause of action in the same proceedings.
11. At the point at which the respondent acquired the assets of Smart Medical, the claimant had been working for Smart Medical for six years as a Membership Administrator, dealing with accounts and purchase ledgers, and also acting as PA to Michael Parker, the Chairman and CEO. The Judge found (at paragraph 13) that, in practice, the claimant worked on average around 4 days per week for Smart Medical. She typically chose not to work on Thursdays. She also provided other services for another client with whom she had worked for around 15 years.
12. The claimant said to me during the hearing that she thought that the incorrect spreadsheet, as she put it, had been put before Judge Russell. This refers to schedules which were produced during the due diligence process in respect of the acquisition of Smart Medical by the respondent.

Judge Russell understood there were two different schedules, and she deals with these in her findings of fact. At paragraph 12, the Judge notes that regarding the claimant's hours of work in the initial schedule dated the 14th of June 2023, it was stated that the claimant's hours were on an “as required” basis and that she was paid an hourly rate and her salary was “as per demand”.

13. Then, at paragraph 14, the Judge noted that Michael Parker of Smart Medical provided the respondent with an updated schedule of staff dated 10th of November 2023. In that schedule, by contrast, the claimant was described as working both from home and in an office, that she was contracted to work 32 hours per week and that she received expenses, although she was described as self-employed. There was also a suggestion that she was on a three-year fixed term contract
14. The Judge noted at paragraph 15 that the claimant was aware, in her role as Michael Parker's PA, of the contents of these schedules but did not query them.
15. Judge Russell found that, on the 15th of December 2023, the respondent's solicitors noted the difference in the two schedules about the claimant's engagement, and that a further updated schedule was provided which does not mention that the claimant was contracted for 32 hours per week. In paragraph 17 of her judgment, the Judge finds that “In sum, the final agreed account of the claimant's terms of engagement was that the claimant was self-employed, there was no mention of a fixed term agreement, she worked on an “hours as required” basis and had a three-month notice period”.
16. At paragraph 19, Judge Russell found that there was no written agreement between the claimant and the respondent when she began working for it. The arrangement was that she would continue to work on the same basis as she had worked before, although I note that as she was not an employee, the claimant’s terms were not protected under the TUPE Regulations 2006.
17. At paragraph 20, Judge Russell found that the claimant, after the acquisition of Smart Medical by the respondent, essentially worked autonomously on the Smart Medical membership as she had done before, although she was provided with a “Bupa” e-mail address. She had flexibility as to when she worked. She was paid following provision of an invoice where she would describe her hours of work. The Judge found that the claimant routinely began work at 10am and typically ended at 4:00pm although she had flexibility to finish earlier and she did on occasions. There was no system for checking the hours the claimant worked. It was essentially taken on trust that she worked the hours for which she invoiced the respondent for payment. The Judge added in paragraph 20 that the claimant was responsible for her own tax affairs.
18. So, the Judge's findings were clearly based on the invoices submitted by the claimant, which were at pages 175 to 182 of the file for the preliminary hearing. They are at pages 67 to 74 in the bundle before me, although the December 2023 invoice has been added separately at page 76. The December 2023 invoice was not specifically drawn to my attention during the hearing but has come to my attention when I reviewed the documentation to produce these written reasons. As it is relevant to the amount due I have taken it into account.
19. In the hearing before me, the claimant sought to argue that although her invoices indicate that she was working either 98 or 99 hours per month so

that she was being paid either £3430 per month plus £980 IR 35 element where she worked 98 hours per month or £3465 plus £990 IR 35 element if she claimed 99 hours, these invoices were not a true reflection of her actual work, and therefore that she should be paid holiday pay based on what she says were the actual hours she worked. For example, at paragraph nine of her witness statement for today's hearing, she says that she could arrange aspects of her working time each day over 4 days, by starting early or finishing late, but in reality, the job took up 4 full days each week.

20. At paragraph 10 she says her evidence is not that she was contractually required to record exactly 32 productive hours on a timesheet every week, but that four regular working days per week was the established pattern under which she worked. At paragraph 11 she says that the invoices which show 98 or 99 hours per month (and which she produced) do not accurately reflect the way in which the arrangement operated in reality.
21. She says that before the transfer, her former Bupa manager, Mr Alan Cole, advised her to structure her invoices so that her monthly remuneration remained at approximately the agreed level, which was £3500 per month. She goes on: “Consequently my invoices were generally constructed using either 98 or 99 hours at £35 per hour to keep within the agreed limits as per request”. This appears to suggest that her invoices were something of a sham, as she says they did not reflect the tr4uth of the matter.
22. The claimant says in paragraph 15 that, although she initially noted apparent hours worked each day on her invoices from January 2024 to March 2024, she subsequently decided to remove this “timesheet style submission” in April 2024 onwards, because it was not actually reflecting the four full days she worked for Bupa every week. She said that she did not submit detailed timesheets recording the start and finish time of every working day as she had not been instructed to do so and the 98- or 99-hours figure should not be interpreted as though she had.
23. Although the claimant says that the invoices are not an accurate reflection of the hours she was actually working, I note that the first 3 invoices between January and March do record start and finish times so that objectively speaking, anyone looking at them would consider that the claimant was setting out the hours she actually worked. That is what the invoices say. No doubt these invoices would be used by the claimant for official purposes, such as in relation to tax.
24. The claimant has produced no evidence, documentary or otherwise, despite there having been directions for disclosure at an earlier stage in these proceedings, to show what were the hours that she claims she actually worked if they differ from the hours on the invoices. Indeed, it was not clear to me exactly how many hours per month the claimant is alleging that she was working, referring to only four full days, although acknowledging that, as the Judge previously found (based on the invoices), there were times when she would finish earlier than 6:00pm.
25. Although she claims that she was not required to work exactly 32 hours per week she has not specified what her case is in relation to the number of hours worked. When I asked the claimant why, in some months, she had claimed 98 hours on the invoice and in others 99, she could not explain why. At one point, when the respondent was arguing that regulation 15B of the 1998 regulations applied, she tried to argue that because the invoices show 98 and 99 hours, she was not an irregular

hours worker. Although regulation 15B does not in fact apply, it seemed to me that the claimant was trying to have her cake and eat it, by relying on the invoices when it best suited the case she was making.

26. In her additional calculation at pages 54 and 55, the claimant does not refer to hours of work at all but has based her calculation on days of leave. Although the respondent refers to hours of work in its skeleton argument, I remind myself that this is effectively a claim for a payment on termination under Regulation 14, which is based on a proportion of annual entitlement expressed in weeks, not hours or days, see below. As I have set out above, there is no claim for unauthorised deductions which goes beyond the claim for statutory holiday pay.
27. On the balance of probabilities, I reject the claimant's allegation that she was working for the respondent for more hours than she set out in her invoices and therefore that her holiday pay ought to be calculated on this non-specific basis. The claimant accepts that she did not always start or finish at the same time and I consider that even if I was to accept that she worked around 32 hours per week, that is not a definite figure and the claimant has provided no evidence from which I could calculate what hours she was actually working, apart from the invoices.
28. As Judge Russell found, the invoices were taken on trust, in other words when the claimant said she had worked 98 or 99 hours per month, the respondent trusted that was the correct number of hours and paid accordingly.
29. I pointed out to the claimant that if it is her case that she had agreed with Mr Cole that she would be paid around £3500 per month and that was the case however many hours she did, if it was necessary for me to work out an hourly rate by dividing more than the 98 or 99 hours per month into the amounts claimed, that would produce a far lower hourly rate than the £35 per hour asserted by the claimant. But under the mechanism in the regulations, as it stood for leave years beginning prior to 6 April 2024 and as I have found below, and as the claimant accepts that she had not actually taken any leave in the relevant leave year, I do not actually need to calculate an hourly rate, or a daily rate as claimed by the claimant in her schedules of loss, for the reasons explained below.
30. In all the circumstances, I find that the invoices submitted are an accurate reflection of the hours that the claimant worked and the payments that were made.
31. As to the termination date of the claimant's contract with the respondent, it is correct that on page 65, in a letter dated 19th of August 2024, Jenny Cooney stated that although the respondent would continue to pay for three months' notice, and the claimant's last working day would be the 31st of August 2024, her contract would come to an end on the 31st of October 2024. If matters had stopped there, I would have found that the claimant's contract continued to that date, the 31st of October 2024.
32. Two days later, however, Ms Cooney wrote again to the claimant on the 21st of August, referring to the meeting on the 25th of July 2024 and the subsequent letter of the 19th of August 2024. In the second paragraph, Ms Cooney states: "You will be aware that whilst you provide services under your agreement your professional obligations and the other obligations you have agreed under your agreement continue [sic]. It has come to our attention that you are not providing the services within Bupa's best interests and as such we regret to inform you we have made the decision to cease your provision of services at Bupa effectively immediately. Please

note that you will still receive payments for the full 3 months' notice as explained to you in the previous letter dated 19th of August 2024, and these will be paid in full in the August payment."

33. I find, reading the letters together objectively, that although initially the respondent gave the claimant 3 months' notice to terminate her contract with it, having had further information on the 21st of August 2024, the respondent reviewed the situation and decided to terminate the contract immediately, compensating the claimant financially by paying her as indicated in the letter.
34. In my view, that is the only sensible interpretation to give to the words: "we have made the decision to cease your provision of services at Bupa effectively immediately", read in the light of the previous letter which gave three months' notice. In other words, the respondent was terminating the claimant's contract with immediate effect, whilst honouring its agreement to pay her for the following three months. This was the reason why she received accelerated payment of the three months' notice, which would otherwise have been paid monthly until the end of October 2024. So, the claimant's contract terminated on the 21st of August 2024.
35. The IR35 payment of £980 or 990 per month was paid in every month from January to August inclusive in 2024 and was for the purposes set out above, to ensure that the claimant did not receive less net pay than she would if she was not classed as an IR35 worker.

Relevant Law:

36. Under regulation 13(A1) of the Working Time Regulations 1998 (WTR), it states that this regulation applies to a worker in respect of any leave year beginning before the 1st of April 2024, which is the case here.
37. Regulation 13(1) then provides that a worker is entitled to four weeks' annual leave in each leave year. As we have seen in this case the leave year is agreed to start on the 1st of January and end on the 31st of December in each calendar year.
38. Regulation 13A, Entitlement to Additional Annual Leave says in paragraph (A1) that this regulation applies to a worker in respect of any leave year beginning before 1st of April 2024. Again, that is the case here.
39. Paragraph 13A (1) then provides that subject to provisions in subparagraphs 3 and 5, which do not apply here, and regulation 26A, a worker is entitled in each leave year to a period of additional leave determined in accordance with paragraph 2. Paragraph 2 provides that the period of additional leave to which a worker is entitled under paragraph (1) is 1.6 weeks. Regulation 26A relates to entitlement to additional annual leave under a relevant agreement, which does not apply here.
40. I note that where regulation 15B does not apply, as it cannot here as the leave year started before 1 April 2024, the entitlement to leave is expressed in weeks.
41. **Regulation 14** (1) then provides that paragraphs (1) to (4) apply where a worker's employment is (a) terminated during the course of her leave year, and (b) on the date on which the termination takes effect, the proportion she has taken of the leave to which she is entitled in the leave year under regulations 13(1) and 13A (1) differs from the proportion of the leave year which has expired. In this case, the claimant had not taken any leave, so this provision will apply.

42. Subparagraph 2 of regulation 14 provides that where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, the respondent shall make her **payment in lieu of leave in accordance with paragraph 3.**

43. As there is no provision of a relevant agreement applicable in this case, under regulation 14(3)(b) the payment due from the respondent to the claimant will be a sum equal to the amount that would be due to the worker **under regulation 16** in respect of a period of leave determined according to the formula A x B - C where A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A (5.6 weeks), B is the proportion of the worker's leave year which expired before the termination date (see below) and C is the period of leave taken by the worker between the start of the leave year and the termination date (here, C is nil, so the calculation is A x B).

44. Under **regulation 16,** a worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulations 13 and 13A (in this case) at the rate of **a week's pay** in respect of each week of leave. Under subparagraph 2, **sections 221 to 224 of the Employment Rights Act 1996** shall apply for the purpose of determining the amount of a week's pay for the purposes of this regulation, subject to the modification set out in paragraph 3 and certain other provisions.

45. The relevance of **paragraph 3 of regulation 16** in this case is that references to employee in sections 221 to 224 are to be substituted by references to the worker, and as if reference to the employee's contract were references to the worker's contract, as if the references to **sections 227 and 228** did not apply and, importantly, that references to averaging pay over 12 weeks are to be substituted by 52 weeks.

46. Paragraph 16(3ZC) provides that in the case of a worker who on the calculation date had been working for the employer for less than 52 complete weeks, the "relevant period" under sections 221-224 is the number of complete weeks for which the worker has been engaged.

47. Under paragraph (3ZE), in calculating the average weekly amount of payments for the purpose of paragraph (3ZB), no account was to be taken of any weeks during the relevant period in which no remuneration was payable to the worker. This provision does not apply here.

48. Under **section 221** of the 1996 Act, it is stated that section 221 and sections 222 and 223 apply where there are **normal working hours for the worker when employed under the worker's contract in force on the calculation date.**

49. Section 224 applies when **there are no normal working hours for the worker when employed under the worker's contract in force on the calculation date.**

50. Remuneration for the purposes of section 224 is not defined. There were many cases in the European Court of Justice prior to 1 January 2024 when it was held that the purpose of the Working Time Directive, which the 1998 regulations were intended to implement, was to ensure that workers had access to their "normal" remuneration during periods of statutory leave and should not be disadvantaged financially when taking leave (see for example the case of **Robinson-Steele 2006 ICR 932, Lock v British Gas 2014 ICR 813**).

51. Following the withdrawal of the Uk from the EU, subparagraph 3ZA of regulation 16 and following were inserted from the 1st of January 2024. These provide, in the case of entitlement **under regulation 13** (i.e. the

first 4 weeks of leave in a leave year) the following types of payment are to be included when determining the amount of a week's pay for the purposes of this regulation: Subparagraph (a) relates to payments, including commission payments, which are intrinsically linked to the performance of tasks which a worker is obliged to carry out under the terms of their contract; and alternatively (so far as relevant) subparagraph (c) other payments, such as overtime payments, which have regularly been paid to a worker in the 52 weeks preceding the calculation date.

Application of Law to Facts:

52. **A week's pay** under regulation 16 and the 1996 Act: It seems clear from the judgment of Judge Russell that she had found that there were no normal working hours for the claimant under the workers' contract in force between the claimant and respondent on the calculation date (here, the "termination date" under regulation 14). Rather, she found that the claimant was able to decide what hours to work. This seems to be supported in any case by the claimant's own evidence that there was not a fixed pattern of 32 hours per week and from the invoices which she submitted which show finishing times which varied between 2:00 pm and 4:00 pm in January 2024, from 2:00 pm to 5:00 pm in February 2024 and from 1:00pm to 5:30pm in March 2024. There was 1 occasion in February when the claimant started at 12 noon as opposed to 10am also.
53. Therefore, under **section 224 of the Employment Rights Act 1996**, I find that section applies and that there were no normal working hours for the claimant when she was employed under the contract in force on the calculation date (i.e. the termination date, 21 August 2024).
54. In such a case, taking account of regulation 16 WTR, the amount of a **week's pay** is usually the amount of the employee's average weekly remuneration in the period of 52 weeks ending in the last complete week before the calculation (here termination) date, or in this case, where the claimant had worked for the respondent for less than 52 weeks, under regulation 16(3) (e)(i) (and, where it applies, (3ZC)), the average will be based on the number of complete weeks actually worked.
55. Including the 16 days that the claimant was employed in 2023, I find that she was employed for 250 days or 35 complete weeks for section 224(2) and regulation 16(3)(e)(i) and(3ZC).
56. I consider that the IR35 payment was paid to ensure that the claimant did not lose out as a result of having IR35 status, in other words it was part of her reward for the services undertaken, to ensure that she did not receive less for her services than the respondent intended due to her tax status. It was, therefore, in my view part of her reward for her services or remuneration within section 224.
57. If I am wrong about that, alternatively I would find, applying regulation 16(3ZA) (c), that the IR35 payments made to the claimant were indeed payments regularly made to her in the 52 weeks/period of weeks in which the claimant was employed by the respondent prior to the calculation date and they should therefore be included in the determination of a week's pay for the purposes of regulation 16.
58. Including the IR35 payment, if I include the December 2023 invoice, the claimant's average weekly remuneration under section 224 is £37252.50/35 = £1064.36.

59. The number of weeks for which the claimant had worked during the leave year before the termination date of 21 August 2024 is 234 days or 33.4 weeks.
60. The relevant period of leave under regulation 14(3)(b) is A (5.6 weeks) x B (33.4/52 = 0.64) = 3.6 weeks.
61. As this is less than 4 weeks, it is leave due under regulation 13.
62. Thus, the payment due under regulation 14 is (3.6 x 1064.36) = £3831.70.
63. As this claim is for a termination payment under regulation 14(2), for the purposes of the calculation of "A" in 14(3)(b), entitlement under regulations 13 and 13A is expressed in weeks. A x B simply gives a proportion of the weeks for which payment must be made and regulation 16 (for these purposes, regulation 15B not applying) provides for a multiplicand of a "week's pay". There is no need to convert this into "days" or "hours" in my view as the claimant agrees that she had taken no leave in the leave year, so there is nothing to deduct under "C".
64. The amount set out here differs slightly to the claimant's advantage from that announced at the hearing (£ 3831.70 compared with £3809.79) as my attention had not been drawn to page 76 at this point, so at the hearing I averaged the amount paid between January and August 2024 over the 33 weeks of the leave year under section 224 (and did not add the amount paid in December 2023) to get the multiplicand.
65. Having spotted page 76 whilst writing these reasons I have been able to correct the sums involved under the "slip" rule as set out above.

Approved by:

Employment Judge Findlay

Date: 9 September 2026

SENT TO THE PARTIES ON

12 October 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

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