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## November 2018 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

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In this month's edition, we report on:

- Holiday Pay – What happens if an employee doesn't take it?
- Harassment – Is calling an employee a 'fat ginger pikey' harassment?
- How productive are our meetings?

### Holiday Pay – What happens if an employee doesn't take it?

Mr Shimizu brought a claim for unpaid holiday from 2011 and 2012 in a German company. Under German law, he lost the right to carry over untaken leave to the next year.

The Working Time Directive states that if a worker doesn't take paid annual leave in any year, their leave should not automatically be lost, unless the employer has 'diligently' brought it to the worker's attention that leave will be lost.

So, if employees do not take annual leave, employers must inform employees accurately and in good time of their rights and that they may lose their annual leave entitlement.

**Employers:** Check if your employees have taken all their leave, if not make sure you are clear to them that they will lose it.

**Contact us:** We can advise on calculating annual leave and holiday pay.

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## Harassment – Is calling an employee a ‘fat ginger pikey’ harassment?

It seems not in the recent case of *Evans v Xactly*. The employee was a sales executive with type 1 diabetes and links to the traveller community.

His employment was ended due to his poor performance. He brought many claims under the Equality Act 2010, including claims for harassment linked to disability, as the employer had called him ‘fat’ (comments which he linked to his diabetes) and race (for the ‘pikey’ comment which he said was linked to his traveller community association).

The employment tribunal found that there was banter amongst the sales team. Although certain comments are highly offensive in some workplaces, the culture was different at Xactly.

The employee was also involved in this banter and was comfortable with the office culture and environment. The employee had also not complained at the time of the comment. They said he would have done if he had felt offended. The tribunal therefore found there had been no harassment.

It was appealed, and the Employment Appeal Tribunal agreed. The context was key. The comments were not harassment as the employee was actively involved in the culture of banter between colleagues.

It was found it was light hearted reciprocal banter and did not create a hostile working environment. The facts showed that the employee was not offended at the time.

**Employers:** Normally such comments may be harassment, each case depends on its facts. It is wise to address such banter in the workplace immediately.

**Contact us:** We can advise on harassment and discrimination claims.

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## How productive are our meetings?

Economist and workplace commentator Stephanie Hare has published ideas on why British productivity is so low. We all know meetings are the problem... taking too long, unproductive and tedious half the time.

Conference calls and video conferencing are the worst offenders when technical issues take up the first few minutes. Does this sound familiar? Everyone gets settled and then in comes the obligatory latecomer and the whole thing starts over again.

Meetings often involve people who do not need to be there. They are often badly organised, have a lack of any agenda and if they have an agenda, people often do not keep to it. They invariably run over, people like the sound of their own voice and the meeting ends without any action points. It is left with no one knowing who is doing what.

Use the first 5 minutes for people to read the papers as invariably they will not have done so.

Research shows that more women will speak up if the first question or comment is offered by a woman.

The final tip is to seek honest feedback on meetings from attendees. If feedback is poor, cut numbers, tighten up agendas and ensure everyone is heard.

**Employers:** Structure meetings properly, keep to the agenda and don't invite too many people – it's a waste of time.

**Contact us:** We can assist to train your managers on how to hold effective meetings.

**For more information or assistance Email:** [enquiries@employmentlawsupport.co.uk](mailto:enquiries@employmentlawsupport.co.uk)

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**Silverstone**  
Business Forum

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