

Sickness and Annual Leave



Introduction

Since the European Court of Justice (ECJ) ruled that an employee (or worker) who is off work sick before a period of booked annual leave and then absent for that reason into the holiday period, is entitled to have this treated as sickness absence and to take the holiday at a different time either in the current or the next holiday year, we have had numerous queries regarding holiday and sickness.

Sickness and holidays

In this ruling, the ECJ reaffirmed the purpose of annual leave and the difference to that of sickness absence. It gave a reminder that the purpose of paid annual leave is to enable the worker to “rest and enjoy a period of relaxation and leisure”. The purpose of sick leave is to allow a worker to recover from illness. It should be remembered that holiday entitlement under the Working Time Regulations is seen very much as a health and safety measure.

Importantly, this ECJ case concerned an employee who fell ill *before* he was due to take annual leave and it remains to be seen what the position would be if an employee claimed to have fallen ill while on holiday. This has yet to be tested but there is the obvious concern that some unscrupulous employees could attempt to claim they had fallen sick on holiday in an attempt to extend their holiday entitlement.

What should employers do?

At the moment, the ECJ decision can only apply to workers in the public sector as private sector workers are unable to enforce EU rights directly in an Employment Tribunal. It would really need an amendment to the Working Time Regulations in the UK for the ruling to apply fully.

However, if an employee is unable to take their holiday because of sickness, we would recommend that you consider dealing with it as sickness and paying sickness payments, rather than holiday pay, and that you review your holiday/sickness clause to ensure that you ask for medical certificates issued from a Doctor in the event that an employee wishes to claim sickness whilst on a period of holiday leave.

Minimum Wage and Redundancy Pay

We advised on rate changes in our October Fact Sheet but, as we are still receiving queries on this, have pleasure confirming what these rates are. With effect from 1 October 2009, the National Minimum Wage rates rose to £3.57 per hour for workers aged 16 to 17, £4.83 for workers aged 18 to 21 and £5.80 for workers aged 22 and over. The limit on a week's pay for statutory redundancy pay also rose from £350 to £380.

Can we help?

If you would like further advice on sickness and holiday entitlements or you have other employment issues that you would like to discuss, please do call us. Simply telephone us on 01708 758958 or visit us at www.hrinsight.co.uk.

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