



Holiday pay and long-term sickness absence

Introduction

The EC Working Time Directive (“the Directive”) lays down minimum safety and health requirements for the organisation of working time. Article 7 provides that every worker is entitled to at least four weeks paid annual leave.

European Member States are required to introduce domestic legislation to incorporate the Directive. In the UK the Working Time Regulations 1998 (“WTR”) were introduced to bring UK law in line with the Directive.

In the recent case of *Stringer v HMRC*, the European Court of Justice (“ECJ”) has been asked to decide whether workers on long-term sick leave can continue to accrue their minimum statutory holiday entitlement whilst off sick and, if so, how and when they should be able to take that leave.

Facts of the case

The appellants in *Stringer* were all employed by HMRC. Mrs Khan was absent on long-term sick leave and was receiving sick pay. During this period she gave notice to her employer that she wanted to take 20 days paid annual leave. Her employer refused and Mrs Khan issued proceedings in the employment tribunal under the WTR claiming that she was entitled to take annual leave and to be paid during her leave. The tribunal upheld her claim.

Mr Ainsworth, Mrs Kilic and Mr Thwaites were each dismissed by HMRC. They had all been on long-term sick leave and had been absent for the whole of the leave year in which they were dismissed. They had not taken any leave during that year. They each brought a claim in the employment tribunal for compensation in lieu of their accrued yet untaken statutory holiday entitlement. The tribunal upheld their claims.

HMRC took its case to the Employment Appeal Tribunal, which dismissed its appeal but granted leave to appeal to the

Court of Appeal. HMRC argued that the purpose of the WTR was to protect workers health and safety and that leave would be of no benefit to those who are not actually working.

The Court of Appeal found in favour of HMRC and the employees’ subsequently appealed to the House of Lords. The House of Lords referred questions on the interpretation of the WTR to the ECJ.

ECJ’s decision

The ECJ has ruled that workers on long-term sick leave are entitled to continue to accrue their minimum statutory holiday entitlement during any sick leave period. The ECJ found that:

- (1) Whilst national laws may prevent employees taking annual leave during their sick leave period, employees should be entitled to take their accrued holiday at another time.
- (2) Where an employment relationship ends, employees are entitled to a payment in lieu of any accrued yet untaken holiday, at their normal rate of pay.

The ECJ has decided that the UK national courts can decide whether employers may require workers to return to work before taking any holiday. The case will now be remitted back to the House of Lords who will consider this issue.

Conclusion

The decision has important implications for employers who are dealing with employees on long-term sick leave. Employees will now be entitled to carry over any unused holiday entitlement from one leave year to the next and receive a payment in lieu of any unused holiday at the end of their employment. In the current economic climate, with many employers struggling to keep their business afloat and retain staff, this decision will come as a bitter blow.

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