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Holiday entitlement of employees who are on long term sick leave

Since the introduction of the Working Time Regulations 1998 it has been understood that employees who are on long term sick-leave, had a right to normal paid holiday entitlement, irrespective of whether they were able to work when they sought to take holiday. It has been common for employees on long term sick leave to ask to take the last few weeks of the holiday year as holiday to use up the full year's holiday entitlement. Even where employees had run out of sickness benefit, it was understood that they had the right to holiday on full pay, to the extent of their full entitlement, as if they had been working normally.

However, a recent Court of Appeal ruling has tried to clarify this situation. Effectively the judgement says that an employee off sick at the beginning of the holiday year does not have any entitlement to paid holiday under the Working Time Regulations until he/she returns to work.

Therefore, if an employee is off sick for the **whole of the holiday year**, he/she cannot claim that the last few weeks of the holiday year are annual holiday and that he/she has an entitlement to be paid for those weeks as if he were on holiday. This ruling did not consider a situation in which an employee is absent sick for half the holiday year. Given the wording of the Working Time Regulations, it seems likely that if the employee is absent for part of the holiday year only, then his/her entitlement to full holiday entitlement will be protected.

This decision will probably go to the House of Lords on appeal so it would be as well for employers to regard the Court of Appeal decision as applying only to situations where an employee is off sick for the whole of the holiday year for the time being, which some might argue is only commonsense.

Employers can, of course, include a contract term that allows employees to claim paid holiday whilst on sick leave.

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