



News Alert

An Employment Tribunal has held that employees who are unable to take their statutory holiday due to sickness absence, are entitled to carry over their full annual leave entitlement of 5.6 weeks (28 days) to the following holiday year.

Implications

Although this decision by an Employment Tribunal is not binding on other employment tribunals, it is another example of UK tribunals giving employees the benefit of the European Court of Justice's decision earlier this year, despite the prohibition on carry over of holiday from one year to the next in the Working Time Regulations (WTR).

Key points of the Employment Tribunal's decision:

- Employees accrue 5.6 weeks holiday each year even when absent from work due to sickness and cannot be required to take that holiday during their sickness absence.
- If an employee is unable to take their holiday during the current holiday year because of sickness, then it may be carried over to the next holiday year.
- Regulation 13(9) of the UK's WTR is therefore incompatible with Article 7 of the Working Time Directive (WTD) and accordingly words would have to be added into the WTR to make it 'compatible' with the aims of the WTD [i.e. Europe, Tribunals and UK legislation is contradictory]

The Government is currently consulting on amending the WTR so that carry over of untaken holiday is permitted in certain circumstances, including where an employee has been absent due to sickness.

Therefore, employers should keep records of any statutory holiday accrued by employees absent on sick leave and obtain advice when it becomes clear that the employee will not be able to use up their holiday entitlement before the end of the current holiday year.

The material contained in this article is provided for general purposes only and does not constitute legal or other professional advice. Appropriate advice should be sought for specific circumstances and before action is taken.



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