

Legal Update – November 2011

Sick workers have the right to carry statutory holiday over to the next working year

Adams and another v Harwich International Port Ltd ET/1503084/10 and 1503085/10

This recent case, which was heard in the Employment Tribunal, looked at whether workers have a right to carry forward to the next year untaken statutory, paid annual leave.

The two Claimants were employed by Harwich International Port Ltd as controllers. Both were off sick for a number of months in the leave year 2010. Neither Claimant asked for or took any annual leave whilst off sick, and were not requested by the Defendant to do so. When they sought permission to carry the days of annual leave over to the next leave year, this was refused.

Annual leave entitlement is set out in EU Working Time Directive which provides for workers to be entitled to a minimum of four weeks paid annual leave and the Working Time Regulations 1998 which provide for entitlement to a further 1.6 weeks.

The employment judge concluded that the intent of the Working Time Directive was to provide workers with 'rest and breaks from work' and accordingly to treat sick leave, which is 'to recover and recuperate from illness', as holiday would not make any sense.

The judge went on to say that workers must be given the opportunity to take their annual leave in a current leave year as this will allow them to obtain the benefit of the intention of annual leave, the rest from work.

If they were not able to take the annual leave in a current leave year for reasons relating to sickness, or following sickness due to employers good business reasons, then the worker has a right for it to be carried over to the next leave year.

As a final note the judge held that the leave could only be taken in the leave year immediately following the current leave year in which it had accrued. There was not a right to carry the leave forward indefinitely.

For any further advice on any the above please contact our Poole office on 01202 725400 or our Dorchester office on 01305 251007.

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