

EMPLOYMENT LAW UPDATE
OCTOBER 2009

A ruling by the European Court of Justice (“ECJ”) has held that the Working Time Directive does not prevent an employee taking annual leave whilst absent from work due to sickness. Further, if the employee does not wish to take his/her holidays whilst on sick leave, annual leave must then be granted in a different period, and if necessary outside of the normal annual leave period.

It appears from the ruling that an employee is not only entitled to postpone holiday because of sickness, but also to request annual leave during a period of sick leave. An employee on sick leave for several months, or even in excess of 1 year, will be able to accrue and hold annual leave entitlement, which they must then be able to take when returning to work. In relevant circumstances, holiday entitlement must be carried over from one holiday year to another.

If the employee’s employment is terminated, the employee must be paid in lieu of that accrued holiday entitlement. It appears that the provisions of the Working Time Directive have not been properly implemented by the UK Working Time Regulations 1998, which expressly prevent the carrying over of statutory annual leave into a subsequent year.

Employers may need to amend sickness absence policies and procedures and may wish to consider a requirement for medical evidence of ill health, even for any short term absence.

On an unrelated matter, you may have seen in the news recently, a case which highlighted the importance of obtaining and keeping appropriate identification records when recruiting workers.

Employers must ensure that they comply with legislation concerning the employment of migrant workers, and also ensure that any such practices or policies in place do not discriminate against prospective workers on racial grounds.

This letter is for guidance only and does not provide legal advice. If you require legal advice in relation to any of the points above, or employment law advice in general, please contact Neil Eaton, Andrew Connock or Jill Jack.

