

EMPLOYMENT LAW UPDATE
JULY 2010

As the main holiday season is now upon us, you may wish to keep in mind the case of *Shah v First West Yorkshire Limited* (2009). This was the first UK case to consider the carrying over of holiday entitlement to the next annual leave year, where an employee is prevented from taking his/her holiday due to illness.

Mr Shah brought a claim against his employers for 4 weeks' leave entitlement which he had booked prior to breaking his ankle. The Tribunal held that Mr Shah was entitled to carry over his holiday into the following leave year as he had been unable to take that holiday due to his broken ankle.

The Working Time Regulations provide employees with paid periods of leisure throughout the working year in order to protect their health. The Tribunal decided that it was consistent with the "thrust" of the Regulations to allow Mr Shah to take the holiday he could not take due to sickness absence, in the following leave year.

The Shah case is only a Tribunal level decision, but other Tribunals may apply this decision. Employers may become obliged to allow employees to carry forward holiday entitlement into the next holiday year, where the employee has been prevented by sickness or injury absence, from taking it in the current year.

In order to prevent abuse of sick pay and holiday entitlement, employers may consider requiring medical certificates to be submitted by an employee for any period of sickness claimed whilst on holiday. Employers should take a consistent approach to any requests from employees to take holidays at a later date due to sickness. The law in this area remains uncertain but may become clearer as similar cases are tried.

Should you have any questions concerning these issues, or any other employment issue, please contact any member of the employment team at Eaton Ryan & Taylor; Neil Eaton, Andrew Connock, Jill Jack, Fatema Begum, Edward Browne or Nadine Berry. This note is for guidance only. It should not be regarded as a substitute for taking legal advice from your usual contact at Eaton Ryan & Taylor.

