



SICKNESS LEAVE V HOLIDAY LEAVE

The Working Time Regulations have been in force for over ten years, have been amended on more than one occasion and have increased the number of paid days of annual leave to 5.6 weeks. However, there has been much confusion over the years in relation to the Working Time Regulations 1998 and this has been compounded by the various interpretation given to the legislation from the courts and tribunals. Consequently, businesses and employers are left with the difficulty of implementing this complicated area of law every day in the workplace and this in turn has led to a plethora of case law and often a lack of certainty for employers and employees alike.

A recent case went to the European Court of Justice – Vincent Pereda v Madrid Movilidad – a Spanish case. The Court considered the issue of whether an employee lost his annual leave entitlement when he was sick during any period of pre-planned/booked annual leave.

Mr Pereda was a specialist driver and he suffered an accident at work around 14 days before the commencement of his pre-planned period of four weeks annual leave. As a result of this he was off for a period of six weeks and his sick leave almost entirely overlapped with his planned holiday leave. He requested an additional period of annual leave in lieu of the fact that he had been ill and not been in a position to take his annual leave. His request for a further period of annual leave was refused by his employer.

He issued proceedings in his national Spanish court and eventually brought his case to the European Court of Justice. The European Court of Justice stated that under the European Directive on the Organisation of Working Time, article 7 must be interpreted as meaning that when the period of leave allotted for annual leave coincides in time with a temporary disability following an accident at work which happened before that period of leave began, the employee affected once he returns to work, has the right to use his leave on dates different from those originally allocated, irrespective of whether the calendar year to which they relate has ended.

The ruling emphasised that there can be no derogations from the entitlement of paid annual leave the purpose of which is to enable a worker to rest and enjoy a period of relaxation and leisure. By contrast the purpose of the entitlement of sick leave is to ensure that he can recover from being ill.

This decision will cause difficulties for employers especially in circumstance where employees return from a period of annual leave with a sickness certificate and request further leave. In addition given that the Working Time Regulations in Northern Ireland stipulate that annual leave cannot be carried over from one annual leave year to the next, this may impact on how an employer manages annual leave for its staff. No doubt there will be repercussions for many businesses.

In light of this employers should actively consider the terms of their contracts of employment together with their annual leave policies and entitlement to ensure compliance with the European Court's decision given the potential impact this may have on workers/employers in the work place. This is especially important to those in the public sector who may be able to rely directly on the European Directive. Advice should always be sought in relation to all employment matters to avoid legal costs and tribunal hearings.

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