



# Accruing Holiday Whilst Absent

The understanding and application of the Working Time Directive, which protects the health and safety of workers and the hours they work, has been deeply affected by the European Court of Justice's reaction to the *Stringer v HMRC* case which occurred earlier this year.

The decision made by the House of Lords has led to a change to the Working Time Regulations 1998, which currently states that statutory holiday entitlement cannot be rolled over into another holiday year. The decision now places the responsibility upon the shoulders of employers to manage their employee's holiday entitlement in the event of long term absence, due to the employees inability to take their entitled holiday.

Following the employee's return to work, employers may encourage them to take any holiday accrued during their absence in either the current or following holiday year if their entitlement is rolled over. There is a risk, however, that business performance may suffer if the employee has accrued a large amount of holiday and requests a further period of absence.

Alternatively, the employee could take any holiday entitlement accrued whilst they are absent meaning their pay would partly be made up of Statutory Sick Pay and then topped up to full pay by their employer. The following of this option could potentially lead to complications as it means that the employee would still be owed paid holiday entitlement as sick pay cannot be paid as part of holiday pay. This means that the employee would have extra holiday entitlement to take once they have returned to work.

The final, and perhaps most sensible option for the employer is to advise their employees to take their accrued holiday whilst they are absent, meaning that Statutory Sick Pay is stopped for the duration of the holiday period. The employee will therefore be paid in full whilst taking their accrued holiday and Statutory Sick Pay will be reinstated once the employee's holiday has been completed. This ensures that entitled holiday is taken in the correct holiday year.

### **A spokesperson from CIPD states that;**

*All employees must be aware of the procedures that their employers will follow in the event of long term absence so that they can plan their holidays accordingly.*



It is also worth considering that employees may be awarded contractual holiday entitlement which can be treated in the same manner as statutory holiday. The accrual of additional days may be restricted however if an employee is absent, suggesting that policies relating to absence need to state that any contractual holiday entitlement accrued but not taken will be lost, rolled over or paid in lieu if it has not been taken

### **This fact sheet is for information purposes only.**

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