



Human Resources & Health and Safety



Do you employ staff?

Sickness or Injury During a Holiday

Have you ever had employees become ill or injured during their holiday away from work? Have they ever asked to recoup this holiday, leaving you uncertain about what you are required to do?

The Case Law

Currently, there is no legislation that specifies an employee can reclaim annual leave in the event of illness or injury during a scheduled holiday. Because of this, many employers and employees believe that this is a situation that cannot be helped, and that if injury or illness occurs during pre-booked annual leave, this is an unfortunate case of bad luck that the employee will have to deal with. However, despite there being no legislation in place, there is case law from the European Court of Justice (ECJ), which employers are expected to operate in line with.

In both cases, *Pereda v Madrid Movilidad SA* (2009) and *Asociación Nacional de Grandes Empresas de Distribución (ANGED) v Federación de Asociaciones Sindicales (FASGA) and others* (2012), the ECJ confirmed that holiday and sick leave are two statutory rights which should be used for separate purposes, and the ECJ also went on to explain that an employee who falls ill, or becomes injured, on during a holiday from work, does have the right to take the holiday at another time, if they request to do so.

In *Shah v First West Yorkshire Limited* (2010) an Employment Tribunal ruled that if an employer prohibits an employee who has been unable to utilise their holiday due to injury or illness, from carrying their annual leave entitlement to the following year, the employer is in breach of the Working Time Regulations.

How to Manage It

Although not a legislative requirement, in line with best practice, employers could review both their Absence Management and Annual Leave policies, to ensure that they contain appropriate wording related to this situation. Having the necessary wording in place will provide clarity, reduce ambiguity and also enable managers to deal effectively with an employee who requests to recoup their holiday due to illness or injury during their holiday.

Within this wording, it is advisable that an employer sets out a clear notification procedure for employees who are ill or injured whilst on holiday. Medical evidence should also be sought, even if the employee claims to be ill or injured for less than seven calendar days, to confirm the employee's condition. Employers should also specify how the employee is going to be paid for this time i.e. full pay, statutory sick pay, company sick pay, etc.

When an employee's annual leave cannot be rescheduled in the same holiday year, it should be carried over to the following holiday year; but employers can request that it is used by a certain time. If an employer wishes to impose a time-limit they should also include this in their wording, whilst being open minded enough to recognise that sometimes there are legitimate reasons for employees not being able to comply with timescales e.g. a long-term absence.

Employers should also be mindful of employees who become ill or injured before a holiday, who may be well enough to continue working but who would not be well enough to continue with their holiday plans. For example, an employee with a broken arm could – in some roles – continue working, but they would be unable to go on a planned skiing holiday. Whilst there is no legislation or case law to cover these situations, it would be reasonable to allow an employee to reschedule their annual leave to a time in which they were able to suitably enjoy it, which would prevent them from spending their annual leave being unable to do anything but recover from illness or injury.

How We Can Help

If you have any queries relating to any of the contents of this newsletter, or any other HR related subject, please don't hesitate to contact us at hradvice@hasslefreehr.co.uk