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Guide to sickness and annual leave

Moving forward
together >



Best Employment practice requires employers to give their employees clear information about their rights whilst at work, including those that relate to sickness absence and paid annual leave.

This guide highlights some of the important issues to note when dealing with periods of extended sickness absence and the entitlement to paid annual leave including:

- a summary of employers' legal obligations towards their employees,
- how to prevent false claims by employees,
- carrying over annual leave.

The issues outlined by this guide are under constant development with cases regularly being referred to the European Court of Justice ('ECJ').

Taking regular, updated legal advice is therefore imperative.



The effect of sickness on the right to paid annual leave

Employers should be aware of their obligations when it comes to dealing with the entitlement of employees to paid annual leave not taken because of sickness.

The right to accrue paid annual leave continues while an employee is on sick leave even if that period exceeds 12 months.

In this scenario, the employee should be permitted to carry over their full holiday entitlement to the following year instead of simply losing it. The rationale behind this is that annual leave is deemed as time off for relaxation and leisure while sick leave is for the purpose of recovery from an illness which has left an employee unfit to be at work.

Judgments in recent cases have taken matters further by stipulating that if an employee falls sick either before or during any pre-arranged period of annual leave, then they should also be allowed to reschedule it to a later date.

In the latter scenario, employers should take steps to try and prevent any false claims of sickness during any period of annual leave by ensuring they have measures in place which clearly define what is expected of employees. This may include a requirement to provide evidence such as a medical certificate in respect of any purported illness to confirm that the individual is indeed 'unfit for work'.

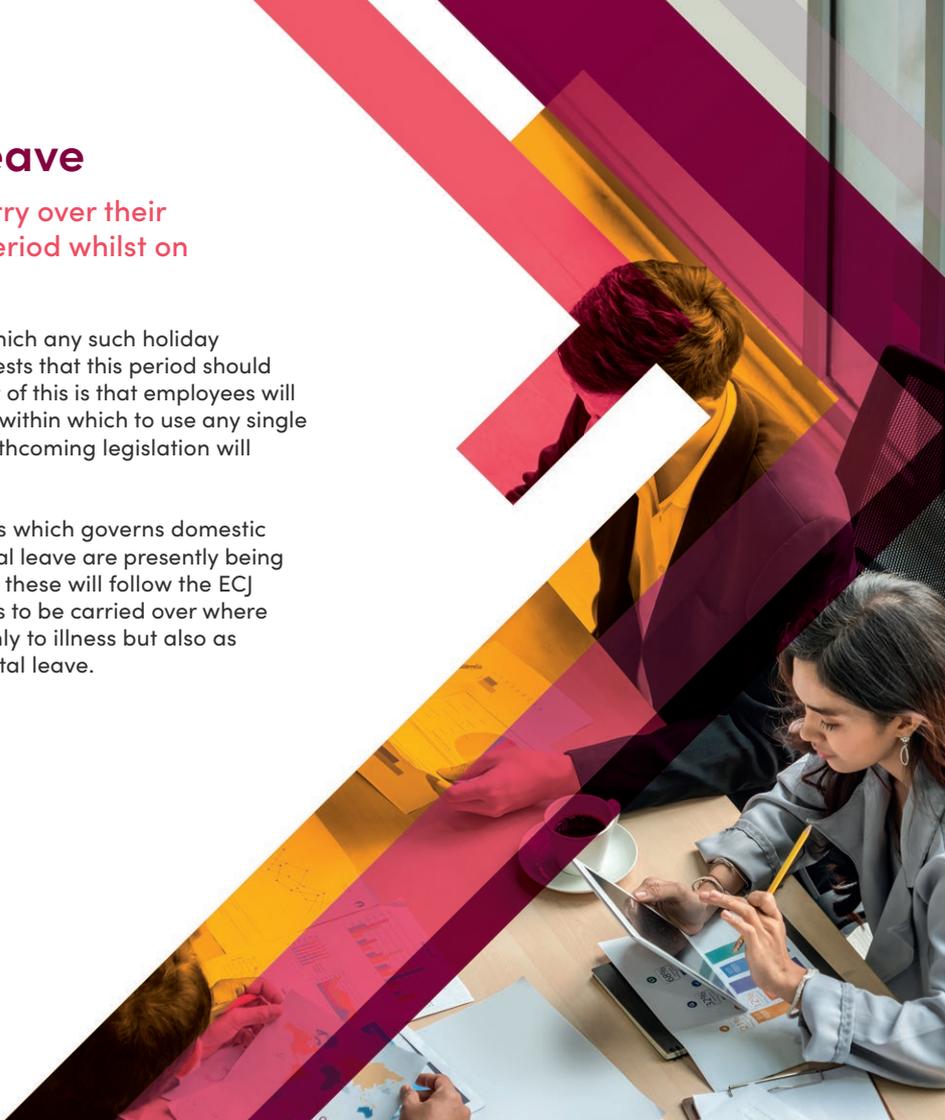


Carrying over annual leave

Employees do not have the right to carry over their holiday entitlement for an indefinite period whilst on extended sickness absence.

Employers can seek to cap the length of time in which any such holiday entitlement must be taken. Current case law suggests that this period should be limited to a maximum of 18 months. The impact of this is that employees will effectively have a window of two and a half years within which to use any single year's annual leave entitlement. It is likely that forthcoming legislation will confirm this.

Proposals to amend the Working Time Regulations which governs domestic law in relation to sickness absence and paid annual leave are presently being considered by the government. It is expected that these will follow the ECJ decisions and confirm that untaken annual leave is to be carried over where employees have been unable to take it due not only to illness but also as a result of maternity, paternity, adoption or parental leave.



Call Palmers Solicitors for advice

The specialist employment law team at Palmers Solicitors can advise you on all areas of sickness absence and your legal rights and responsibilities as an employer.

Our expert solicitors can also advise on the creation and maintenance of contracts of employment as well as procedures which deal with issues such as sick leave entitlement and the current regulations surrounding employment legislation.

Our HR package contains detailed policies, including relating to sick leave and holiday entitlement.

For bespoke advice about this and any other area of employment law, please contact us.



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