



## Holiday Rights for Employees on Sick Leave

On 10 June 2009 the House of Lords made a decision on a case that has been going on for almost 4 years. Regretfully the outcome was not that expected and the result has meant that it has a big impact on employers.

The outcome briefly is that a failure to pay statutory holiday pay constitutes an unauthorised deduction of wages. The main effect to employers is that if you breach an employee's right to take statutory annual leave or to be paid for holidays under the Working Time Directive, the employee can bring a claim for unauthorised deductions.

For the full article please refer to our [News Section](#).

### So what should you do?

1. Review your contracts of employment and/or sickness and absence policies and until any other judgement, make it clear that the right of accrual whilst on long term sick is only on the statutory days. (Currently this is the right of employees on maternity and adoption leave).
  2. Also an alternative for you to include in your contracts of employment is reserving your right to exercise discretion as to whether any enhanced contractual holiday entitlement will be paid in the event of long-term sickness. However, this is fraught with risk as anyone on long term sick is likely to be disabled and you should always seek professional advice on each individual case.
  3. Change your contracts of employment and/or sick and absence policies to state that statutory holiday can be taken during sick leave. Therefore, if an employee is not receiving any sick pay this could be a welcome payment. However, you must stress that they must book holidays as normal.
  4. Ensure that you actively manage longer term sickness absence better to avoid having employees on long term sick for a number of years and having costly back-dated claims\*
  5. Review your Company sick pay schemes to make them less generous to take account of the increased payment of holidays during sick leave
  6. Review any permanent health insurance schemes or income protection schemes you may have with the providers as to how this will affect such schemes
  7. Review if you currently have employees on sick leave and who have sought to take statutory holiday and have not been paid for it as they can now bring a claim whilst still on sick leave under the unlawful deductions provisions.
  8. As the change has opened up the door for ex employees to bring a claim, check any dismissals (including any redundancies) you may have made to see whether or not any claims may be likely.
- \* *Ensure that any dismissals on the grounds of incapacity due to ill health must also be managed properly to avoid any disability discrimination or unfair dismissal claims which could be more costly than the back dated holiday pay. This is not a safe course of action where the employee is on PHI benefits.*