



> ABSENCE AND ANNUAL LEAVE - RULING



A tribunal has confirmed that staff that are off sick for more than a year and are unable to take their annual leave must be paid their full holiday entitlements.

The Rawlings v The Direct Garage Door Company employment tribunal, held in Sheffield, ruled that employee James Rawlings, who was off sick for more than a year before leaving his company, was entitled to be paid his full holiday entitlements upon resignation because his absence from work had prevented him from taking his leave.

The House of Lords held that workers could accrue holiday pay while on sick leave and that it could be carried forward to the next leave year – despite the UK Working Time Regulations stating that it is unlawful for employees to carry over more than eight days.

Putting the judgment in the Stringer case into practice, the Sheffield tribunal found Rawlings, whose sickness absence lasted for the whole of 2005 and until he left the company in 2006, was entitled to be paid for the holiday he had been unable to take during the time off.

What does this mean for employers?

The Stringer case coincides with another important case which employers should be aware of, namely Pereda -v- Madrid Mavilidad, which also concerns annual leave.

Employers should be aware that the Stringer case provided that the right to accrued annual statutory leave is not lost at the end of the leave year – but this in itself contradicts the Working Time Regulations, which state it is unlawful to carry over more than 8 days leave.

The Department for Business Innovations and Skills has issued some guidance in the light of the above two cases, which states:

- Workers continue to accrue paid annual leave notwithstanding the length of the absence due to sickness
- A worker can still take their statutory annual leave whilst on sick leave, and receive their normal rate of pay rather than the normal level of sick pay
- Upon termination of employment, workers are entitled to payment in lieu for any untaken annual leave, which may have accrued during their absence from work due to sickness
- The Pereda case had indicated that a worker who falls sick either before or during annual leave can opt to change that leave to sick leave and then take annual leave at another time
- It is advisable for employers to update their procedures to ensure that workers supply documentary evidence of their sickness either during or before their annual leave.

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> NEWS ROUND UP



Restructuring Selection Criteria

Employers are reminded following the decision in the recent case, 'Bradford and Bingley v McCarthy', that the criteria used to select a person for redundancy must be fair and objective. If the employee can show that the selection criterion was biased in favour of another employee then the dismissal will be judged as unfair.

Collective Consultation

The recent case ruling in 'Shanahan Engineering v Unite the Union' examined whether Shanahan were wrong to assume that they were exempt from collective consultation due to 'exceptional circumstances' when they were forced with making 50 engineers redundant within one week of an unanticipated change in circumstances.

Consultation should have been carried out over a period of 30 days but clearly this was not going to be possible.

The employment appeal tribunal (EAT) decided that special circumstances did exist but they still had a duty to consult during the time that was available to them.

As no attempt to consult had been made the tribunal awarded the maximum 90 days protective award. The EAT later decided to reduce the award to 30 days.

Nursing Home Fined by HSE

A company which runs a nursing home in Essex has been fined after an elderly man was lowered into a bath filled with water possibly as hot as 72°C.

MG aged (72) was living at West House Nursing Home in St Vincent's Road, Westcliff-on-Sea, Southend, when he suffered first degree burns to his feet on 5 May 2009. He was being bathed by two care assistants. He was lowered into the bath using a hoist but immediately began to cry out that the water was too hot. Despite being quickly raised out of the bath and having his feet immersed in cold water, MG suffered first degree burns to both feet and was kept overnight at Southend Hospital.

Rootcroft Ltd, which runs the nursing home, appeared at Southend Magistrates' Court and admitted breaching Section 3(1) of the Health and Safety at Work etc Act 1974. The company was fined £5,000 and ordered to pay £5,989 in costs. The company was also ordered to pay the victim £500 in compensation.

> HEALTH AND SAFETY LAW POSTER

The Health and Safety Executive (HSE) introduced the new 'eye catching' law poster and pocket cards in April 2009.

It was decided that the old style ones were not being read as they were regarded as 'visually unappealing'. Don't worry if you haven't changed yours yet, you have until 5 April 2014.

Equivalent easy read and large print versions are available and there is an MP3 version of the HSE Talking Leaflet.

For further information, visit <http://www.hse.gov.uk/pubns/books/law-poster.htm>

> VETTING AND BARRING SCHEME - INDEPENDENT SAFEGUARDING AUTHORITY (ISA) REGISTRATION ON HOLD

Plans to start registering employees that work with children or vulnerable adults under a new vetting and barring scheme have been halted by the new coalition Government.

Those carrying out roles regulated by the Independent Safeguarding Authority (ISA) were due to register from 26 July 2010.

The ISA will continue to maintain two constantly updated lists, one for those barred from working with children and another for those barred from working with vulnerable adults. Existing requirements concerning Criminal Records Bureau (CRB) and Access Northern Ireland checks will remain in place. Employers continue to be legally obliged to refer information about potentially harmful individuals to the ISA.

The vetting and barring scheme is scheduled to go ahead in Scotland as planned.

> DEFAULT RETIREMENT AGE SCRAPPED

The Coalition Government has announced plans to scrap the Default Retirement Age (DRA). What does this mean for employers?

The new plans allow for a six month transition from the existing regulations, following the announcement that the DRA would be phased out from April 2011.

The Government said that it proposed to help employers by removing the administrative burden of statutory retirement procedures. The removal of the DRA means there is no reason to keep employees' "right to request" working beyond retirement, or for employers to give them a minimum of six months notice of retirement.

Although the DRA is to be scrapped, it will still be possible for individual employers to operate a compulsory retirement age, provided that they can objectively justify it. It is likely therefore that where a compulsory retirement can be justified, the employers will follow a fair dismissal process, although, the existing "right to request" may become best practice. We eagerly await developments and clarification on this in the coming months.



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