



Bulletin 151

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PERIODS OF ILLNESS WHILST ON HOLIDAY - EFFECT ON HOLIDAY ENTITLEMENT

In the case of *Pereda v Madrid Movilidad SA Case C-277/08 ECJ* the applicant, in accordance with a Spanish collective agreement in force at the time, was allocated annual leave by his employer between set dates. Immediately prior to his leave, Mr Pereda had an accident which resulted in him being unable to work for almost the entirety of his period of annual leave. It was ruled by the Court that the employer could not prevent Mr Pereda from being granted a new period of annual leave upon request equivalent to the amount of days during his annual leave for which he was unable to work.

The reasoning behind classifying such periods of illness as sick leave and not annual leave is to allow the employee sufficient time to recover from being ill. This right to a recovery period is separate and distinct from an employees' right to claim annual holiday leave, the purpose of which is to enable workers to rest and to enjoy a period of relaxation and leisure.

Note that in this case the ECJ only considered and applied the principle to the four weeks entitlement under the European Working Time Directive and not the 5.6 weeks (28 days) entitlement granted by way of the Working Time Regulations. Whilst the distinction has not yet been challenged, it would appear from this and previous rulings such as the case of *Stringer (or Ainsworth) v Her Majesty's Revenue and Customs [2009]* that the principle will also apply to the 28 days as set out in our domestic legislation (WTR).

➤ Practical Tips

Employers should review their current holiday and sick leave procedures to ensure that any genuine period of illness that occurs whilst an employee is on annual leave should be recorded as sick leave not annual leave, thereby protecting employees entitlement to the statutory minimum of four weeks paid annual leave.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to helen.calvert@brabnerscs.com

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