

WORKERS ON SICK LEAVE MAY CARRY OVER STATUTORY HOLIDAY INTO THE NEXT ANNUAL LEAVE YEAR

In *Shah v West Yorkshire Ltd* the Employment Tribunal followed a recent ECJ decision which held that an employee whose annual leave is ruined by sickness should be allowed to retake the holiday, in the following leave year if necessary. Mr Shah had booked four weeks of holiday in February and March 2009 but in January he broke his ankle and was therefore on sick leave from 15 January to 18 April 2009. When he returned to work he notified his employer that he wished to claim back the four weeks holiday entitlement. His employer refused this request arguing that he had returned to work in a new leave year which had begun on 1 April 2009, and therefore those holiday days had been "lost". He had been paid for his holiday while on sick leave.

The Employment Tribunal held that the Working Time Regulations 1998 should where possible be interpreted in a manner consistent with the Working Time Directive. The purpose of holiday is to allow an employee to have a period of actual rest and to enjoy a period of relaxation and leisure. Ordinarily this should be taken in the relevant leave year so that leave is taken more or less as accrued and workers take regular periods of leisure. This is obviously not the purpose of sick leave.

In order to interpret the Working Time Regulations in a manner consistent with the Working Time Directive, the Employment Judge essentially added a sentence to the beginning of the relevant provision of the Regulations (Regulation 13(9)) allowing workers on sick leave to take a period of holiday on their return from sick leave and where necessary (because there is insufficient time in the current holiday leave) allowing such leave to be taken in the next holiday year.

If you have any queries, please get in touch with your usual Parker & Co contact.

DISCLAIMER

All information in this update is intended for general guidance only and is not intended to be comprehensive, or to provide legal advice. If you have any questions on any issues either in this update or on other areas of employment law, please contact Parker & Co. We do not accept responsibility for the content of external internet sites linked to in this update.

We currently hold your contact details to send you Parker & Co updates, alerters or other marketing communications. If your details are incorrect, or you do not wish to receive these updates, please let us know by emailing: info@parkerandcosolicitors.com

CONTACT US

Helen Parker	020 7614 4031	helen.parker@parkerandcosolicitors.com
Richard Woolmer	020 7614 4035	richard.woolmer@parkerandcosolicitors.com
Dan Begbie-Clench	020 7614 4034	dan.begbie-clench@parkerandcosolicitors.com
Jackie Feser	020 7614 4038	jackie.feser@parkerandcosolicitors.com
Charlotte Schmidt	020 7614 4033	charlotte.schmidt@parkerandcosolicitors.com
Rebecca Jackson	020 7614 4032	rebecca.jackson@parkerandcosolicitors.com

Parker & Co Solicitors
28 Austin Friars
EC2N 2QQ
Tel: 020 7614 4030
Fax: 020 7614 4040

www.parkerandcosolicitors.com