

Taking holiday during sick leave

Are sick workers entitled to take paid statutory holiday?

- Legislation allows workers to take statutory holiday while they are off sick. This means that workers on long-term sick leave can take holiday and be paid for it, even where they have exhausted their right to statutory and/or contractual sick pay.
- An employment tribunal has decided that a worker who had been on sick leave for the last 15 months of his employment was entitled to statutory holiday pay for that period. The non-payment of holiday pay was an unlawful deduction from wages, even though the worker had not sought to take statutory holiday during the period in question.
- Workers on long-term sick leave do not have to wait until the termination of their employment to request holiday pay. If they notify that they wish to take statutory holiday on certain dates (and you do not refuse the request), your business will be obliged to make holiday payments at that time.

Can workers be prevented from taking holiday during sick leave?

- If one of your workers gives notice that they want to take statutory holiday on particular days, you can give a counter-notice which enables you to prevent them taking holiday on the requested dates.
- However, there is little point in you doing this if your worker is unlikely to return to work in the current leave year. You will almost certainly be in breach of the legislation if you issue a counter-notice to prevent your worker from taking their holiday before the leave year ends. Your business may then be liable to pay compensation for a refusal to allow holiday to be taken. You may also be liable to pay holiday pay for the untaken holiday period when your worker's employment eventually ends.

Can workers be made to take holiday during sick leave?

- Legislation enables your business to give notice to a worker specifying the dates on which statutory holiday must be taken. Therefore, you could give notice to a worker on long-term sick leave to use up their holiday entitlement before their contractual sick pay runs out. If so, your business might be able to avoid making holiday payments later in the year when your worker's contractual sick pay has been exhausted.

- However, if the worker objects you should not force them to take statutory holiday during sick leave against their wishes. This is likely to be in breach of the legislation, as case law suggests that if workers do not wish to take holiday during sick leave the holiday must be granted at a different time.
- A sick worker forced to take holiday at a time when other workers are not forced to do so might feel that your actions amount to a fundamental breach of contract, leading to a claim for **constructive dismissal** and possibly **disability discrimination**.

More information

If you have any questions about the content of this checklist, please contact Robert Hill on 01494 525941 or Robert.hill@rpj.uk.com