



## Can I take my holiday next year please?

Employers who are receiving requests from employees to change holiday plans due to sickness can be forgiven for being unsure of the right response.

Under the Working Time Regulations 1998 (WTR) holiday entitlement can only be taken during the holiday year unless the employer has different rules or there is a workplace agreement. However, a case from the European Court of Justice ('ECJ') from 2009, *Pereda v Madrid Movilidad SA*, held that if an employee is prevented from taking holiday because of short-term sickness absence, they should be allowed to re-schedule the holiday - including being allowed to carry over the holiday lost through illness to a new holiday year. This followed the case of *Stringer v HMRC* in which the ECJ ruled that a period of sickness absence cannot result in workers losing any part of their entitlement to minimum paid holiday.

An employment tribunal recently ruled that the WTR could be interpreted to give effect to *Pereda* meaning that the employer's refusal to allow the employee to retake a period of holiday affected by a broken ankle, in a new leave year, was a breach of the regulations (*Shah v First West Yorkshire Limited*). Mr Shah had booked and been granted 4 weeks' holiday by his employer. However, before taking his holiday he broke his ankle and had to take 3 months sickness absence. He asked his employers if he could reschedule his holiday for another time but his employer refused as this would have meant the holiday fell into the following holiday year. Mr Shah brought a claim under the WTR that he should be allowed to take his accrued holiday entitlement. The employment tribunal ruled that Mr Shah was entitled to take the holidays, which he was prevented by ill health from taking in March 2009, at some subsequent time in the following leave year.

The decision in *Shah* is not binding on other employment tribunals. However, it does follow other decisions of the ECJ and it is therefore indicative as to how other tribunals could approach the issue. The WTR may be amended by parliament in due course but in the meantime, employers should be aware of workers attempting to reclaim holiday due to sickness. Employers should continue to monitor and manage such situations carefully, and may wish to review their policies and procedures, although this is not strictly necessary for the time being. If an employer does want to amend its policies now, a distinction should be drawn between WTR holiday entitlement and contractual holiday as the ECJ and tribunal decisions only concern WTR holiday entitlement.

This article is no substitute for obtaining professional advice, if you would like further advice on this issue, or a full review of your employment contract, policies and procedures, please contact **Elizabeth Judson** on **0115 9 100 200** or send an e-mail to [enquiries@actons.co.uk](mailto:enquiries@actons.co.uk).