

EMPLOYMENT LAW

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## **JANUARY 2009 – ECJ DECISION ON HOLIDAY PAY FOR THOSE ON LONG TERM SICK LEAVE**

ON 20<sup>TH</sup> JANUARY 2009 THE EUROPEAN COURT OF JUSTICE HANDED DOWN A CRUCIAL DECISION IN THE MATTER OF STRINGER V HMRC.

THE DECISION RELATES TO A LONG STANDING ARGUMENT AS TO WHETHER OR NOT A WORKER ON LONG TERM SICK LEAVE IS ENTITLED TO HIS PAID ANNUAL LEAVE – REGARDLESS OF THE FACT THAT HE IS UNABLE TO ATTEND WORK BECAUSE OF ILL HEALTH. IN APRIL 2005 THE COURT OF APPEAL HAD DECIDED THAT THE RIGHT TO PAID HOLIDAY LEAVE DID NOT ACCRUE DURING PERIODS OF SICKNESS ABSENCE.

THE EUROPEAN COURT HAS DECIDED THAT A WORKER WHO IS ON SICK LEAVE FOR THE ENTIRE HOLIDAY YEAR IS STILL ENTITLED TO A PERIOD OF PAID ANNUAL LEAVE. WHETHER OR NOT THE WORKER CARRIES THE LEAVE OVER OR TAKES IT AS PAID LEAVE DURING THE HOLIDAY YEAR, THE WORKER WILL BE ABLE TO CLAIM PAID HOLIDAY.

THIS IS A DECISION THAT WILL NOT SIT COMFORTABLY WITH EMPLOYERS AS IT MEANS THAT EMPLOYEES WHO HAVE EXHAUSTED THEIR ENTITLEMENT TO STATUTORY AND CONTRACTUAL SICK PAY WILL NOW BE ABLE TO CLAIM PAYMENT FOR THEIR ANNUAL LEAVE ENTITLEMENT FROM THE EMPLOYER.

THE CASE WILL NOW GO TO THE HOUSE OF LORDS FOR FINAL JUDGMENT AND IT IS LIKELY THAT THE DECISION OF THE EUROPEAN COURT WILL BE FOLLOWED.

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