

HOLIDAY PAY - LATEST UPDATE FOR YOUR CLIENTS.

The European Court of Justice (ECJ) ruling on holiday pay.

BACKGROUND

In January 2009 the European Court of Justice made a ruling on holiday pay in the case of *Stringer v HMRC*. This ruled that employees will continue to accrue the right to paid holiday while off sick and that employers would have to compensate for this at the end of an employee's employment. A claim can only be backdated as far back as 1998; the date the Working Time Regulations took effect.

The House of Lords ratified the ruling in June 2009. However, their judgement didn't provide much detail and we won't know the exact impact until further rulings are given in the UK courts and tribunals.

SOME COMMON QUESTIONS ANSWERED

To help you, here are some answers to common questions about the ruling. These represent our understanding of the ruling and do not constitute advice. Unfortunately, as we are still awaiting more details from the courts many of the answers to these questions are still uncertain. It is very important that employers should obtain their own legal advice before making decisions.

Q. Is there a minimum number of days that an employer must take into account when assessing lost holiday pay?

A. We believe that while the ECJ judgment covers a minimum of 20 days leave; it's most likely the judgment covers the full amount of statutory leave for each year of absence. Currently employees are entitled to 28 days statutory leave each year.

Q. If there's no Group Income Protection (GIP) scheme in place and the employee is not receiving any pay, does the employer still have to compensate for lost holiday?

A. Yes, they do.

Q. Can employers insure themselves against having to make these payments?

A. Yes. By insuring a lump sum payable on termination of employment, GIP policyholders can be certain that payment can be made for accrued holiday. The cost is less than you might think. For example, employers who insure a lump sum equal to 28 days pay for each year of absence will see an increase of approximately 0.2% of payroll.

Q. Is the employer's liability to make payments for lost holiday based on their final salary or an average over the period in question?

A. The employer's liability will be calculated on a year by year basis. Therefore, the employer should take into account the salary applicable for each year the holiday pay relates to.

Q. An employer is insuring a lump sum under a GIP policy equivalent of 28 days pay for each year of sickness. Do they have to pay 100% of salary if they are paying a GIP benefit to one of their employees? For example, if they are paying 75% of salary under the GIP, can the lump sum be based on 25% of pay?

A. This is still up for debate and is likely to be settled by further case law, although it may be a while before this comes through. It may be that an employer who allocates a period of holiday during the year would be able to top up the pay to 100% (for instance in this case they pay 25%). Similarly, if the employer pays one lump sum on termination there's an argument that they should be able to pay 25%. However, we think the more likely answer is they will have to pay the full 100%, and will be unable to give any credit for the fact that the employee will have received 75% pay for the full year.

THE IMPLICATIONS FOR YOU AND YOUR CLIENTS' GROUP INCOME PROTECTION SCHEMES

Most employers will not have appreciated that if their staff leave after a prolonged period of absence, they could face the liability for over five weeks holiday pay (the basic four weeks minimum plus bank holidays) for each year of sick leave, whether they were being paid during this time or not.

Whilst the industry is considering whether holiday pay should be insured, what is probably more important is how we can help employers get their staff back to work as quickly as possible. Other ways we can help employers minimise the liability is to offer direct payment facilities. This allows them to release the person from the payroll (so minimising the amount they compensate for lost holiday) and allow us to pay the benefit direct and even protect the pension contribution and life insurance cover where appropriate.

Legal & General's Workplace Recovery proposition offers fast aid for absent staff.

Over 40 years of experience has shown that more than 70% of our claims are now for stress, cancer or musculoskeletal conditions so we've developed a centre of excellence to provide bespoke treatment for each of these. The centres provide an assessment by a range of independent experts from as early as weeks four to six. Where appropriate we'll then fund the recommended treatment to ensure the employee is returned to the workplace as soon as possible.

For example, for stress claims our exclusive arrangement with CBT Services Ltd means that we can quickly provide up to 24 sessions of Cognitive Behavioural Therapy (CBT). This is the National Institute for Health and Clinical Excellence (NICE) treatment of choice for these conditions. Waiting for this treatment on the NHS could take many months.

As early notification of absence is a vital element in the provision of early rehabilitation, our Early Notification Bonus actually rewards this. Schemes with over 250 lives can receive a bonus of 5% of their premium provided they notify us of 80% of long term absences (those over four weeks) by week six. So far, we've returned over £300,000 of bonus to employers in this way.

Our proactive approach to absence management means that we can get over 70% of long term absent staff back to work. This success was recognised in the 2009 Rehab First Awards where we won the Rehabilitation Provider of the year award (Insurer).

Workplace Recovery also includes:

- Variable benefit levels up to £300,000 a year.
- Limited term options of two to five years.
- A Progressive option offering rehabilitation support in the first four years and payment of benefit where we have not achieved a return to work.
- Direct payment options if the employee is taken off the payroll.
- This can also include continued pension contributions and even life cover where we insure the scheme.
- Up to five years capital lump sums available.
- Free Employee Assistance Programme with telephone and online support for employees and managers.

Many of your clients will not have appreciated the need to take account of holiday pay as part of the ECJ ruling so this offers an ideal opportunity to review their group income protection arrangements to ensure that they take this into account. The ruling also highlights the need to work with a group protection provider with the flexibility and experience to tailor a scheme to meet individual requirements.



For further information on how Legal & General can help meet your clients' needs, please speak to your normal contact.

CONTACT US.

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