

Holiday Pay for long-term Sick Workers

The Advocate-General has handed down her opinion in the cases of *Stringer v HMRC* and *Schultz-Hoff v Deutsche Rentenversicherung Bund* which may have far reaching effects on holiday entitlement for workers on long term sick leave.

The opinion given in the *Stringer* case does not follow the Court of Appeal's ruling made in 2005 which stated that holiday pay did **not** accrue whilst an employee is off work on long-term sick-leave.

The Advocate-General stated in her opinion that the entitlement to paid leave is a fundamental social right and consequently cannot be made subject to the worker's capacity for work.

Therefore:

- entitlement to paid holiday **does** accrue whilst an employee is absent on sick leave; but
- while employees can now accrue paid holiday whilst on sick-leave, they may **not** take their holiday whilst on sick-leave.

In the case of *Schultz-Hoff* the Advocate-General was asked if a worker's right to annual leave, which went untaken due to sickness absence, expired at the end of the leave year. If it did, then the accrued and untaken holiday would be lost, and the employee wouldn't be able to take this holiday when they returned to work in the following leave year.

The opinion given was that leave untaken through illness in a leave year should still be available to take on the worker's return to work. Further the employee should be able to take this leave, and a payment in lieu cannot be made (other than on the termination of employment).

Both cases will now be referred to the ECJ, which will give a definitive ruling. While the Advocate-General's opinions are often followed by the ECJ, this is not always the case. We must now await judgement for certainty, which can be expected in around six months' time.

IF YOU REQUIRE GUIDANCE PLEASE CONTACT:

Clive Dobbin	023 8048 2370
David Roath	023 8048 2238
Jane Biddlecombe	023 8048 2374
Stephanie Merritt	023 8048 2364
Kathryn Evans	023 8048 2361



Paris Smith & Randall LLP • Number 1 London Road • Southampton • SO15 2AE
e: info@parissmith.co.uk t: 023 8048 2482 f: 023 8063 1835