



The ECJ judgement on Sick Leave and Holiday Pay

What does it mean for Group Income Protection benefits?

In January this year the European Court of Justice (ECJ) ruled that paid holiday accrues for employees during sick leave. This only applies to statutory holidays.

The full impact on the UK was dependent on a subsequent ruling by the House of Lords. Their ruling, which was handed down on 10 June, ratified the ECJ judgement that the right to statutory holidays does accrue during periods of sickness absence.

The ruling also confirmed that employees have an entitlement to pay in lieu of any holiday that they have not taken in the event of their employment being terminated.

What's in the ruling as it stands?

- It only applies to statutory minimum holidays. Employees are currently entitled to a minimum of 5.6 weeks annual leave, which is 28 days for someone working 5 days per week.
- It does not matter if an employee is away for the whole or part of a holiday year, holiday still accrues during sick leave.
- Employees should receive payment for any untaken holiday accrued during sick leave if they leave employment.
- Holiday pay will be calculated in line with the contracted salary an employee would have received had they not been on sick leave.

What is not in the ruling?

Unfortunately, there is nothing in either the ECJ or House of Lords ruling that clarifies whether:

- Holiday can be taken during periods of sickness.
- Holiday entitlement can be carried over from one year to another.

This uncertainty will only be clarified in the courts.

How could this affect employers?

Employers may need to:

- Revisit their records to remind themselves of how many employees they are paying benefits to and why; and
- Review their policies and contracts to see what sick leave and holiday entitlements these offer.

In brief...

- In January, the ECJ ruled that employees are entitled to accrue paid statutory holidays while on sick leave.
- The House of Lords ratified this decision in June, but did not provide clarity on a number of issues.

What does this mean?

- In the event of an employee's contract being terminated they will be entitled to receive payment in lieu of an statutory holidays accrued during their sick leave that they have not taken.

However...

- It is not clear whether statutory holidays can be taken during periods of sickness or whether the holiday entitlement can be carried over from one year to another.
- The full implication of this ruling will not be clear until the courts clarify all the issues it raises, a process that could take several years.



Where a group income protection (GIP) benefit is being paid for an employee who is on sick leave, an employer will need to consider whether or not additional payments should be made in respect of any accrued statutory holidays. For example, the employer may decide it is necessary to top up the GIP benefit to 100% of pre disability salary.

Managing sickness absence effectively will be even more important.

How is Canada Life helping employers?

Employers may need to:

1. Where Canada Life is paying a GIP benefit, we will not reduce the benefit we pay by any additional payments made by the employer in respect of statutory holidays.
2. Also, alongside our GIP insurance, we offer a range of valuable services designed to help reduce absence, manage sickness and provide support for both employers and employees.

The services **automatically** provided are:

Best Doctors® – Best Doctors provides GIP scheme members with access to independent, expert medical advice and assistance to help enable them to make the best treatment choices

BusinessCare – Provides round the clock online or telephone-based business advice, covering issues such as employment law, HR issues, tax, VAT, legal or employee wellbeing issues.

Claims Management Service (CMS)– CMS' objectives are:

- To proactively manage existing claims; and
- To review a client's previous claims history in order to reduce future absence and claims levels.

CMS therefore can reduce costs that occur through absenteeism and has the potential to reduce future premium costs.

Additional services comprise:

Absence Management Programme (AMP) – AMP objectively manages employee absences, often delivering significant absence reductions and improved employee productivity.

Employee Assistance Programme (EAP) – EAP offers support to employees to help them deal with problems in the work place and in their personal lives. EAP is designed to help tackle issues that may distract employees and increase employee absence.

- 1 Debra Leaker, 'Sickness absence from work in the UK', Economic & Labour Market review, vol 2, no 11, Abstract.
- 2 CBI Absence & Labour Turnover Survey 2008.
- 3 CIPD Annual survey report 2008, Absence Management, pp 2.

Who does this affect?

The figures

Between July 2007 and June 2008, around 5.8 million working days, or 1.5% of all scheduled working days were lost due to sickness in injury.¹

Each year long-term sickness costs UK businesses over £13 billion² equating to an average cost of £666 per employee.³

Time is money...

Many employers are being proactive by reviewing their policies and contracts seeing what sick leave and holiday entitlements these offer.

Can Canada Life help?

Yes.

We will **not** reduce any GIP benefit we pay by any additional payments made by the employer in respect of statutory holidays.

Our range of services offered in conjunction with our GIP cover provide expert advice and assistance to help manage employee absence and sickness.

If you have any further questions, then please contact your usual Canada Life Account Manager or call 0845 223 8000.

Our forms are available to download from our website: www.canadalife.co.uk/group

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