

Employment & Employee Benefits

Accrual of Annual Leave on Sick Leave

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Can an Employee accrue Annual Leave whilst on Sick Leave?

Section 19 of the Organisation of Working Time Act, 1997 sets out that an employee is entitled to a minimum of four working weeks' paid annual leave where the employee has worked at least 1,365 hours in a leave year.

These amendments significantly impact the private sector from the implementation date of 1 August 2015. Prior to this date only public sector workers could accrue annual leave while on certified sick leave.

The amendment to Section 19 of the Organisation of Working Time Act, 1997 by Section 86 (1) of the Workplace Relations Act 2015 has sought to remedy the inconsistency between the Irish position and the EU position and has brought much needed clarity to this grey area.

Section 86 (1) provides that employees who are on certified sick leave will accrue annual leave entitlements during their certified sick leave. It enables employees to carry over such accrued leave for a period of 15 months after the leave year.

There is undoubtedly an increased burden on employers to ensure that they act prudently and carefully with employees who are on certified sick leave, in the short or long term.

Employee Entitlements

Section 86 (1) of the Act allows for:-

- Statutory annual leave entitlement to accrue during a period of certified sick leave;
- A carry over period of 15 months after a leave year in which annual leave can be taken by those employees who could not, due to illness, take their annual leave during the leave year or the normal carry over period of 6 months; and
- On termination of employment, payment in lieu of untaken annual leave will apply to leave which was not taken as a result of illness, in circumstances where the employee leaves the employment within a period of 15 months following the end of the leave year during which the statutory leave entitlement accrued.

Effects of Changes

It is imperative to note that the reform in the law only applies to statutory leave and does not apply to any additional contractual annual leave entitlements.

Employers should take particular care with employees who are on long-term sick leave as they will continue to accrue annual leave rights, which need to be considered when the employee is returning to work or if the employment relationship is being terminated.

Employers should revisit the language of their employment contracts and employee handbook and/or policies to ensure they reflect the changes and are consistent with the amendment.

For further information on this topic please contact: Laura Feely, Solicitor, Employment & Employee Benefits Group, E lfeely@efc.ie