

# Employment

## Sickness and holidays

### – what you need to know

Under the Working Time Regulations 1998 (the Regulations), full-time workers are entitled to a statutory minimum of 28 days (5.6 weeks) of paid holiday per year and workers are entitled to be paid in lieu of holiday only when their employment terminates. You can offer more holiday in a contract of employment but you cannot offer less. The Regulations implement the EU Working Time Directive (the Directive), which provides for four weeks' paid holiday per year.

#### Tricky issues

While this may seem relatively straightforward, the Regulations are not as clear on other points. Case law has provided guidance on some issues but there are still matters on which the law is uncertain. We are regularly asked for advice on holidays and sickness, on issues such as:

- Can a worker who falls ill before annual leave reschedule his leave?
- What happens if the worker falls ill while on holiday?
- Can a worker on long-term sick leave insist on taking paid holiday during this period?
- Can an employer require the worker to take holiday during sick leave?
- Can a worker carry over holiday from one year into the next holiday year where sickness was the sole reason for him being unable to take the leave?
- Can a worker carry forward 5.6 weeks' leave under the Regulations or is it limited to four weeks under the Directive?
- Can a worker on long term sick leave carry holiday forward indefinitely?
- What steps can employers take to prevent abuse where a worker is on holiday and wants to take it as paid sick leave?

#### What should you do now?

In the majority of cases, you should allow workers on long term sick leave to accrue holiday and to take paid holiday while off sick. You should permit workers who fall sick while on holiday to reschedule their holidays. In both cases, if it is not possible for the worker to take holiday in the holiday year in which it accrues, you should permit the worker to carry forward four weeks' leave to the next holiday year.

Please get in touch with your usual Womble Bond Dickinson contact if you have any specific issues you would like to discuss.