

ask about employment law

Paul Whitefield has specialised in employment law for over ten years. He recently set up specialist employment firm Fox Whitfield in Didsbury. Paul looks at some common legal issues around holidays



AN EMPLOYEE CLAIMS HE WAS ILL FOR A WEEK OF A TWO-WEEK HOLIDAY. HE WANTS ME TO PAY HIM SICK PAY FOR A WEEK AND LET HIM TAKE THE SECOND WEEK OF HIS HOLIDAY ANOTHER TIME.

Recent case law indicates that employees who become ill during a period of statutory holiday may choose to take that time as sick leave rather than holiday. However, they would still be required to comply with the normal company sick leave policy, normally that would require them to tell their employer the day they are ill. Employers should ensure their holiday pay and sick leave policies deal with this.

WE TOLD EMPLOYEES STRANDED BY THE VOLCANIC ASH CLOUD THAT THEIR ADDITIONAL DAYS' ABSENCE WOULD BE PAID AND TREATED AS HOLIDAY. AN EMPLOYEE WHO HAD TO USE ALL HIS HOLIDAYS NOW WANTS TO CHALLENGE THAT.

If it was made clear to the employee

that the absence would be treated as holiday at the time and they agreed to this, it is hard to see how they could challenge it. Had you not treated the absence as holiday the employee would not have been entitled to be paid for those days. Subject to the business requirements you could offer him some unpaid leave.

IF AN EMPLOYEE IS ABSENT FOR A LARGE AMOUNT OF THE HOLIDAY YEAR AND SO CAN'T TAKE HOLIDAYS, DO WE HAVE TO CARRY THOSE DAYS FORWARD INTO THE NEXT HOLIDAY YEAR?

Yes. If an employee can't take statutory holiday because they are absent on maternity or sick leave, they should be permitted to carry those holiday days into the next holiday year. In many cases this can be tagged onto the start or end of maternity leave. It may be possible to limit this to statutory holidays in your contract of employment if your employees get more than the

statutory minimum. Employees also have the right during sick leave to take days as holiday and to receive holiday pay for those days, even if they have exhausted their right to sick pay.

IF AN EMPLOYEE FAILS TO TAKE THEIR HOLIDAY ENTITLEMENT IN ONE YEAR, CAN THEY CARRY IT FORWARD TO THE NEXT YEAR?

Unless the contract of employment says otherwise, the untaken holiday would be lost in most cases. Only if the employee is unable to take the holiday due to absence might the employer be required to permit the holiday to be carried forward. It is wise to have this covered in the contract of employment or holiday policy.

Paul can be contacted
on 0161 283 1276 or at
paulw@foxwhitfield.com
www.foxwhitfield.com