

Sick workers can choose to carry over annual leave

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Workers on sick leave can choose to carry over their annual leave for up to 18 months after the leave year in which it accrued. There is no need for the worker to be physically incapable of taking their annual leave entitlement.

Mr Plumb was employed by Duncan Print Group Ltd as a printer.

Mr Plumb suffered an accident at work and, as a result, he remained on sick leave from 26 April 2010. Mr Plumb did not take or request any annual leave until September 2013, at which point he asked Duncan Print for permission to take all his accrued leave from the date he went on sick leave. Duncan Print agreed to pay for accrued leave in the current leave year (1 February 2013 to 31 March 2014) but would not pay for leave accrued in prior years. Once his employment terminated on 10 February 2014, Mr Plumb brought a claim for payment in lieu of the accrued but untaken holiday since his sick leave commenced. In its defence, Duncan Print argued that the annual leave could not be carried over because Mr Plumb had been unwilling, not unable, to take it.

The Employment Appeal Tribunal held that the annual leave had carried over. There was no requirement that the worker be incapable of taking annual leave due to illness. It was enough that the worker on sick leave had chosen not to take annual leave whilst on sick leave; whilst workers can take annual leave whilst on sick leave, there is nothing compelling them to do so. This is because the two kinds of leave are intended to have different purposes: sick leave enables unwell workers to recover from illness whereas annual leave allows for periods of rest and relaxation for health and safety reasons.

That said, the EAT concluded that leave cannot accrue indefinitely. A worker is able to carry annual leave over for a maximum of 18 months; therefore, Mr Plumb was entitled to around half of the amount he had claimed.

Plumb v Duncan Print Group Ltd UKEAT/0071/15

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