

12 July, 2016

Dear HR Manager

Re: Annual Leave and the Amendment of Organisation of Working Time Act, 2015

1. Background

The Organisation of Working Time Act 1997 sets out the provisions for the award of annual leave. Section 86(1) of the Workplace Relations Act 2015 amends the Organisation of Working Time Act 1997 and provides for the accrual of annual leave while on sick leave. This Section of the Act commenced on 1 August 2015.

The new legislation is in response to Court of Justice of the European Union (CJEU) rulings on accrual of annual leave entitlements during sick leave which relate to the requirements of the EU Directive on Working Time (consolidated Directive 2003/88/EC).

Starting with the Schultz-Hoff/Stringer cases (2009), the CJEU has ruled that employees can accrue annual leave while out on sick leave. In the KHS case (2011), the CJEU ruled that national law could put a cap on the unlimited accrual of annual leave during successive years of absence on sick leave, with the Court accepting on the facts of that case that a 15 month carry over period was not contrary to the Working Time Directive. By virtue of the doctrine of direct effect, these rulings applied to Irish public sector workers. However they did not apply to private sector workers until 1 August, 2015. Prior to this amendment, the Organisation of Working Time Act provided that annual leave was calculated on the basis of time worked and was silent on the issue of how time spent on sick leave should be regarded for the purposes of calculating annual leave.

2. Clarification of impact on Annual Leave for civil servants

Prior to the direct effect of the CJEU rulings, it was the position in the Civil Service that annual leave accrued while on sick leave with full or half pay. However, no annual leave accrued when off pay due to sick leave or on Pension Rate of Pay (now Temporary Rehabilitation Remuneration or TRR). The effect of the CJEU rulings, and the change in legislation means that in the Civil Service:

- **Statutory** annual leave accrues when an individual is on TRR and/or zero rate of pay due to certified sick leave.
- Periods of sick leave at full and half pay will retain full annual leave entitlements.

The statutory leave accrued can be carried over for a period of 15 months post the leave year in which it was accrued.

As the CJEU cases date from 2009, the effective date of change for this is the annual leave year commencing in the calendar year 2009.

3. Treatment of Non-Statutory Annual Leave

All civil servants have some annual leave in excess of the statutory minimum of 4 working weeks which may not have been exhausted prior to being on sick leave. This non-statutory sick leave may be carried over in accordance with the provisions of Circular 27/03 (the relevant paragraphs are 14 and 27).

4. Sequence in which annual leave must be taken

As set out at paragraph 2, annual leave accrued while on sick leave will remain available to the individual for 15 months following the leave year in which it accrued. Following this 15 month period, the annual leave will drop off the individual's record. Therefore on return to work, the individual must take the oldest remaining annual leave first.

5. Unauthorised leave

For the purpose of clarity it should be stated that annual leave does not accrue during periods of unauthorised absence.

6. Queries

An example of calculation of annual leave is attached (Appendix 1). Any queries should be directed to CSHR Policy Unit.

Regards,

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Department of Public Expenditure & Reform

Appendix 1

Example 1

Jo has AL allowance of 25 days. She is absent on TRR from 1 April 2010 to 31 March, 2014.

Statutory accrual

1/4/2010 - 31/3/2011 is 20 days. Leave entitlement lasts until 30/6/2012 (15 month period)

1/4/2011 - 31/3/2012 is 20 days. Leave entitlement lasts until 30/6/2013

1/4/2012 - 31/3/2013 is 20 days. Leave entitlement lasts until 30/6/2014

1/4/2013 - 31/3/2014 is 20 days. Leave entitlement lasts until 30/6/2015

If Jo returns to work on 1/4/2014, she has access to

- (a) 20 days accrued in 2012/2013 (up until 30/6/2014),
- (b) plus 20 days accrued in 2013/2014 (up until 30/6/2015) and
- (c) her current AL allowance.

The leave must be taken in this sequence.

She has lost entitlement for the years 2010/2011 and 2011/2012.

Impact within an annual leave year

Annual leave will also need to be recalculated in situations where staff are on full pay and TRR/zero rate of pay in the same annual leave year.

Note: Prior to the CJEU ruling, civil servants were not accruing annual leave while on unpaid sick leave. So it is assumed that similar calculations/adjustments have been made in the past in situations where paid and unpaid leave occurred in the same annual leave year.