

PRESS RELEASE

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Q: I employ four people in my small consultancy. One member of staff has been on extended sick leave for a number of months due to stress. She has requested paid statutory holiday whilst still signed off. Can she do this?

A: Legislation supports employees who take statutory holiday during sick leave, even when no statutory and/or contractual sick pay (CSP) allowance remains.



An employment tribunal recently found an employee was due statutory holiday pay during an extended sick leave period. It was considered illegal to withhold holiday pay albeit no statutory holiday had been taken during that time.

You could issue a counter-notice denying a request for statutory holiday. However, if your employee is unlikely to return to work before the holiday year-end, this is inadvisable. You may be in breach of the legislation by preventing them from taking leave within the leave period. In addition you might have to pay compensation – potentially far more costly.

It may benefit your business to refuse a request for statutory holiday during extended sick leave if:

- your employee's CSP expires within two months and four months of leave period remain enabling them to take holiday upon return to work;

- they request paid statutory holiday beginning as their CSP ends, they will receive pay beyond the CSP period;
- if your employee's health is improving and they are likely to return to work with time to take holiday in the leave year.

If you decided to take action you could argue you wanted your employee to benefit from a holiday when well, rather than during an illness.

If you issue a counter notice your employee could claim for disability discrimination or, alternatively, constructive dismissal on the grounds that you breached the implied contractual term of mutual trust and confidence by declining their holiday request in order to save money.

It would be advisable to discuss the issue with an expert in employment law before you decide on any cause of action.

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