

## Request it or lose it: employees must give proper notice if they want to take holiday

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The key issue in the case was whether an employer is legally obliged to permit an employee to take all of his statutory paid leave within the employer's leave year, even if requested by the employee towards the end of the leave year at a time when it may not fit in with the staffing patterns of the business.

The case, *Lyons v Mitie Security Ltd*, involved a security guard, Mr Lyons, who worked on an 'as required' basis for Mitie, attending the premises of various Mitie clients to provide security services. He raised a series of grievances with his employer, including a request, in March 2008, for payment for nine days' outstanding holiday. This request was refused on the basis that Mr Lyons had not given the notice of holiday required by his contract of employment (see below). Mr Lyons resigned in April 2008 and brought tribunal proceedings, including a claim for outstanding holiday pay.

The Working Time Regulations contain rules for giving notice of holiday, which in essence require employees to give notice of taking holiday that is at least twice as long as the period of holiday being asked for. Hence an employee who wishes to take a week's holiday must give two weeks' notice. These statutory rules can be varied in the contract of employment or by collective agreement. The Mitie contract of employment included the following provisions:

- *The holiday year runs from 1st April to 31st March.*
- *All applications for holiday must be made by completing the Company's standard holiday request form and submitting it for approval to your Line Manager. The form wherever possible should be submitted at least 4 weeks prior to the commencement of the holiday. Applications for holidays at shorter notice will be considered on their merits and subject to staffing requirements.*
- *A maximum of 2 weeks may be taken at any one time (including weekends and Bank Holidays) unless you have the written approval of a senior manager of the Company.*
- *All holiday must be taken during the relevant holiday year and may not be carried over to the following year. Any holiday pay for holiday entitlement not taken in the relevant holiday year will be forfeited.*

Mr Lyons argued that he had not been able to take his statutory holiday during employment and was therefore entitled to be paid in lieu on termination of employment. He argued that his right to statutory minimum paid holiday was an inalienable right that could not be restricted by clauses in a contract that required him to give notice. Mitie however argued that Mr Lyons had to comply with the notice provisions if he wanted to take leave and as he had not done so his entitlement to leave would fall away.

The EAT put the problem as follows: 'what is the position of an employee who, towards the end of a leave year...requests to take his outstanding holiday before the end of the year only to be met with an objection from an employer that staffing requirements within the business meant that an employee could not take some or all of the outstanding days?'

The EAT decided that the right to statutory holiday is not inalienable and employers are entitled to require employees to comply with the statutory rules or any reasonable contractual rules they have stipulated for holiday requests. Both the Working Time Regulations and the Working Time Directive envisage 'conditions for entitlement' to paid annual leave. Employers should not be put in a difficult position with regard to their operational and staffing requirements as a result of employees leaving their holiday requests until very late in the leave year.

What does the case mean for employers?

- The ruling confirms that employers can rely on the statutory rules on notice of holiday, or any reasonable contractual rules of their own, to manage employees' holiday requests;
- If employees do not comply with the notice requirements and have left their holiday requests until very late in the holiday year, employers can refuse these requests either:
  1. because there is not enough time left in the holiday year to fit the holiday in; or
  2. because to grant holiday at such a late stage would create staffing difficulties.

- If employees do not comply, their rights to outstanding holiday will fall away subject to any rules on carry over for contractual holiday that exceeds statutory entitlement;
- Employers must not operate any notice mechanism in an 'unreasonable, arbitrary or capricious way'. As the EAT pointed out, employers are likely to face grievances and constructive dismissal claims if they do.
- The decision is not suggesting that employers should not make an effort to ensure that employees take their holiday during the holiday year.
- As there was very little relevant case law for the EAT to rely on, it is possible that the case may be appealed or overturned at a later date.

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