

Reclassifying holiday as sick leave

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An important decision was made by the European Court of Justice on the 10th September 2009 in the case of Francisco Vicente Pereda v Madrid Movilidad SA which held that where an employee decides they do not want to take annual leave during a period of sick leave, he or she **MUST** be permitted by the employer to take the annual leave at a different time.

Therefore, if an employee is taken ill during a scheduled holiday they now have a choice. The choice is that they can either continue to take their annual leave as planned **OR** they can insist on postponing their annual leave and take sick leave instead.

The European Court of Justice did not comment on the evidence that an employee will be required to produce before they are permitted to reclassify their annual leave as sick leave and therefore, there is wide concern that some employees will abuse the recent ruling.

At this early stage, we are advising our employer clients to request a medical certificate from employees in such circumstances confirming that they are unfit to work over the period in question. For more advice and assistance contact our employment team.

September 2009