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Press and Information

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Judgment of the Court of Justice in Joined Cases C-350/06 and C-520/06

*Schultz-Hoff v Deutsche Rentenversicherung Bund
Stringer and Others v Her Majesty's Revenue and Customs*

**A WORKER DOES NOT LOSE HIS RIGHT TO PAID ANNUAL LEAVE WHICH HE
HAS BEEN UNABLE TO EXERCISE BECAUSE OF SICKNESS**

He must be compensated for his annual leave not taken

In its judgment of today, the Court of Justice of the European Communities interprets the entitlement to paid annual leave enshrined by the Community working time directive.¹

This interpretation was requested by the Landesarbeitsgericht Düsseldorf (Germany) and the House of Lords (United Kingdom) in cases relating to the entitlement to paid annual leave of workers on sick leave.

The Landesarbeitsgericht is called upon to rule on compensation for a worker who was unable to exercise his right to paid annual leave on account of incapacity for work which meant he had to retire. According to the relevant German legislation, a worker's entitlement to paid annual leave not taken is extinguished at the end of the calendar year concerned and at the latest at the end of a carry-over period which, except in the case of a derogation in favour of the worker laid down in a collective agreement, is of three months' duration. If the worker has been incapacitated for work until the end of that carry-over period, compensation by means of an allowance in lieu of the paid annual leave not taken is not permitted on termination of the employment relationship.

In addition to a similar claim for compensation for annual leave not taken during the leave year as defined in United Kingdom law, the House of Lords is called upon to examine the case of a worker who, in the course of an indefinite period of sick leave, asked her employer if she could take, during the two months following her request, a number of days of paid annual leave.

In its judgment, the Court notes that the right to sick leave and the conditions for the exercise of that right are not governed by Community law. With regard to the right to paid annual leave, it is for the Member States to lay down conditions for its exercise and implementation, by prescribing the specific circumstances in which workers may exercise the right to annual leave, without making the very existence of that right subject to any preconditions whatsoever.

¹ Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

In those circumstances, the entitlement to paid annual leave enshrined by the working time directive does not, as a rule, preclude either the authorisation of paid annual leave during a period of sick leave, or the prohibition of such paid annual leave. However, any such prohibition must be subject to the condition that the worker in question has the opportunity to exercise his right to leave during another period.

While the conditions for application of the right to paid annual leave in the various Member States are governed by them, the conditions for carrying over leave not taken are nevertheless subject to certain limits.

In that regard, the Court points out that the entitlement to annual leave of a worker on sick leave duly granted cannot be made subject to the obligation actually to have worked in the course of the leave year laid down by a Member State. Consequently, a Member State may provide for the loss of the right to paid annual leave at the end of a leave year or of a carry-over period only if the worker concerned has actually had the opportunity to exercise his right to leave.

The Court finds that a worker who is on sick leave for the whole leave year and beyond a carry-over period laid down by national law is denied any opportunity to benefit from his paid annual leave. The same is also true of a worker who has worked for part of the leave year before being put on sick leave.

The Court concludes that the right to paid annual leave is not to be extinguished at the end of the leave year and/or of a carry-over period laid down by national law where the worker has been on sick leave for the whole or part of the leave year and where his incapacity to work has persisted until the end of his employment relationship, this being the reason why he could not exercise his right to paid annual leave.

With regard to the right, on termination of the employment relationship, to an allowance in lieu of the paid annual leave which the worker has been unable to take, the Court rules that the allowance must be calculated so that the worker is put in a position comparable to that he would have been in had he exercised that right during his employment relationship. It follows that the worker's normal remuneration, which is that which must be maintained during the rest period corresponding to the paid annual leave, is also decisive as regards the calculation of the allowance in lieu of annual leave not taken by the end of the employment relationship.

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Languages available: FR CS DE EN ES EL HU IT PL PT RO SK

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-350/06>*

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
Communications,*

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