



### **Section 19\***

This is an extract from our seminar notes given to the Southern Law Association joint seminars with the Employment Law Association of Ireland given on 29<sup>th</sup> November and 4<sup>th</sup> December 2014

The European Court of Justice (“ECJ”) has ruled on a workers’ entitlement to be paid for annual leave / holidays while on sick leave.

There are two important European Court decisions on this being case C-350/06 and C-520/06 both which are commonly called the Stringer case. These decisions of the ECJ have huge significance for employers and employees throughout Europe.

### **The Findings of the Court**

The ECJ held that a workers annual leave / holiday entitlement continue during periods of sick leave.

- A workers’ entitlement to have worked during the leave year in question is not necessary to obtain such rights.
- A workers annual leave / holiday entitlement in a given year may not lapse at the end of the leave year or any carry over period due to the workers’ inability to work.
- The maximum period of leave which a worker on sick leave can obtain is limited to 18 months. Therefore the maximum leave which can an accrue is 6 weeks being four weeks for each Annual Leave year and two weeks for the six month period.
- Where a workers does not return to work prior to his / her employment being terminated (whether by the employer or by the employee) the worker is entitled to payment in lieu of the outstanding Annual Leave / Holiday Leave entitlement not taken during the period of his or her sick leave.

There is an argument that Irish law currently does not comply with the rulings of the ECJ. The Organisation of Working Time Act 1997 requires the worker to actually have worked in order to obtain the Annual Leave / Holiday Leave entitlements.

If the Irish law is not compliant with the ECJ ruling then employers will have no liability. This does not mean that the worker will lose their rights. The worker will be entitled to sue the Irish State for the



loss. It would appear that any worker, whether or not they have brought a claim before the Rights Commission Service / Labour Court and whether or not they have complained to their employer will be entitled to bring a claim if it has arisen in the last six years and possibly back to when the Act came into force. This could be a substantial cost to the Irish State.

If the Irish legislation is in compliance with the ECJ ruling, which is questionable to say the least, then employers will have a liability. Even if employers at the present time do not have a liability employers need to deal with workers' who are on long term sick leave rather than allowing them to remain on the books indefinitely as such workers' will become entitled to Annual Leave / Holiday entitlements in respect of the entire period that he or she was out sick. Immediately the Organisation of Working Time Act is amended. The claim cannot exceed 18 months leave being 6 weeks.

Questions will arise as to what the effect of the ECJ ruling is. The ECJ ruling only applies to the four week mandatory Annual Leave / Holiday entitlement which workers' are entitled to obtain. Additional annual leave over and above the Statutory Minimum will not be affected by the ECJ ruling.

My firm has made a written submission to the Minister of Jobs Enterprise and Innovation on 27th March 2014. Where there is a clear and definitive ECJ ruling the State is obliged to bring in the legislation to implement same. Failure to do so is simply going to mean expensive claims against the State.

For employees who believe that they may have a claim it is important that that the claim issues as soon as practicable as it is likely that the State may attempt to minimise exposure by limiting claim periods.

\*In contentious cases a solicitor may not charge fees or other expenses as a percentage or proportion of any award or settlement.