



'Phillips' Legal Corner'



Question

Can I carry over holiday days that I didn't take in the last holiday year?

Answer

Gill Brown, specialist employment solicitor at Phillips Solicitors, replies:

The answer is not a clear yes or no – you will need to refer to your contract and any holiday policy that your employer has in place. These documents should tell you what your employer agrees to. There is no automatic legal right and in fact the statutory holiday regulations say that you cannot carry holiday over. The reasoning behind this is that everyone needs a holiday and it is to encourage people to take time off for health reasons. If it is agreed that you can carry holiday over then it is advisable to agree the number of days with your employer and to have this confirmed in writing. If you are entitled to carry days over, please check if there are conditions attached i.e. that you need to use them up within a certain time.

There are some exceptions to the general principle that you cannot carry holiday days over without consent. If you leave your job, the number of days of accrued unused holidays will be calculated on a pro rata basis and you will be entitled to be paid for these. Secondly, if you are on long term sickness absence your holiday allocation will accrue and be carried over to the next year. Thirdly your holiday allowance accrues in the usual way when you are on maternity leave and can carry over between holiday years.

There is also a recent ruling on cases of illness whilst on holiday leave – it suggests that if you are ill and unable to go on your planned holiday or have to return early from it because you are sick, then you are not necessarily obliged to take the time as holiday, but may take it as sick leave and reclaim the holiday entitlement. You would need to provide substantial evidence of the sickness or injury and if you do want to treat this time as sick leave instead of holiday, your employer can pay you sick pay rather than holiday pay, if this is a different amount in your particular case.

If you have queries generally regarding your holiday entitlement or are sick when you are meant to be on holiday or unsure of your rights always seek the help of an experienced adviser.

Gill Brown, solicitor at Phillips, heading up the employment law team. Call Gill 01256 854605 or email Gill at gbrown@phillips-law.co.uk

Visit our website at www.phillips-law.co.uk