Workx Advocaten

ILLNESS AND HOLIDAYS: **THE RULES**

The Supreme Court has provided clarity on two questions:

1. Do the holiday days of an employee who takes no holiday during illness expire over time?
2. An employee falls ill just before or during a booked holiday. Can the holiday days taken still be deducted from the holiday balance?

01. EXPIRY OF HOLIDAY DAYS DURING ILLNESS

As a rule, statutory holiday days expire six months after the calendar year in which the entitlement was acquired, **unless** the employee could not reasonably have taken holiday up to that time.

EMPLOYEE CANNOT REINTEGRATE

Expiry period does not apply

The exception then applies: the employee could not reasonably have taken holiday. A holiday is intended for recuperation; a long-term sick employee who cannot reintegrate has no need for recuperation.

EMPLOYEE CAN REINTEGRATE

Short expiry period applies

The employee is therefore deemed able to take holiday. Reintegrating employees do need recuperation.

02. SETTING OFF DAYS OF ILLNESS AGAINST A HOLIDAY ALREADY BOOKED

Days of illness cannot **be treated as holiday days**, unless the employee consents or this has been agreed in a written agreement.

Whether the employee can reintegrate is **not relevant** here: even if that is not the case, set-off can take place.

ROUTE	STATUTORY	EXTRA-STATUTORY
Consent Express and specific	✓	✓
Written agreement Also by collective labour agreement	✗	✓

THE CASE BEFORE **THE SUPREME COURT**

1. Employee asks for five weeks' summer holiday (touring Norway in his camper van); the request is approved.
2. A month later he reports sick.
3. A week before departure: the company doctor (bedrijfsarts) finds that he is unfit for his own work and other work.
4. He tells the company doctor and his manager that he will go on holiday anyway.
5. The employer deducts 29 holiday days: **wrongly**. Telling the company doctor and/or manager that he wants to go on holiday is not sufficient as consent.

TIP! Had an employee already booked a holiday before falling ill? Then, as an employer, ask for **explicit consent** to deduct the holiday days during illness.

Based on our article on illness and holidays, 8 February 2024 — workxadvocaten.nl (in Dutch)
www.workxadvocaten.nl/en/artikel.html?a=ziekte-en-vakantie-hoe-zit-dat-eigenlijk

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