

Dear Colleague

## CARRY OVER OF HOLIDAY ENTITLEMENT DURING LONG TERM SICK LEAVE

### Summary

1. This letter advises Boards of a legal ruling which will affect local policies on the carry over of holiday entitlement from one leave year to the next for staff on long term sick leave.

### Background

2. The European Court of Justice has issued a judgment on paid holiday for workers who are absent from work while sick. Although currently referred to the House of Lords for a final ruling, this judgment has a direct affect on employees in the NHS and has immediate implications for employers.

3. The current situation in NHSScotland is that employees who are off on long term sick leave can only carry over 5 days annual leave from one leave year into the next. The European Court judgment gives employees an entitlement to the full statutory amount of annual leave under the Working Time Directive (WTD).

4. **The WTD entitlement to annual leave until 31 March 2009 was 24 days but it should be noted that this rose to 28 days from 1 April 2009. Both these figures include statutory/public holidays.**

5. In effect, this means that any employee who is not able to use up their leave entitlement in a given year because of sick leave will be entitled to the difference between any annual leave and/or public holidays taken before sick leave began and the statutory entitlement. This should be carried over and added to the entitlement in the new leave year or, where an employee terminates and does not return to work, should be paid at full pay rates in lieu of leave.

6. **It should be noted that staff are entitled to statutory leave only and employees are not entitled to carry over (or be paid on termination) the full amount of leave provided by their NHS terms and conditions of employment.**

CEL 17 (2009)

30 April 2009

### Addresses

#### For action

Chief Executives, NHS Boards and Special Health Boards and NHS National Services Scotland (Common Services Agency)  
Directors of Human Resources, NHS Boards and Special Health Boards and NHS National Services Scotland (Common Services Agency)

#### For information

Members, Scottish Partnership Forum  
Members, Scottish Terms and Conditions Committee  
Members, Scottish Workforce and Staff Governance Committee

### Enquires to:

Colin Cowie  
Scottish Government Health Directorates  
Health Workforce  
Ground Floor Rear  
St Andrew's House  
EDINBURGH EH1 3DG

Tel: 0131-244 3778  
Fax: 0131-244 2837

E-mail:

[Colin.cowie@scotland.gsi.gov.uk](mailto:Colin.cowie@scotland.gsi.gov.uk)



7. This circular is effective from 1 April 2009 and this policy should therefore be applied from the transition of the 2008-2009 leave year onwards. The Annex to this circular gives a worked example of how the the new arrangements would operate.

8. Part-time employees should be treated similarly but the leave allocation should be pro-rata according to the days/hours worked reflecting their actual statutory leave entitlement.

### **Action**

9. NHS Boards, Special Health Boards and NHS National Services Scotland (Common Services Agency) should amend their current policies on this issue with immediate effect.

10. Employers are asked to make their own arrangements for obtaining additional copies of this Chief Executive Letter (CEL) which can be viewed at:

[www.sehd.scot.nhs.uk](http://www.sehd.scot.nhs.uk)

Yours sincerely

**JACQUI JONES**

Deputy Director for Health Workforce  
Employment and Retention



## CARRY OVER OF HOLIDAY ENTITLEMENT DURING LONG TERM SICK LEAVE

The following is a practical example of how the new policy would work:

- An employee has already been off for a 1 day public holiday in May 2008 and then 5 days annual leave in June 2008.
- They then go off sick and do not return before the end of the 2008-09 annual leave year – 31 March 2009.
- On return to work they would be entitled to 18 days leave from the previous year (i.e. the difference between the statutory entitlement of 24 days and the 6 days taken before sick leave commenced.)
- As detailed in the circular, the statutory entitlement increased to 28 days on 1 April 2009 so if the above example were moved on a year the employee would be entitled to 22 days leave from the previous year.
- This leave should be added to the employee's entitlement in the new leave year or, in the event of an employee terminating and not returning to work, payment should be made in lieu of outstanding leave.