

JOELSON WILSON

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**UPDATE FROM OUR EMPLOYMENT TEAM: JULY  
2009**

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### Holiday pay for employees on sick leave

- The issue of whether an employee on long term sick leave can take paid annual leave whilst off sick has been decided by the House of Lords. Employees on long term sick leave can take paid annual leave even though they are not at work
- Paid annual leave for these purposes is the statutory amount of leave under the **Working Time Regulations ('WTR')**. The WTR allow every worker 28 days' holiday including public/bank holidays per year (pro rated for part time workers)
- Paid annual leave under the WTR can only be taken in the leave year in which it accrues. The employer cannot pay the employee in lieu of the holiday and it can *only be taken in the leave year in which it accrues*. Untaken holiday under the WTR can't be carried over.
- Employers should note that employees can now also claim back pay for earlier years where holiday pay was not paid.

### Employees' allowance for staying overnight on the premises counts towards national minimum wage

- An allowance paid to workers who sleep on site from time to time (in this particular case, a care home) is to be taken into consideration when calculating wages under the national minimum wage legislation and deciding whether average pay meets the national minimum wage (currently £5.73 an hour).
- Other allowances, such as an allowance for working antisocial hours, being 'on call' or performing additional duties over and above the worker's normal duties do not count when calculating workers' pay for national minimum wage purposes.
- Where the allowance paid is in respect of the worker performing part of his/her normal job, then it will count in deciding whether the worker's wages meets the national minimum threshold.

### **Need to know more?**

**Ask us. For information/advice on employment issues, please contact:**

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**This document is not intended to be a comprehensive review of all developments in the law or practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions.**

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July 2009