

SUMMARY

ECJ 29 November 2017, case C-214/16 (Conley King), Paid leave

<p>The Working Time Directive precludes provisions that establish the right to be paid only after leave has been taken. Further, the right to paid leave (or a corresponding payment at the end of the employment relationship) cannot lapse if the employee has been deterred from taking the leave.</p>

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Legal background

Article 7(1) of Directive 2003/88/EC (the ‘Working Time Directive’) stipulates that “Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.” In addition: “The minimum period for annual leave may not be replaced by a payment in lieu, except where the employment relationship is terminated.” The Working Time Directive has been implemented in the UK by means of the Working Time Regulations. The Working Time Regulations grant employees and workers paid annual leave, in two separate articles (one for leave and one for pay), or a corresponding amount for untaken leave at the end of the employment relationship. If an employer refuses to grant this paid leave, a worker must in principle complain within three months of the date on which the leave (should) begin.

Facts and national proceedings

Mr King worked for the Sash Window Workshop based on a 'self-employed commission-only contract'. He was paid based on commission and any leave was unpaid. Once his employment relationship was terminated, he claimed payment of all leave, including any leave that had lapsed. His employer refused and Mr King started proceedings. During these proceedings, the court established that he was a worker and hence entitled to annual paid leave. The referring court doubted whether the short claiming period of three months was in line with the Working Times Directive and asked some preliminary questions.

Questions put to the ECJ

Must Article 7 of Directive 2003/88 and the right to an effective remedy set out in Article 47 of the Charter of Fundamental Rights of the European Union (the 'Charter') be interpreted as meaning that, in the case of a dispute between a worker and his employer as to whether the worker has the right to paid annual leave under the first of those articles, they preclude the worker having to take his leave first before establishing whether he has the right to be paid in respect of that leave?

Must Article 7 of Directive 2003/88 be interpreted as precluding national provisions or practices that prevent a worker from carrying over and, where appropriate, accumulating, until termination of his employment relationship, paid annual leave rights not exercised in respect of several consecutive reference periods because his employer refused to remunerate that leave?

ECJ's findings

The right to paid annual leave is a particularly important principle of EU Social Law, the implementation of which must be confined within the limits laid down by the Directive. Although Member States may lay down conditions for the exercise and implementation of the right to paid annual leave, this may not be made subject to any preconditions whatsoever. Directive 2003/88 treats the right to annual leave and to a payment on that account as being two aspects of a single right. The purpose of the requirement that the leave be paid is to put the worker, during such leave, in a position which is, as regards salary, comparable to periods of work. The very purpose of the right to paid annual leave is to enable the worker to rest and to enjoy a period of relaxation and leisure. However, a worker who faces uncertainty about remuneration would not be able to fully benefit from that leave. Moreover, such circumstances

may dissuade him or her from taking leave. Any practice or omission of an employer that may deter a worker from taking leave is therefore incompatible with the Working Time Directive. Against that background, the right to paid leave cannot depend on a factual assessment of the worker's financial situation. The UK legislation brought Mr King in the position that he must first take his leave before it could be established whether this was to be paid (and only after a claim). This is not an effective remedy and therefore contrary to the Working Time Directive.

As regards carrying over and accumulating paid annual leave rights, Mr King did not take leave for reasons beyond his control. As has been previously held in the Schultz-Hoff judgment (C-350/06 and C-520/06), the right to annual paid leave may not be lost (not even after a carry-over period) when a worker has been prevented from using his rights.

Similarly, a worker is entitled to a corresponding amount if this leave is still untaken upon termination of the employment relationship (Article 7(2)). While it has been held that the Directive does not prevent carry-over periods (such as the 15-month period in KHS, C-214/10), this has been in the case of illness. In that context, and given the problems an employer may encounter from long absences, a carry-over period may be allowed. Similarly, there must be specific circumstances which justify exceptions to the rule that leave does not lapse if the worker has not been able to take his leave. Such specific circumstances did not exist in the case at hand. Mr King's employer had in fact benefitted from him not taking leave. It was also not relevant that his employer originally thought that Mr King was not entitled to leave.

Ruling

Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, and the right to an effective remedy set out in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, in the case of a dispute between a worker and his employer as to whether the worker is entitled to paid annual leave under the first of those articles, they preclude the worker having to take his leave first before establishing whether he has the right to be paid in respect of that leave.

Article 7 of Directive 2003/88 must be interpreted as precluding national provisions or practices that prevent a worker from carrying over and, where appropriate, accumulating, until termination of his employment relationship, paid annual leave rights not exercised in respect of several consecutive reference periods because his employer refused to remunerate that leave.

Creator: European Court of Justice (ECJ)

Verdict at: 2017-11-29

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