

**DISPUTE RESOLUTION DEPARTMENT**  
**EMPLOYMENT LAW**  
**MAY 2009**

**RECENT CASES**

Cold feet?

Having suffered from chest infections, Mr Sawyer maintained a temperature of 27 degrees in his office by wearing lots of layers (according to the court report, this consisted of lots of underclothing and outer garments and two woolly hats which he wore one atop the other) and with the aid of a heater. The heater was then taken away and Mr. Sawyer claimed that he had been discriminated against on the ground of his disability. At the Employment Appeal Tribunal, Mr. Sawyer represented himself dressed in a top coat and the said woolly hats. He was found not to have a disability within the meaning of the Disability Discrimination Act and the decision to strike out his case was upheld.

Long term sickness absence

In a 2008 housing case, the House of Lords decided that treatment for a reason which relates to the disabled person's disability has to be construed narrowly. The Employment Appeal Tribunal have now confirmed that this reasoning applies equally in employment cases. So, if a disabled employee is off sick for a long time and is dismissed, the comparator will be someone who is not disabled, but is also absent from work for a similar length of time. If this comparator would have received exactly the same treatment for the same underlying reason, there is no disability-related treatment.

"I've been sick – I need a holiday"

The European Court of Justice has decided that a worker does not lose his right to paid annual leave which he has been unable to take because of sickness absence.

Unpaid salary

It seems that large fixed bonus payment can now be sued upon in the Employment Tribunal jurisdiction after an employee's case for £100,000 was allowed to proceed as an unlawful deduction from wages claim. This particular employee was aggrieved that he had not received the bonus although he had already received a bonus of £1.2m in addition to his annual salary of £300,000.

**Help for parents with older children**

Parents of children up to 16 years old are able to request flexible working from **1 April 2009**.

**Holidays**

The statutory minimum holiday entitlement increases to **28 days** from **1 April 2009**

**If you require any advice or assistance about an employment matter, please contact Deborah Driscoll in our Dispute Resolution Department.**

**Disclaimer**

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