

**CIVIL LITIGATION DEPARTMENT  
EMPLOYMENT LAW  
HOLIDAYS, NOTICE AND RETIREMENT  
OCTOBER 2009**

**DEHLI BELLY BONUS**

If you break a leg on a skiing holiday or spend all your holiday in the bathroom after drinking dodgy tap water, remember to thank the European Court of Justice. It has now ruled that sickness or injury whilst on holiday does not count towards your statutory annual leave. Presumably this will lead to disputes between employers and employees about whether you are still technically enjoying your holiday, but if it happens just before you are due to depart and you decide not to go, your employer should allow you your full entitlement at another date, even if it has to be carried over to another leave year.

**CREDIT FOR WORK DURING NOTICE PERIOD**

In past years, the case of Norton Tool has been authority for the proposition that it was good employment practice for an employer who had unfairly dismissed an employee without notice to make a payment in lieu of notice and that, in assessing compensation for dismissal, his payment would not be subject to any deduction for sums earned in other employment during the notice period. This fundamental principle has been challenged in recent years, but each case will be assessed on its own facts and it is essentially still good law. However, the recent case of Stuart Peters v Bell makes it clear that this rule will only apply where the employer has expressly dismissed the employee. It will *not* apply where the employee is claiming constructive unfair dismissal.

**RETIREMENT AGE**

The Age Regulations provide that it does not constitute unlawful discrimination for an employer to dismiss an employee on the grounds of retirement at age 65. Age UK brought a challenge in the courts arguing that the choice of a default retirement age of 65 was not proportionate on social policy grounds. Their challenge was not upheld and 65 is still the designated retirement age for the foreseeable future. A review is due in 2010 under Labour, however the Conservatives have confirmed that, if elected, they might raise the retirement age for men to 66 from **2016**. Women's state pension age might also be raised at the same time, but this similarly will be subject to a review.

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

**Disclaimer**

The content of this article is intended for general information purposes only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at October 2009 and it may be affected by subsequent changes in the law. We cannot accept responsibility for any loss as a result of acts or omissions taken in respect of this article.