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Holiday pay rights in event of death of an employee

The European Court of Justice (EJC) has ruled that employees who have died with outstanding holiday allowance should be paid this after their death, concluding that the death of an employee did not end their right to be paid annual leave.

Background – *Bollacke v K + K Klass and Kock*

In the case of *Bollacke v K + K Klass and Kock* (K + K), Mr Bollacke worked for K + K from 1 August 1998 to 19 November 2010. From 2009 onwards he was seriously ill and during that year he was off sick for over eight months. He was then unfit for work again from 11 October 2010 until his death on 1 November 2010. During this time he had accrued 140.5 days untaken holiday. His widow, Mrs Bollacke, was his sole beneficiary and on 31 January 2011 she requested payment from K + K in lieu of holiday on termination. K + K rejected the application expressing doubts that inheritable entitlement could exist.

Following this the case was referred by the German Higher Labour Court to the ECJ to advise if a law stops the payment of annual leave in the event of an employee's death.

The ECJ ruled that the "right to pay annual leave is a particularly important principle of social law and that the right to annual leave and to payment on that account constitute two aspects of a single right". The ECJ also added that payment of that allowance did not depend on a prior application by the interested party.