

Employment Update

Financial compensation for untaken holidays

31st May 2019

Regarding the Supreme Court's Judgment on March 14th 2019

On many occasions long periods of work contract suspension that finally end with its termination, due to the declaration of a permanent invalidity of the worker (art. 49.1.e) of the Worker's Statute), are marked by the question of whether workers are entitled to financial compensation for holidays not taken.

The topic is not trivial as it can affect accrued holidays, and which could not be taken over up to periods of even there years. This raises the question of whether they will be affected by the one-year limitation (art. 59.2 WS).

The Supreme Court's decision of 14th March 2019 (Dinosol Supermercados case; RCU 466/2017) revoking the previous STSJ Andalucía (Sevilla) of 27 October 2016 and SJS nº 3 Jerez de la Frontera of 21 November 2014 responds to these questions.

The issue at issue was focused and fixed in determining first whether a worker who was in a temporary incapacity situation, who was unable to work continuously for several years and who had not been able to enjoy his right to annual leave, having had his employment contract terminated as a result of the declaration of total permanent incapacity for his usual profession, was entitled to take that leave or to financial compensation from the moment of the termination of the employment relationship; and, secondly, in determining the dies a quo for the calculation of the limitation period of the action brought.

The analysed case judged the situation of a worker who had remained on sick leave for temporary incapacity due to professional contingency in the period from 03/03/10 to 19/03/10 and, subsequently, on 08/30/10 started a new process of temporary incapacity due to professional contingency, and after TI file was issued Resolution of the Provincial Directorate of the INSS dated 14/12/12 by which he was declared in total permanent disability situation for the normal profession, which led to the termination of the contract with effects of that date.

The factual background was that the plaintiff had not enjoyed the holidays corresponding to the years 2010, 2011 and 2012, so before the contractual termination had deducted demand for the amount in request for the payment of the amount of € 3,114.04 as financial compensation for the holidays not taken, being completely rejected his request both in the Social Court and before the Supreme Court of Appeals.

The judgment under appeal held that, since the plaintiff remained in a situation of TI, no holiday was accrued during those periods and that, therefore, the payment of his financial compensation was not due, and that the plaintiff also had no action to claim that payment.

The doctrine established by our High Court resolves that the exceptional right to request the possible economic compensation for annual vacations that could not have been effectively enjoyed does not arise until the employment relationship is cancelled and, consequently, until that moment it cannot be understood that the term for the exercise of the action tending to demand such compensation begins, since while the employment relationship survived, even in suspension, such substitution of the obligation to make for a pecuniary one was not demandable. In this way, the Judgement of the High



Court of Andalusia was revoked, the appeal of supplication formalized by the worker was considered and the company was condemned to the payment of the claimed amount.

To that effect, the Tribunal Supremo, relying on the case-law of its own Labour Chamber and of the Court of Justice of the European Union (which proclaims the exceptional right of the worker to obtain financial compensation for paid annual leave not taken solely at the end of the employment relationship), concludes that since the worker could not take his leave for reasons of force majeure, being in a situation of TI, his right to financial compensation from the moment of termination of the employment relationship must be recognised.

Since this termination took place as a consequence of his declaration of total permanent incapacity for his usual profession on 14/12/12, that date is the date to be set as dies a quo for the exercise of the action, and noting that the act of conciliation had been held on 09/05/13, it was clear that the action claiming holidays for the years 2010, 2011 and 2012 was not prescribed because the period of one year provided for in Article 59.2 WS had not elapsed.

You can read the [full sentence](#) for more information

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