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## The Story of 4-weeks Leave

**Why do employees in the European Union enjoy a statutory minimum of 4 weeks annual leave (plus public holidays)? How did it come about? FedEE's Secretary-General, Robin Chater, was an Adviser to the European Commission when the issue was being debated. Here he retraces its origins and the steps taken by EU legislators.**

### Early Developments

The history of paid holidays is not as long as we might think. Although some paternalistic employers in the nineteenth century did give a few days paid time off each year (especially for Christmas Day), or allow unpaid holidays, it was not until the UK 1871 Bank Holidays Act that the concept of state holiday rules emerged. The early 20th century saw the emergence of some collective agreements allowing a few days paid holiday and then in the 1920s the public sector around Europe started letting civil servants have a week's paid holiday each year.

The first international governmental measure was the ILO Holiday with Pay Convention of 1936. This granted 6 days per year - but only for certain sectors. Most significant, however, was that this was something given in addition to existing public holidays. A recommendation of the same date did suggest that paid holidays should be granted to other sectors, but it was not a requirement. The next move was the 1938 UK Holiday With Pay Act that granted one week paid leave to all workers. The trade unions had been pressing for two weeks, but the economic climate and threat of war limited their aspirations.

What most people do not realise is that during WW2 there was a lot of industrial action in the UK in support of all kinds of improvements in working conditions and a desperate government made huge concessions. This continued after the war and into the 1950s - including on the newly liberated continent. Most especially in France - which is where the next historical evolution will take place.

### Post-War Period

1954 saw the next ILO Holidays with Pay Convention and this laid a huge emphasis on letting collective agreements lead the way. Gradually national legislation in France and a recovering Germany put collective agreements to the fore. The allies actually encouraged unions in Germany and the establishment of Works Councils as an antidote to the re-emergence of right wing politics.

Finally in 1970 came the next ILO convention C132. Things had moved ahead a great deal since the 1954 Convention and two and three week holidays were becoming the norm. Thus, in 1970 a minimum three week paid annual holiday was set. Once again, in addition to national holidays.



Also, the requirement for the pay to be made in advance of the holiday was introduced and a requirement for two of the three weeks to be taken in one block.

Other developments were emerging on the continent during the 70s and 80s - including the concept of double pay during holiday periods (13th month bonus) and the 14th month payment of fixed bonuses at Christmas. Moreover, the fact that fixed bonus payments amounted to an extra month's salary was a strong basis for claiming that the annual holiday should also be for one month.

## The Era of Employment Reforms

Now we come to the period of 1989-1992 in the European Union. This was purposely set by the EU as a period when health and safety Directives would be introduced into a number of workplace situations, The EU Treaty was so geared that any measure introduced under (the then) Article 118a on Health and Safety could be passed by Qualified Majority Vote and not unanimity. This allowed a number of measures to be introduced and passed readily under this umbrella. The other aspect of such measures was that because they were all about health and safety they could not allow much leeway and interpretation. They were mandatory in the same way that a safety guard must not be taken off a machine to allow faster production, even if the worker is happy for its removal. No one is allowed to harm themselves.

Although working time was not in the first wave of health and safety Directives, by 1992/3 it was being very actively discussed within the European Commission and there was a lot of pressure from the ETUC on DGV (The Employment Directive). The Commission at the time was also very much French dominated and the one thing French workers demanded most was their right to take lunch at 1pm and a month's break during August. Another factor that got brought into play was the position of shift workers. Here the psychological stress on workers was given a little research support, although it was allowed to spread unchecked into work in general. It was like once psychological impacts in the workplace were injected into discussion they got blown into the whole debate. Thus, early discussions centred on one month's leave and the catholic churches demand that Sunday be a weekly day off. They both won. Although there was some health and safety research input to the thresholds chosen for working time the decisions were largely political.

The country to stand out against the WTD, and its introduction as a health and safety measure, was the UK. UK officials fought a brave - but ineffective - stand against it, but was finally ignored. The challenge was then taken to the European Court of Justice. This was when I first realized the ECJ was essentially corrupt and just an instrument of a few powerful interests. The UK lost its appeal - not on the grounds that it did not have a case, but by some muddled obfuscating argument dreamt up by the Advocate General.

There was a very useful paper drawn up and published in the Journal of occupational and Environmental Medicine in the late 90s by Anne Spurgeon and Cary Cooper. They concluded



that proper research to back up the WTD was missing. This did not stop a further revision of the WTD in 2003 - when curiously, the requirement for Sunday to be a normal weekly day off was removed.

The WTD has been constantly challenged before national Courts and the ECJ since it was first introduced. But the primary focus has been the status of "on call" time. The provision in the WTD that an employer cannot "buy out" unused holiday (except when an employee leaves their employment) has been generally accepted. The only frequent annual holiday challenges have concerned carryover of untaken holiday from year to year and the build-up on holiday entitlement in the first year of service (Danish case). The issue of carryover is one area, however, where we have found that individual countries have frequently ignored the Directive. It is possible in Italy and other countries to carry over the core holidays for longer than even the often allowed first three months. Of course, as a health and safety provision no carryover should be allowed at all of the 4 weeks minimum - but it is, in practice, allowed in some countries.

## **Conclusion**

So, whether annual paid leave should be three weeks or five weeks was determined by historical evolution and political/IR pressures. The WTD's emergence as a health and safety measure was critical. If it had been considered under Art 235, as the UK suggested, it would never have been passed. Its advocates knew this was their last chance to get as much as they could out of the EU and they succeeded in reaching four weeks rather than the ILO three weeks. Five weeks was always going to be too big a leap.