



Second victory for Amicus in holiday pay battle

As you will be aware, Amicus is pursuing claims to establish the rights of all offshore workers to 4 weeks' paid holiday. This circular tells you what progress Amicus has made (some of which has been set out in previous updates) and what you should do to benefit from Amicus' campaign.

Government changes the Working Time Regulations after Amicus pressure

The offshore employers have argued that the Working Time Regulations which give you a right to 4 weeks' paid holiday a year do not apply to offshore workers beyond UK territorial waters. Amicus defeated this argument at a tribunal hearing last year but the offshore employers appealed. The Appeal is scheduled for 3-5 October 2006. Now, after representations from Amicus, the Government has amended the Working Time Regulations so that there is no longer room for any argument that they do not apply to offshore workers who work in the UK sector of the Continental Shelf. This is a major step forwards in our fight for you to receive the holiday to which you are entitled.

Your position

Amicus has to date brought claims on behalf of members who have made requests for holiday, had them refused and then requested assistance to pursue tribunal claims. However, as we explained in our circulars of September 2004 and December 2005, if the claims already brought are successful (as we believe they will be), this will not require your employer to give you additional holiday or holiday pay for the period since 1 August 2003 (when the Working Time Regulations began to apply offshore). The only members who will receive compensation if the current claims are successful are the members who have actually brought claims.

We hope that at the end of the current claims the offshore employers will change their practices so that all offshore employees receive paid holiday. However it will only be possible for you personally to obtain compensation for the holidays lost before that change if you have personally requested holiday, had that request refused and the brought an employment tribunal claim. We set out in the next section of this update what to do if you wish to request holiday with a view to pursuing a holiday pay claim.

Requesting holiday

Notice to employer

1. If your employer has a form which it requires you to complete before you take holiday you should use it. However, as well as using that form you should also use the standard letter which appears at the end of this newsletter.
2. If your employer requires you to give notice that you want to take a holiday a particular number of weeks in advance of that holiday, you should comply with that requirement. You should comply with that requirement even if your employer requires you to give more notice than the minimum notice required by the Working Time Regulations (see below).
3. If your employer does not have particular requirements about when you should give notice that you want to take a holiday, the Working Time Regulations require you to give notice which is double the length of the holiday you wish to take. You must give notice "twice as many days in advance of the earliest day [of holiday] as the number of days or part-days [of holiday requested]".

Example: if you want to take 14 days' holiday you must give notice of that at the latest 28 days before the first day of holiday. So, if you want to take 14 days' holiday beginning on 5 November, the last day you can give notice is 9 October. You must be sure that your employer has received the notice by no later than that date.

4. Therefore, if your employer does not have any particular requirements, you should ensure that the attached letter reaches your employer at least 28 days before the first day of holiday that you want to take, assuming that your first request is for 14 days holiday.

5. You should check that your employer has received your notice and you must keep a copy of the notice.

How much holiday should I ask for?

6. Your entitlement under the Working Time Regulations is to 4 weeks' paid holiday a year. There is a dispute about what this means. In a typical 2-on, 2-off rota it will make your claim easier to progress if you ask for holiday in 14 day blocks. However we suggest that you make a number of requests covering **all offshore time** in each holiday year. If you use the attached letter this will enable you to make requests covering all offshore time in any twelve month period. It is prepared on the assumption that you spend two weeks onshore followed by two weeks offshore.

Holiday year

7. You cannot carry holiday forward from one holiday year to the next. You should therefore make requests covering all holiday entitlement in each holiday year.
8. If your contract or related documentation says when your holiday year begins and ends (e.g. 1 January to 30 December), that is your holiday year for the purpose of the Working Time Regulations.
9. If your contract does not specify any date, your holiday year for the purpose of the Working Time Regulations begins on the day your employment with your employer began, *unless* your employment began on or before 1 October 1998. For example, if your employment began on 30 March 2002, your holiday year would run from 30 March in one year to 29 March in the following year.

If you have any difficulty in completing the holiday request please contact Regional Officer, Graham Tran (contacts in para 12 below).

10. If your contract does not specify any date and your employment began *on or before* 1 October 1998, then your holiday year runs from 1 October to 30 September.
11. To make things simple, we suggest that when you request holiday you ensure that your request covers all onshore dates in the next 12 months. You should then make another request in similar form at this time next year.

Bringing a tribunal claim

12. Assuming that your employer does not agree to your request for holiday, it will be necessary for you to bring an employment tribunal claim. **Such a claim must be brought within 3 months less one day of the first day of holiday on which you asked to take holiday.** For example, if you asked to take holiday beginning on 5 November 2006, then a claim should be brought by no later than 4 February 2007.
13. However, before beginning a tribunal claim, you must raise a grievance with your employer in writing and then wait 28 days. **If you do not raise a grievance you will not be able to pursue a tribunal claim.**
14. Once you have been refused holiday, you should contact Graham Tran at graham.tran@amicustheunion.org urgently and he will help you raise a grievance. His postal address is Amicus, 83 Crown Street, Aberdeen, AB11 6EX. The telephone number is 01224 588771. You will need to send Graham your request for holiday and your employer's response. You should send this as soon as possible after you have heard from your employer.

Alan Harvey
National Officer
Amicus

Request for holiday due under the Working Time Regulations 1998

Dear Sir/Madam

1. I give notice by this letter that I will take holiday to which I am entitled under the Working Time Regulations 1998. I will take holiday between _____ and _____. I also give notice that I will take holiday between _____ and _____.
2. If you refuse my request to take holiday on those dates, I give notice that I will take holiday between _____ and _____. I also give notice that I will take holiday between _____ and _____.
3. If you refuse my request to take holiday on those dates, I give notice that I will take holiday between _____ and _____. I also give notice that I will take holiday between _____ and _____.
4. If you refuse my request to take holiday on those dates, I give notice that I will take holiday between _____ and _____. I also give notice that I will take holiday between _____ and _____.
5. If you refuse my request to take holiday on those dates, I give notice that I will take holiday between _____ and _____. I also give notice that I will take holiday between _____ and _____.
6. If you refuse my request to take holiday on those dates, I give notice that I will take holiday between _____ and _____. I also give notice that I will take holiday between _____ and _____.
7. If you refuse my request to take holiday on those dates, I give notice that I will take holiday between _____ and _____. I also give notice that I will take holiday between _____ and _____.

I look forward to your early written response.

Yours faithfully

Signed:

Name (printed):

Date:

*Completed example of a request for worker working two weeks offshore followed by two weeks onshore. **The dates specified in this letter are when the worker would be offshore.***

Request for holiday due under the Working Time Regulations 1998

John Smith
10 Main Street
Aberdeen

Richard Jones
Offshore exploration plc
Aberdeen

1 October 2006

Dear Sir/Madam

1. I give notice by this letter that I will take holiday to which I am entitled under the Working Time Regulations 1998 between **5 November 2006 and 18 November 2006** . I also give notice that I will take holiday between **3 December and 16 December 2006**.
2. If you refuse my request to take holiday on those dates, I give notice that I will take holiday between **31 December 2006 and 13 January 2007**. I also give notice that I will take holiday between **28 January 2007 and 10 February 2007**.
3. If you refuse my request to take holiday on those dates, I give notice that I will take holiday between **25 February 2007 and 10 March 2007**. I also give notice that I will take holiday between **25 March 2007 and 7 April 2007**.
4. If you refuse my request to take holiday on those dates, I give notice that I will take holiday between **22 April 2007 and 5 May 2007**. I also give notice that I will take holiday between **20 May 2007 and 2 June 2007**.
5. If you refuse my request to take holiday on those dates, I give notice that I will take holiday between **17 June 2007 and 30 June 2007**. I also give notice that I will take holiday between **15 July 2007 and 28 July 2007**.
6. If you refuse my request to take holiday on those dates, I give notice that I will take holiday between **12 August 2007 and 25 August 2007**. I also give notice that I will take holiday between **9 September 2007 and 22 September 2007**.

7. If you refuse my request to take holiday on those dates, I give notice that I will take holiday between **7 October 2007 and 20 October 2007**. I also give notice that I will take holiday between **4 November 2007 and 17 November 2007**.

I look forward to your early written response

Yours faithfully

Signed: *John Smith*

Name (printed): JOHN SMITH

Date: 1 October 2006