

Employment

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Offshore Workers' Holiday Entitlement

Offshore workers are not entitled to take holidays during the time that they should be offshore, following a ruling by the Employment Appeal Tribunal (EAT). This decision will come as a significant relief to employers in the offshore industry.

Offshore workers typically work a 2 week on, 2 week off rotation. The offshore period is commonly called a field break. In February 2008 we reported on the decision of the employment tribunal in the 7 test cases brought concerning the implications of the Working Time Regulations 1998 (WTR) on offshore workers. At the employment tribunal it was held that offshore workers were entitled to annual leave on top of their field break.

The EAT has however overturned that Judgment, deciding that annual leave under the WTR can be accommodated within an established work/rest pattern. They held that there is no requirement for annual leave to be taken from time that is otherwise 'working time'.

The EAT concluded that:

- In the absence of a specific definition, 'annual leave' should be given its ordinary meaning, that is to say:
 - an entitlement to be absent from work for a total of 4 weeks per year;
 - not at the employer's disposal; and
 - free from all employment duties.

- During field breaks workers are not:
 - required to be present at a place determined by the employer;
 - at the disposal of their employers; and
 - carrying out their normal working activity.

Therefore, field break satisfies the definition of annual leave. It is not 'working time' nor 'compensatory rest'. It is a real rest from work

Although this appeal concerned 7 test cases, over 300 other claims have been put on hold awaiting this Judgment. Unions argued that the amendments to the WTR in 2003 to specifically include offshore workers were "bizarre" if they did not give them a right to annual leave. The EAT, however, accepted the employers' argument that if the employment tribunal's Judgment was correct, this could lead to unbelievable results: teachers would be able to take leave during term time as well as the normal school holidays, and professional footballers would be able to take leave during the football season.

Finally the EAT also observed that this whole conflict may have been avoided if the employers had given "advance notice to the claimants of the periods that they could and could not take leave, ... Many employers do, without difficulty, operate on the basis that employees are given such notification well in advance of the beginning of each leave year either in their contracts of employment or on an annual basis."

This Alert! is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

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