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Revised July 2014

FOR MEMBERS, STEWARDS, BRANCHES & REGIONS

UNISON 

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| FOR REGIONAL OFFICE USE ONLY |

HOLIDAY PAY

unison

**‘NORMAL PAY FOR HOLIDAY’ CLAIMS**

On 22 May 2014, UNISON member Joe Lock was successful in his claim, *Lock v British Gas*. The Court of Justice of the European Union (CJEU) found that a worker’s annual leave pay should include commission payments if these were part of normal pay. The Employment Tribunal will decide how UK law will now be interpreted in light of this decision.

**If you are regularly paid payments for time or activities at work that are not paid when you take annual leave (e.g. commission payments, other supplements, bonuses or overtime payments) then please consider completing this form. UNISON will consider if your employer owes you any back pay and assess if a legal claim has any prospects.**

It is likely that whatever decision is reached by the Employment Tribunal will be appealed through the higher courts, so it may be a long time before any payments are received.

**CLAIMS MUST BE MADE WITHIN 3 MONTHS OF THE LAST UNDERPAID HOLIDAY PAY. IF YOUR EMPLOYER HAS STARTED PAYING – OR IS ABOUT TO START PAYING – HOLIDAY PAY TO INCLUDE ADDITIONAL PAYMENTS, THEN THE TIME LIMIT IS RUNNING, WHICH IS WHY YOU NEED TO RETURN THE FORM IMMEDIATELY TO THE ADDRESS AT THE END OF THE FORM**

If UNISON takes a claim on your behalf please tell us immediately, **in writing**, if:

1. You stop receiving the payments for commission, other supplements, bonuses or overtime pay;
2. Your employer starts paying you any unpaid commission, other supplements, bonuses or overtime pay during annual leave;
3. You change jobs, you leave your employer or you are transferred to another employer (you have 3 months less one day from the date of change or leaving to bring a claim); or
4. There is any other material change in your employment circumstances e.g. there is a change in your job role.

Please note, the Lock decision only covers the minimum period of annual leave guaranteed by the Working Time Directive (i.e. 20 days) and does not cover additional contractual annual leave.

1. **Conditions for providing assistance**
2. UNISON seeks to ensure that members are provided with the best possible advice and assistance to achieve a satisfactory outcome to matters of grievance and discipline. UNISON will determine the most appropriate representative for your case. This may mean reallocating the case at a later stage and you will be informed of any such decision.
3. UNISON representatives and members are expected under UNISON rule to treat one another with respect. Failure to do so by a UNISON representative will entitle you to make a complaint in accordance with UNISON’s Complaints Procedure: <https://www.unison.org.uk/upload/sharepoint/Policies/COMPLAINTS_PROCEDURE.pdf>. Failure by you to treat your representative with respect may lead to support being withdrawn from you.
4. At all times, action taken on your behalf will be on the basis of agreement reached between you and your representative about the best way UNISON can assist you. Throughout the procedure you will be kept informed and no decision will be made without first consulting you. Should you decide at any point not to accept the advice of your UNISON representative then you are free to proceed without UNISON assistance. Please inform UNISON if you no longer require UNISON’s assistance in these circumstances.
5. The fee advance and Early Conciliation agreement must be signed if a potential legal claim is identified. UNISON supports claims to an Employment Tribunal, where a legal claim has been assessed by our solicitors as having reasonable prospects of success.
6. Until UNISON or its solicitors confirms in writing that it is acting for you in a legal claim, any responsibility for lodging a claim in an Employment Tribunal or Court (including County Courts, Sheriff Courts and appeal Courts) is yours alone.
7. UNISON representation is provided on the understanding that UNISON is your sole representative. UNISON cannot be held responsible for any costs or expense incurred if you have opted out from UNISON assistance or if UNISON representation has been withdrawn. Nor will UNISON be responsible for providing assistance in respect of any appeal or higher level hearing against a decision arising from representations made after you have opted out from UNISON assistance or after UNISON assistance has been withdrawn.
8. You are expected to cooperate with your representative by being honest and frank about any allegation against you and in respect of any grievance you have. Your representative can only assist you if they are in possession of the full facts. Failure to cooperate can lead to UNISON support being withdrawn.
9. You must notify your representative immediately if your circumstances change or if any new information comes to light regarding your case.
10. You must ensure that your personal and financial information is accurate and up to date at the time that you apply for assistance. If you have given information which is misleading UNISON have the right to withdraw support.
11. In the event of UNISON support being withdrawn you have the right to appeal to your branch secretary in the first instance unless notified otherwise.
12. You must remain a member of UNISON throughout any period during which UNISON is providing advice and assistance to you. This means that if you are unemployed by reason of dismissal or redundancy you must pay a UNISON subscription at the Unemployed Member’s rate; if you gain new employment within or outside of the areas of UNISON organisation you must maintain a UNISON subscription according to your earnings band as set out in Schedule A of the UNISON Rule book.
13. UNISON reserves the right to use the details of your case and outcome in publicity, case study or learning materials, subject to your name only being used with your permission.
14. **To the member**
15. **Section 9 Fee Advance and Early Conciliation Agreement** Please read the notes *Conditions for providing assistance* before signing this section. You should only sign this section if you agree to all the terms in relation to the fee advance and early conciliation. You should hand the original to your representative and ask that you be given a copy. You should keep this in a safe place for future reference. It is a binding agreement between you and UNISON.
16. **Section 10 Declarations:** please sign if you agree to all the terms in this agreement between you and UNISON.
17. **Please note the *Conditions for providing assistance at A above***. You should only sign the declaration in section 10 if you agree to all of these conditions.
18. Please make a copy of the CASE form for your records or ask your workplace representative to make a copy for you.
19. Membership details

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| --- | --- | --- | --- | --- |
| Membership Number |  |  | If you joined UNISON within the last 4 weeks – please give the date you joined |  |

1. Member’s correspondence details

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Title | First Name | Initial(s) | Surname | | |
| Address 1 | | | | |
| Address 2 | | | | |
| Town/City | | | | |
| County | | | | Postcode |

1. Member contact details

|  |  |
| --- | --- |
| Home telephone number | Work telephone number |
| Mobile telephone number | Work extension number |
| Home email address | Work email address |
| Voice/Text number |  |

1. Member personal details

|  |  |  |
| --- | --- | --- |
| Date of birth | National Insurance Number | Gender |
|  |  | Male  Female |

1. Member employment details

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Job title/occupation | | | | | | | | | | Payroll Number | | | |
| Employment commenced |  | | | | Employment ended | | | | | |  | | |
| Basic hours  per week |  | Basic wage  per week | | £ | | | ***OR*** | Basic salary  per month | | | | £ | |
| Average take home pay per week | | | £ | | | Average take home pay per month | | | | | | £ | |
| Other bonuses or benefits per week | | | £ | | | Other bonuses or benefits per month | | | | | | £ | |
| Employer Head Office Name | | | | | | | | | | | | | |
| Address 1 | | | | | | | | | | | | | |
| Address 2 | | | | | | | | | | | | | |
| Address 3 | | | | | | | | | | Postcode | | | |
| Workplace Name | | | | | | | | | | | | | |
| Address 1 | | | | | | | | | | | | | |
| Address 2 | | | | | | | | | | | | | |
| Address 3 | | | | | | | | | | Postcode | | | |

1. Case details

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| Do you receive commission, other supplements, bonuses, overtime pay or pay for additional hours in your normal pay?  Yes  No  Do you receive commission, other supplements, bonuses, overtime pay or pay for additional hours when you take annual leave?  Yes  No  On which dates have you taken annual leave this year?  Please give details: |

1. Is there anyone else with a similar claim?

Is there anyone else with a similar claim?

Yes  No

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| 1. Other actions?   a) Has anyone other than UNISON advised or acted on your behalf? Yes\*  No |
| \*If yes to a), please give name and organisation of who has advised/acted and give brief details of advice given or action(s) taken |
| Name |
| Action taken |
| b) Have you or anyone other than UNISON triggered the ACAS Early Conciliation procedure? Yes  No |
| c) If yes to b) when did you trigger ACAS Early Conciliation? Date |
| d) If yes to b) have you received an ACAS Early Conciliation certificate? Yes  No |

1. Fee Advance and Early Conciliation Agreement

*\*Please note that this section of the form must be completed by members in England, Scotland and Wales. It does not apply to members in Northern Ireland.\**

I, confirm that should I be granted Legal Assistance by the Union I understand and accept that the Union is authorised to advance Employment Tribunal fees to me on the terms set out below.

I agree:

1. To accept advances from the Union equal to the Employment Tribunal fees in my case in the event that I am not eligible to make an application for a fee remission or it is rejected.
2. That these amounts are repayable by me in the event that my Employment Tribunal claim or part of it succeeds to any extent, whether by settlement, compromise agreement, Judgment or otherwise. I, therefore, agree and authorise that all sums recovered in my case will be held by the Union (or the Union Solicitors) to retain (or repay to the Union) the sums advanced and pay the balance to me. I understand that the Union has instructed its solicitors to take all possible steps to recoup these amounts from the defendants and that it also has a discretion to waive all or part
3. That I have complied with the Union’s Conditions of Legal Assistance and will continue to do so. I understand that the amounts accepted under 13.1 above are repayable by me immediately in the event that Legal assistance is withdrawn following any failure by me to comply with the Conditions of Legal Assistance.
4. That I have not triggered the ACAS Early Conciliation procedure, and I understand that it is a condition of my representation that I do not trigger the ACAS Early Conciliation procedure.
5. I authorise UNISON to make representations on my behalf to ACAS under the Early Conciliation scheme. When UNISON triggers the ACAS Early Conciliation procedure, and ACAS call me, I will inform them that they should speak to the person from UNISON named in the letter to me from UNISON, normally my Organiser.

I acknowledge the conditions above and that the Employment Tribunal fees remain my personal liability and that the Employment Tribunal fee advance will be paid direct to the Employment Tribunal on my behalf.

|  |  |  |
| --- | --- | --- |
| Signature of member |  | Date of member’s signature |
|  |  |  |

1. Declarations

I confirm and agree to the conditions of assistance set out in this Case Form. I confirm I have retained a copy for my own future reference. I understand and agree specifically to the conditions of assistance in respect of the Fee Advance and Early Conciliation Agreement at 9 above. I confirm and agree that the information is a true and accurate record. I agree to this information being shared with a third party in respect of any actions in accordance with the Data Protection Act 1998. I understand that no information will be dislcosed to any external marketing. I confirm my membership is up to date.

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| --- | --- | --- |
| Signature of member |  | Date of member’s signature |
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**RETURN COMPLETED FORMS TO:**

**UNISON CITY OF EDINBURGH BRANCH**

**10 INFIRMARY STREET**

**EDINBURGH**

**EH1 1LT**

**Telephone: 0131 558 7488**

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| FILE NUMBER |  | ***FOR REGIONAL OFFICE USE ONLY*** | | |
| **CASE TYPE** |  | | **SUB TYPE** |  |