



Briefing

Employment

Does travel time count as “working time”?

Employers of mobile workers, who have no fixed place of work and travel directly from home to and from their first and last customers, will need to review their current working patterns and check their compliance with the Working Time Regulations (the Regulations). This is as a result of a recent European case which has decided that the time spent by these peripatetic workers driving to and from their first and last appointment of the day should count as working time under the EU Working Time Directive (the Directive).

Who is affected?

This ruling will have implications for many businesses with workers who regularly travel between different locations or sites as part of their job, for example, care workers, travelling sales reps and maintenance engineers. However, it does not apply to the large majority of workers who have a permanent place of work. For them, travel time to and from home to an office or depot will not count as working time.

What was the case about?

The case was brought by Spain’s largest trade union, Comisiones Obreras, against a security company, Tyco. Following the closure of Tyco’s regional offices and depots, its technicians were required to travel from home to their first appointment and were provided with mobile phones to receive instructions from Tyco. This journey varied but sometimes it was over 100 kilometres and could take up to three hours.

However, Tyco only calculated the working time of its technicians from when they arrived at their first appointment until they left their last appointment of the day. The workers claimed that this breached their right to a rest period of 11 consecutive hours under the Directive and Spain’s High Court referred the question to the Court of Justice of the European Union (ECJ) as to whether this time should be regarded as working time for the purposes of the Directive.

What was decided?

The ECJ determined that:

- the travel in question formed an integral part of the work and was a necessary means of providing services to customers - it should therefore be regarded as forming part of the workers’ activities

- the workers were also at their employer’s disposal during the journey as they acted on the instructions of Tyco who could change, cancel or add an appointment. It was for the employer to put in place procedures to avoid any potential abuse of the working arrangements by employees
- it would be contrary to the objective of protecting the health and safety of workers pursued by the Directive if the rest periods of those workers without a fixed place of work were reduced because the time spent travelling between home and customers was excluded from the concept of working time in the Directive.

What is the impact of this decision?

UK courts and tribunals are required to interpret the Regulations in accordance with the Directive and therefore, as a result of this ruling, employers with mobile workers will need to review their current working patterns and check their compliance with the Regulations.

In particular, employers should check whether an employee’s total average working time each week will result in the employee exceeding the 48 hour limit posed by the Regulations (unless the employee has opted out of this limit), as well as any time restrictions contained in the employee’s contract of employment.

In addition, employers will need to consider whether employees are able to take the daily and weekly rest periods to which they are entitled under the Regulations.

If current working patterns are not compatible with the working time limits, it may be necessary to consider how these can be adapted and whether employees should be asked to opt out of the 48 hour limit on working time. Contracts of employment and policies may also need to be reviewed.

Will it increase costs?

The requirement to count travelling time of mobile workers from home to and from their first and last customers could have significant implications for some businesses as it may reduce the number of appointments that a worker can deal with in a day and have a knock-on effect on the efficiency and costs of the business.

However, the decision only concerns working time and the ECJ expressly stated in the case that it is for national legislation to determine whether or not this travelling time is paid or unpaid. The Regulations do not deal with pay, so for many employers a lot will depend on the specific wording of particular contracts of employment, travel policies and collective agreements, so these should be reviewed and legal advice obtained.

The national minimum wage legislation in the UK includes an express exclusion for travel time between home and places of work or assignment from the national minimum wage for time work and salaried workers. However, given the comments made by the ECJ that the travel formed an integral part of the employees' work and was a necessary means of providing services to customers, it is likely that employees and trade unions will put pressure on employers to pay for this travelling time and it is unlikely we have heard the last of this.

Given the underlying rationale for the Regulations and the duty of care otherwise placed on employers, businesses should ensure that they take into account the time that employees spend driving from a health and safety perspective, regardless of this decision.

(Federación de Servicios Privados del Sindicato Comisiones Obreras v Tyco Integrated Security SL and another).

More information

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