

Travelling & working – one & the same?



Given one of the themes of this month's Journal is transport, it may be useful to revisit the status of travel time for workers who travel as part of their duties. The European Court of Justice has considered the thorny issue of when commuting to and from work can amount to working time for the purposes of the Working Time Regulations 1998 (WTR).

The facts

The employer installed and maintained security systems using technicians who were employed to work in various Spanish provinces. Technicians worked from home using a company supplied vehicle to attend to customers when working on site. The technicians sued their employer because the company did not treat the workers' first journey of the day from their home to their first customer, or their last journey of the day from their last customer back to their home, as working time for the purposes of WTR.

The decision

The European Court decided that 'working time' is any period during which the worker is at work, at the employer's disposal and carrying out his activity or duties. Each of these 3 requirements must be satisfied. The Court found that:

"At work" means that a worker who no longer has a fixed place of work is carrying out duties during the journey to/from a customer. The worker is working during that journey.

"At the employer's disposal" consideration as to whether the worker is required to be physically present at the place determined by the employer to be able to provide the appropriate services immediately. The worker must be placed in a situation in which he is legally obliged to obey the employer's instructions and carry out the employer's activities. If workers can manage their time without major constraints and pursue their own interests, such time might not be working time. In this case, the employer determined the list and order of the customers and the times at which customers were to be seen. During the journeys, the workers had to act on the employer's instructions. The workers could not pursue their own interests during those times. Thus, they were at their employer's disposal.

Finally a worker would be regarded as 'carrying out his activity or duties' during time spent travelling between home and customers if the journey to customers is a necessary means of providing services to those customers.

So what?

This means that workers using a company vehicle to go from their homes to visit a customer (determined by the employer) or to return home from a customer, would be "working" during their commute. This does not necessarily mean that such time would require to be time for which payment is due, since payment is determined by the contract of employment (and the



David Hoey, Partner, Accredited Employment Law Specialist

national minimum wage rules). There may well be cases where entitlement to payment is conditional upon the time being "working time" in terms of the WTR, but that is not necessarily the case. The WTR exist to provide a framework for calculating rest breaks, holidays etc. The time spent commuting in circumstances similar to those arising in this case would require to be taken into account in assessing entitlement to breaks etc. Whether wages are due for that time is a matter for the contract of employment.

Making sure the contractual position for such workers is clear and that compliance with both the WTR and the national minimum wage rules is achieved is a must. As ever, specialist employment law advice is recommended to manage the risk. Drive carefully...