

Is travelling time working time?

In the UK, the time spent by a worker travelling between home and work has traditionally not been classed as 'working time'. However, a recent judgment of the European Court of Justice (ECJ) has changed the law, at least in relation to 'peripatetic' workers (i.e. workers who are not assigned to a fixed or habitual place of work) (*Federación de Servicios Privados del Sindicato Comisiones Obreras v Tyco Integrated Security SL*).

What is working time? Under Article 2 of the EU Working Time Directive (WTD), 'working time' means any period during which the worker is *working, at the employer's disposal, and carrying out his activity or duties*, in accordance with national law and/or practice. This definition has been incorporated into Regulation 2 of the Working Time Regulations 1998 (WTR), which also defines working time as including periods of relevant training and additional periods designated as working time by a relevant agreement (such as the employment contract or a collective agreement).

Travelling engineers: The case involved engineers who installed and maintained security equipment in homes and businesses in Spain. The workers were each assigned to a specific geographical area within Spain. Each was given a company vehicle for travelling from their homes to the various places of work, and to return home at the end of the day. The distances between the workers' homes and the places where they were to carry out work varied significantly and sometimes exceeded 100 km, taking up to three hours to drive. The employer counted the time spent travelling between home and customers not as working time, but as a rest period. Therefore, only the period of work on the customers' premises and the journeys between each customer was taken into account as working time. The workers, through their trade union challenged these arrangements as failing to comply with the WTD.

Travelling is "working": The ECJ found that peripatetic workers such as those in this case were "*working*" and "*carrying out their activity or duties*" (as per the definition of working time in Article 2 WTD) over the whole duration of the journeys between home and work. It assessed these journeys as a necessary means of workers providing their technical services at the premises of customers. Given that travelling is an integral part of being a peripatetic worker, the ECJ determined that the place of work of that worker cannot be reduced to the physical areas of his work on the premises of the employer's customers. In the ECJ's judgment, it would distort the concept of working time and jeopardise the objective of protecting the safety and health of workers if those journeys were not taken into account.

Travelling workers are "at the employer's disposal": The ECJ also found that the workers were "*at the employer's disposal*" (again, as per the definition of working time in Article 2 WTD) for the duration of the journeys between home and work. During those journeys, the workers acted on the instructions of the employer, who could change the order of the customers or cancel or add an appointment. Therefore, although the workers could choose their route themselves, they were not able to use their travelling time freely to pursue their own interests.

What does this mean for employers? Although this is a Spanish case, it has implications for UK employers:

- Businesses which employ peripatetic workers must ensure that travelling time between the workers' homes and work counts as working time. The Government guide on 'Maximum weekly working hours' previously stated that working time includes "*time spent travelling for workers who have to travel as part of their job, e.g. travelling sales reps or 24-hour plumbers*" but does not include "*normal travel to and from work*". Since the ECJ's judgment, the Guidance has been [updated](#) to remove the latter section. This will necessitate a change in approach for UK employers who (in line with the previous Government guidance) do not currently treat travelling time to and from work as working time.
- However, it is important to note that the judgment only affects peripatetic workers. It does not require employers to treat travelling time to and from home as working time for other types of workers, such as those with a fixed workplace.
- Where travelling time is treated as working time, this will count towards the 48 hour maximum working week under Regulation 4 WTR, unless the workers have opted out under Regulation 5. It will also be relevant to the workers' entitlement to rest breaks under Regulations 10 and 11 WTR, in particular the entitlement to a daily rest break of 11 consecutive hours. It is worth noting that workers cannot opt out of their entitlement to rest breaks, as they can in relation to the 48 hour working week. Businesses should therefore audit their working patterns to ensure that these parts of the WTR are correctly observed.
- Businesses should review their contractual arrangements with peripatetic workers to consider what payment obligations apply to travelling time. If the worker receives a set salary to work set hours (not including travelling to and from home), but is also required to work any additional hours as are reasonably necessary to carry out their duties, the employer may be able to argue that there is no additional right to payment for travelling time which falls outside the set hours for which the employee is paid. This will be even clearer where the contract expressly provides that the worker is not entitled to any additional pay for travelling to and from home.
- However, where workers are paid on an hourly rate for all hours "worked", it may be more difficult for employers to avoid paying such workers for travelling time (although it may be possible to apply a different (lower) rate of remuneration to travelling time). Businesses must however ensure that the worker receives at least the national minimum wage (NMW) for all time worked. The same will apply to the new national living wage (NLW), when this is introduced in April 2016.
- Businesses should also consider whether additional controls are required on travelling time – for example, the employer may set the worker's appointment schedule for the day, and prescribe the most efficient route which is to be taken to attend those appointments. It may also want to make it clear to workers that travelling time which counts as working time cannot be used to conduct personal business at the beginning and end of the day (and attach disciplinary sanctions for non-compliance).

If you would like further information on these issues or to discuss the impact of the ECJ's judgment on your business, please speak to your usual Slaughter and May contact.