Travel Time to First and Last Job of the Day

In Federacion de Servicios Privados del sindicato Comisiones Obreras v Tyco Integrated Security SL and another (c-266/14), the ECJ decided that time spent by peripatetic workers travelling between their home and the premises of their first and last customers of the day was working time under the Working Time Directive.

Facts

Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Servicos SA (the companies), are security system installation and maintenance companies within the same group, each employing around 75 technicians. These technicians are each assigned to a particular area of Spain.

Each technician uses a company vehicle to travel from their homes to the places where they carry out installation or maintenance work, and then to return home at the end of the day. The distances from their home to their assignments vary, and are sometimes more than 100 km. They receive details of their assignments for the following day from the companies via an application on a mobile phone, which shows them the task list for that day.

The companies did not regard the first journey of the day (from home to the first assignment), or the last journey of the day (from the last assignment to home) as working time. They therefore calculated the working day as starting from the time the technician arrived at their first assignment, and ending when they leave their last assignment.

The technicians brought a complaint through their union in a Spanish court alleging that the companies were breaching the Spanish working time rules by not including the time spent on their first and last journey of the day. The Spanish court referred the question, whether the time spent travelling at the beginning and end of the day by a peripatetic worker (one who is not assigned to a fixed place of work) constitutes "working time", or a "rest period" to the ECJ.

Decision

The ECJ applied Article 2.1 of the Working Time Directive and held that where workers travel from their home to premises of a customer, travel between the premises of customers during their working day and travel from the premises of a customer home, those workers must be regarded as “working” for the purposes of Article 2.1 when they make those journeys.

The ECJ found in Tyco that with the exception of paid annual leave under Article 7.1 of the Working Time Directive, the Working Time does Directive not apply to the pay of workers. The ECJ found that the method of remunerating workers is not covered by the Working Time Directive but by the relevant provisions of national law which in the case of the UK is under the National Minimum

Wage legislation (see below).

However, UK employees and workers may have potential claims under the Working Time Regulations in relation to their working hours if by including their travelling time they are working over and above the maximum working week of 48 hours and are not receiving their daily rest periods.

Daily Rest Periods

The Working Time Regulations refer to daily rest periods as follows:

- A daily rest period of 11 hours' uninterrupted rest per day (regulation 10(1)).
- A weekly rest period of 24 hours' uninterrupted rest per week (or, at the employer's choice, 48 hours' per fortnight) (regulation 11(1) and 11(2)).
- A rest break of 20 minutes when a day's working time is more than six hours (regulation 12(1) and 12(3)).

In view of the Tyco decision employers should monitor working time to ensure employees and workers affected by the Tyco decision receive sufficient daily rest periods taking into account travelling time in accordance with the Working Time Regulations

Does the decision entitle peripatetic workers to be paid for time spent travelling between home and the places where they work under the National Minimum Wage Regulations?

Although similar considerations in relation to travelling time arise in relation to the National Minimum Wage Regulations 2015, decisions on the meaning of 'working time' under the Working Time Regulations do not determine the equivalent issues in relation to the Minimum Wage due to the differences between the Working Time Regulations/Working Time Directive and the National Minimum Wage Regulations.

Position under the National Minimum Wage Legislation

Under the National Minimum Wage Regulations 2015 whether a worker has received the National Minimum Wage is determined by their average hourly rate. Under Regulation 7 of the Regulations this is calculated by:-

- Calculating total remuneration earned over the relevant pay reference period.
- Dividing that total remuneration by the total number of hours worked over the pay reference period.

Regulation 17 provides that the number of hours worked or treated as worked during the reference period is calculated by reference to the type of work undertaken, defined by the regulations: salaried hours worked (Regulations 21-27), time work (Regulations 30-35), output work (Regulations 36-43) and un-measured work (Regulations 44-50).

The National Minimum Wage Regulations for both salaried hours worked (Regulation 27) and time

work (Regulation 34), hours that are treated as worked including those spent travelling for the purposes of working, when a worker would otherwise be working, **unless that travel is between a workers home and a place of work or "a place where an assignment is carried out".**

In 2014 the EAT held in the case of Whittlestone v BJP Home Support that the National Minimum Wage applied to the time spent by a care worker travelling from one client to another **but not the time she spent travelling between her home and the client**.

There is, however, an exception in relation to output work (work that earns commission or piece work). Under Regulation 39 of the National Minimum Wage Regulations 2015 if a worker does output work at home the travelling time between home and the premises at which the worker reports to are to treated as hours of output work.

What should Employers Do?

Employers should carefully review the contract of affected employees and consider whether they have signed an opt out of the 48 hour week.

Employers should also review the contracts of affected employees, in particular the provisions specifying the number of working hours, pay arrangements for overtime and payment for overtime to identify whether or not employees who travel to and from work are entitled under the terms of their contract to be paid for additional hours worked. Depending upon the wording of their contracts, employees who are paid on an hourly basis may argue that they should be paid for all "hours of work".

How can Taylor Walton help?

We can review your contracts of employment to identify any risks for successful claims for additional paid hours of work and work with you to implement any necessary changes.