

Employment & Employee Benefits Group

Is time spent travelling ‘working time’ or ‘rest period’

Is time Spent Travelling ‘working time’ or ‘rest period’ for employees without a fixed place of work?

This recent judgment of the European Court of Justice in the Tyco case ([C-266/14](#)) particularly impacts on the employees of public bodies because such bodies are directly bound by EU judgments.

The case addressed the question of whether time spent travelling between home and individual clients for such employees constitutes ‘working time’ or ‘rest period’ under the Organisation of Working Time Directive (2003/88/EC) and whether benefits accordingly accrue in respect of that time.

Court’s view on ‘Working Time’ vs ‘Rest Time’

The Court determined that travelling time must be included in ‘working time’ since the employer determines the place where the employee should be; the employee is carrying on activities for their employer; and the employee remains at the employer’s disposal. This was distinguished from ‘rest time’ where an employee is able to manage their own time without major constraints and pursue their own interests. No intermediate category exists between ‘working time’ and ‘rest periods’ and they are mutually exclusive.

Facts

Tyco installed security equipment in private homes and on commercial and industrial premises. In 2011 Tyco closed its provincial offices throughout Spain and assigned all employees to its central office in Madrid. Each employee was assigned a geographical area and had the use of a company vehicle in which they travelled from their home to the place where they would install or maintain the security equipment and to return home at the end of the day. The distance between their home and the place they were to work was sometimes as far as 100km. Employees were also provided with mobile phones to communicate remotely with the central office and an application was installed on the phones whereby on the eve of their working day, employees received a task list for the following day.

Tyco calculated employees’ daily working hours as the time between when its employee arrives at the premises of the first customer and the time the employee left the premises of the last customer. The time spent travelling between home and customers was not counted as ‘working time’.

Effects of the Tyco decision in Ireland

It would appear that this case could have significant implications for public bodies who are directly bound by this judgment. Not only would this mean that travelling time would be included in ‘working time’ but it is likely that ‘on call’ time could also fall within the definition of ‘working time’ where the employer determines the physical place in which an employee has to be present. Many employees who do not have a fixed place of work, including a wide range of health care workers, could be affected by this judgment.

It has implications for employers in calculating an employee’s annual leave entitlements as well as their daily and weekly rest periods.

It is important to note that this Directive does not apply to the remuneration of workers. The employer would be free to determine the remuneration for the time spent travelling between home and customers or to ‘on call’ time. This would, of course, be subject to the National Minimum Wage Act 2000 but remuneration for this travel/ on-call time could be set at a lower rate than their “normal” working hours.

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