

2nd March 2018

Key Judgement For Workers 'On-Call' At Home

An important case in Europe, *Ville de Nivelles v Matzak C-518/15*, has clarified whether time spent 'on-call' or on 'standby' at home should be classed as 'working time' rather than a rest period. This case has significant implications for anyone required to spend time on call at home.

The Case

Mr Matzak was a retained fireman working in Nivelles in Belgium. He needed to be on call every fourth week during evenings and weekends, which meant that he had to be contactable and, if necessary, report to the fire station within no more than 8 minutes in normal conditions. This meant that he had to live near the fire station and he was highly restricted in the activities he could undertake whilst on call. He was paid an annual allowance for stand-by shifts; Mr Matzak believed he had not been paid appropriately for this time.

The European Court of Justice has ruled that where workers are required to remain at locations decided by their employers and to operate under time constraints imposed by their employers, which have a material effect on the time those workers can give to personal activities, that standby time is 'working time' within the meaning of the Working Time Directive 2003/88/EC. For example, a worker might be required to standby at home overnight in case calls for technical support are received and might therefore not be able to pursue hobbies or socialise with family and friends during that time.

The ECJ's judgement has implications for whether the maximum working week has been reached and

whether a worker has had the daily rest period, weekly rest period and/or rest break to which he or she is entitled.

The case did not determine what people should be paid for time spent on call/standby, it left that issue for national courts to determine but it's clear that if people are considered to be 'working' whilst on standby, a fair rate should be paid for that work.

The Position In Lloyds

The Bank, Accord and Unite will undoubtedly be aware of this Judgement and if the holiday pay fiasco is anything to go by, we can expect an attempt at a compliance fudge. The Bank's failure to pay holiday pay in accordance with European law and Accord's decision to side with the Bank against staff showed it to be a puppet of Lloyds HR (please see the newsletter at <http://www.ltu.co.uk/newsletters/allmembers/am2-14-12-17.pdf>). There's no reason to believe Accord's performance will be any different on this issue.

We're aware that a significant number of our members work on call at home (e.g. in IT). If you're one of those people, it's essential that you register your details with us using the following link so that we can review your circumstances and advise you appropriately.

<https://www.research.net/r/lloydsoncall>

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