

Judgment on the NMW 'sleep-in' case released

The Supreme Court has announced its judgment on the Tomlinson-Blake v Royal Mencap Society case concerning the payment of sleep-in shifts for carers. We explore what employers should know below:

- The Supreme Court has held that 'sleep-in' carers are not entitled to receive national minimum wage (NMW) for the hours they spend asleep.
- The claimant in this case regularly undertook overnight 'sleep in' shifts and due to the unsociable hours that these shifts required, she was allowed to sleep and was paid a flat-rate allowance plus one hour's pay for potential sleep interruptions.
- The claimant argued that she was instead entitled to NMW throughout the night even whilst she was asleep.
- The claim was initially upheld by the Employment Tribunal and the Employment Appeal Tribunal but the Court of Appeal overturned this decision, finding that the lower courts had erred by not looking at the clear distinctions between 'working' and being 'available for work'.
- The Supreme Court upheld this view, citing that whilst 'available for work' can count as 'working', this is not the case when the employee is expected to sleep for all or most of the shift and is provided with sleeping facilities.
- Employers are reminded that NMW rates will increase from 1 April 2021.
- Also from 1 April 2021, the national living wage age threshold will be lowered from 25 to 23.

38% of businesses unprepared for IR35 changes

According to Grant Thornton, an accountancy firm, 38% of medium sized private sector businesses affected by the upcoming IR35 changes are unprepared. Currently, most contractors are required to determine their own status as employee or contractor for tax purposes; however, from 6 April 2021 this liability will pass to medium and large sector clients. Smaller clients will be exempt from this obligation.

Did you know?

The Government has confirmed that employers won't have to pay penalties on any inaccuracies in calculations within the first 12 months of the new rules coming into force – unless there is evidence of deliberate non-compliance.

70,000 Uber drivers receive worker rights

After the Supreme Court's judgment in February 2021, that Uber's drivers are workers and not self employed, the company has announced that all 70,000 of its UK drivers will be given guaranteed minimum wage, holiday pay, and pensions. This will be in addition to the free insurance to cover sickness, injury, maternity and paternity pay which Uber began providing to all its drivers in 2018.

Did you know?

Where employment status is concerned, it is imperative that employers correctly categorise those who work for them. The relationship between the parties must reflect the terms of a contract otherwise the contract may be seen as a 'sham'.

One million roles open to jobseekers with convictions

Encouraging businesses to make a small change to their recruitment practices has opened up over one million roles to jobseekers with criminal convictions, Business in the Community (BiTC) has pointed out. Set up in 2013, BiTC's 'Ban the Box' campaign has urged employers to remove the criminal convictions tick box from their application forms. Doing this has had a big impact on the UK economy, says BiTC.

Did you know?

This not only benefits ex-offenders but also businesses. Some employers taking part believe that it has solved skills shortages in their businesses and has also helped retain or win new contracts.

The ruling in the 'sleep-in' case means that employers, mainly in the care sector, only need to pay employees NMW for the time they are awake for the purpose of working. Contact our 24-hour Advisory Service for up-to-date guidance on this and more.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this publication.