

In the Know....

Employees Do Not Have To Ask For Breaks



An Employment Appeal Tribunal has recently found that an employer effectively “refuses” to give an employee rest breaks if working hours are so arranged as to not provide for a break. Here, we take a look at what the case means in practical terms.

What were the facts of the case?

In *Grange v Abellio London*, the employee worked as a Relief Roadside Controller who was responsible for monitoring and regulating the frequency of the employer's bus services. At first, he worked for 8.5 hours per day with a 30 minute unpaid lunch break which was sometimes difficult for him to take because of the responsiveness of his role. About a year into the role, Abellio told Grange that his working hours would be amended; the shift would reduce to 8 hours meaning that his break was to be taken at the end of his working day. He raised a grievance and this was rejected. However, whilst the grievance was ongoing, Grange made a claim to the Employment Tribunal that Abellio had refused to allow him to take the breaks he is entitled to under the Working Time Regulations 1998.

What did the Employment Appeal Tribunal decide?

The Employment Tribunal hearing resulted in a win for Abellio because it was decided that Abellio had not breached the law: Grange had not asked for a rest break, and so it could not follow the he had been refused the right.

The Employment Appeal Tribunal overturned this. Although the Employment Tribunal had referred to previous case law on the same issue which stated that in order for an employee to claim they had been refused the right, they had to ask for it first, it concluded that the Employment Tribunal had decided the case wrongly. Abellio had, therefore, refused Grange his rights under the Regulations.

What does this mean for employers?

It is important to realise that there are now two conflicting decisions on this issue, both from the Employment Appeal

Tribunal. Ultimately this means that it will take a Court of Appeal decision to clarify an employer's obligations.

However, this case is likely to be the one preferred by future tribunals. So, it means that employers should take a more proactive view towards allocating time for rest breaks. The judgment emphasises that employers should not put arrangements in place which deny employees their breaks including minimum 20 minute break where working time is more than 6 hours. Breaks cannot be 'taken' at the end of the working day.

The content of this briefing is correct at the time of publishing.

Summary

- The Working Time Regulations 1998 govern the maximum working time of employees;
- Although this case focussed on the right to a 20 minimum rest break during the working day, the decision will also apply to other statutory minimum breaks including rest between working days, and between working weeks;
- The fact that employees do not ask for a break does not mean it must not be provided;
- You cannot force employees to take a break but you must ensure that the working is arranged so that they can have one.

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