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Maximum Working Hours & Rest Periods



An employer was recently ordered to pay compensation for failing to give the required rest breaks to an employee. Here, we take a look at the law on rest breaks.

Working Time Regulations

The Working Time Regulations 1998 is one of the few pieces of workplace law which straddles both employment law and health and safety. Essentially, the Regulations require employers to ensure that their workers have the opportunity to take a minimum amount of time off work so that they do not burn out.

Annual Leave & Rest Periods

Time off is measured in terms of both maximum working hours per week and minimum amount of annual leave. Annual leave is the more inflexible type of time off. Employers must ensure that they give their workers at least 5.6 of their working weeks paid annual leave per leave year. This can obviously be broken into days or weeks of leave but the fact remains that it cannot be forgone or replaced by money unless employment is terminated, although there are rules which allow for some of it to be carried over to the next leave year.

The rules regarding maximum working hours are more flexible. Workers must not work more than 48 hours per week but this is to be calculated as an average over a period of time. Generally, the reference period for calculation is 17 weeks. This means that workers can work for more than 48 hours in any week provided that this is balanced out within the reference period to ensure an average of 48 hours or less. Where workers agree, the reference period can be extended to 26 weeks allowing for more flexibility.

Minimum Rest

Adult workers must get a minimum of 11 hours' rest between working days, and a minimum 24 hours per week which can be changed to one block of 48 hours per fortnight. They must

also get an uninterrupted period of *20 minutes* break during the working day if they work for *more than 6* hours. It was a breach of this particular entitlement which led to an employee being awarded compensation of over £1200 in *Gomes v Higher Level Care Ltd*. However, the Employment Appeal Tribunal decided that there should be no additional award for injury to feelings for the loss they sustained; compensation was purely to punish the employer for their failure and the employee's personal situation was not to be considered.

Opt Out

Employers can ask workers to sign an 'opt-out' agreement which means that they can work more than an average of 48 hours per week provided that the other rules e.g. daily rest, weekly rest etc are still complied with. Workers cannot be forced to sign an opt out agreement.

Excluded Sectors

Certain exemptions to the Regulations apply depending on the employer's industry, for example: care; agriculture; tourism; utilities etc. The exemption means that minimum rest periods can be foregone provided that the worker gets compensatory rest i.e. at the next viable point in time, gets to take the break they should have had. Further, if compensatory rest cannot be provided, the break can be forgone in its entirety if the employee is afforded appropriate protection.

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

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