‘Travel time is working time’ – implications for mobile working

Briefing 15-60

To: All APSE contacts

Key issues

- ECJ judges travel time to first and last appointments to be working time
- Implications for local authority staff carrying out appointments
- Employers need to consider whether staff have a fixed lace of work

1. Introduction

A recent case about travel to work time and the Working Time Directive has been decided by the European Court of Justice (ECJ) and potentially has implications for local government services with workers starting and finishing their working day travelling directly from home to or from a place of work which is not a council property.

2. The Tyco case

A case was brought by technicians employed by the Spanish company Tyco who use company vehicles to travel to customers to install and maintain security equipment, and the case concerned the time in which those workers travel to work. The case was passed to the European Court of Justice (ECJ) which ruled that for mobile workers – who have no fixed place of work – the time they spend travelling between home and their first and last place of work each day counts as ‘working time’ under the EU Working Time Directive.

The employer Tyco, had argued that the first journey of the day (from home to the first appointment) or the last journey of the day (from the last assignment to home) should not count as ‘working time’

but should be regarded as 'rest time'. The ECJ said that not taking the journeys into account would mean Tyco could claim that only the time spent actually installing and maintaining security systems was within the concept of 'working time', and that this would jeopardise the health and safety of its workers. The ECJ added that, because the workers are '*at the employer's disposal*' for the time of the journeys, they act under their employer's instruction and cannot use that time freely to pursue their own interests and so are at work.

The Tyco technicians had no office base or fixed location. They travelled to and from home each day to whichever customer they were allocated – possibly up to 100km away. The ECJ ruled that all of this travelling time was "working time" under the Directive. As such this case is relevant for employers with mobile or peripatetic workforces such as field engineers.

As the Working Time Regulations don't exclude this type of travelling time from the UK definition of 'working time', there is no need for a rewrite of the Regulations to apply this decision within the UK.

Issues around payment are not covered by this decision as National Minimum Wage legislation and the contract of employment govern payment. The EU Working Time Directive is only concerned with what counts as working time. In this case, the ECJ stated that it is for national legislation to determine whether or not this time is paid or unpaid. Within the UK this would of course be governed by individual contracts of employment but also governed by the minimum wage, soon to become the living wage, legislation.

3. Potential implications

As there is the potential for mobile workers to make a claim for payment in relevant circumstances employers should check contracts of employment to see what they say about pay and hours of work. It could be that a contract states that workers are paid for all hours of work, including this type of travel time.

Overtime rates could be triggered if travel to and from work constitutes normal hours of work meaning overtime being paid for what is currently accepted as the normal working day.

Contracts should be clear and may need to be altered to avoid confusion in future.

In terms of the Working Time Directive, it may be that including travel time as work time will mean workers are exceeding time limits especially if they live quite a distance from their place of work.

4. Points for consideration

It is worth noting that the Working Time Directive is not entirely clear, and as with all legislation it may be interpreted differently or not applied consistently. This case may add to the grey areas which already exist. For example what constitutes a fixed place of work? Can the location where an operative's manager is based and where they would go to meet colleagues be a fixed place of work

even though they may not actually visit it for a number of days? If the working day starts for one person when they arrive at their fixed place of work e.g. the supervisor arriving at the depot, why should the situation be different for an operative attending to a property repair or street lighting failure? Is the use of mobile technology to identify the first job of the day considered work? Does the working day start when a mobile device is used? Are van checks considered work? How would employers avoid 'biases' between employees who live near to or some distance away from their first job of the day, in terms of work allocations and working hours?

Needless to say there will be different circumstance applying in different local authorities, not least between rural and urban areas, but it is important for managers and staff to understand what arrangements are in place and that everyone is clear about them.

5. APSE comment

Many local authorities have introduced arrangements whereby operatives can commence work without coming to council premises first. Mobile working technology has enabled this approach and improvements in productivity and performance have followed. Operatives are trusted more and are able to get on with work with far less contact with managers. This trend has been further prompted by the large numbers of middle management and supervisor positions which have been lost as budgets have been cut over recent years.

There are four perspectives to consider when looking at this issue and how it may develop. Firstly it is important to think about and ensure the health and safety of the workforce. Staff are the most important asset the local authority has at its disposal and they must treat them fairly and fulfil their duty of care towards them. Local authorities have a track record of making sure this is the case.

Secondly employers need to be clear about when they are responsible for the wellbeing of their staff and put appropriate safeguards in place. Legislation and guidance should be crystal clear in this regard. This is not always the case as comments about the Working Time Directive note above. Local authorities will gladly follow rules and regulations but it is helpful when these are unambiguous.

Thirdly service users should expect to gain the benefit of advances in technology. If the move to starting work from home has led to more jobs being completed with faster turnaround times, and service users having to wait for a shorter period for work to be completed, then they should expect such benefits to remain.

Finally council tax and rate payers should expect local authorities to make their budgets go as far as possible. Where mobile technology has been proven to bring savings or improve productivity it should be used. So for example there should not necessarily be a move to re-introduce operatives starting work from the depot, if that has been phased out in favour of starting from home.

All of these perspectives should be borne in mind when local authorities look at the implications of this case.

It may be that working arrangements need to be changed to fit in with the ruling depending on local circumstances. Many local authorities currently organise appointments so that travel time, and fuel use, are minimised. As a result, they will already reduce the amount of time spent travelling between jobs but any who do not do so should consider it.

APSE has issued a network query concerning this issue and would encourage managers to respond.

As in all legal matters, local authorities should seek and rely upon the advice of their own council legal officers or appointed legal advisors.

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