



Do you employ staff?

Do you have difficulty understanding your legal and contractual responsibilities as an employer?

Do employment problems keep you awake at night?

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## On-Call and Working Time

### What is Working Time?

As an employer do you understand what 'working time' is? This is important because you need to ensure that all of your employees are being paid fairly and accurately.

According to the Working Time Regulations 1998 working time is any period during which the individual is working, is at the employer's disposal, and is carrying out their activities or duties. This definition would include;

- A period of time when an employee is receiving training
- Work time travel e.g. travelling to see a client
- Business lunches
- Time spent working away from home
- Time spent on-call at the workplace.

This definition would not include;

- The journey to and from work
- Lunch breaks
- Time spent on call away from the workplace when no duties are performed
- Time resting at the end of the work day, even if this is away from home.

There have been challenges over recent years in Employment Tribunals about whether or not on-call time counts as working time. One view is if you are not actually at work then it is not working time, with another view being that as you are limited in what you can do with this time, due to work, it is working time.

In review of this, and the European Courts' ruling that "where a worker is obliged to be present and available at work during on-call time, this must be regarded as working time" It can be understood that not all on-call time is classed as working time, but if an employee is on Company premises whilst they are on-call and present and available for work, this is classed as working time.

## National Minimum Wage and On-Call Workers

In the same way that it has been difficult for employers to agree on what counts as working time, it has also been difficult for employers to understand what to pay employees whilst they are on-call. There is a practice of employers providing their employees with a bonus or set amount of money for working an on-call shift, regardless of the amount of work done. It has often been the case that this has amounted to an employee working for a period of time and not being paid the correct amount, resulting in Employment Tribunal orders for the employee to be paid the money owed to them. If the employee is on-call and it is classified as working time then they are entitled to receive at least the national minimum wage for those hours worked.

If the employee is on-call throughout the night and this is separate from their core contractual duties, e.g. the employee is contracted for day shifts and is working on-call outside of contractual obligations, there are some slight differences. If the employee is required to sleep on the premises then this is an on-call situation in which the employee is available for work, and therefore this will count as working time when they are awake (present and available) for the purpose of working. In other words, an employee who works an eight hour on-call shift but sleeps five hours is only entitled to be paid for the remaining three hours of the shift.

## Associated Risks

If an employer chooses to ignore the aforementioned rules and disregard their responsibility to pay employees the correct wage they are legally entitled to, they may find themselves challenged with an Employment Tribunal claim for monies owed to the employee and possibly fined further by the Employment Tribunal. There are also further unquantifiable costs such as the negative impact to employee morale and the impact to the Company's reputation.

For clarification of any of the above updates or for advice and guidance on any HR and/or Health and Safety Concerns contact us by emailing [hradvice@hasslefreehr.co.uk](mailto:hradvice@hasslefreehr.co.uk) or by calling 02476 664092.

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