



European Union: Working time for workers with no fixed place of work

Insights

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If you employ or plan to employ workers in the European Union who have no habitual or fixed place of work, you should be aware of a recent ruling of the European Court of Justice (“ECJ”). The ECJ determined in September that “working time” for such peripatetic workers includes travel time from home to the first designated customer and back home from the last designated customer.

The issue arose in the case of *Federacion de Servicios Privados del sindicato Comisiones Obreras (CC.OO) v. Tyco Integrated Security SL, Tyco Integrated Fire & Security Corporation Servicios SA*. In that case, the largest Spanish trade union brought suit against Tyco, a security systems company, challenging Tyco’s interpretation of travel time. Tyco had asserted the position that a worker’s time from his home to his first employer-designated customer and back home from the last employer-designated customer was “rest time”. The workers in this case were technicians who installed and conducted maintenance on security systems in an assigned geographic area. Each technician used a company vehicle to travel from his home to appointments and back. The workers did not have to report to a specified location at the start of each day, but at least once a week they had to travel to a certain location to pick up equipment, parts, and materials needed to do their jobs.

Under the European Union’s Working Time Directive, 2003/88/EC, “working time” is defined as “any period during which the worker is working, at the employer’s disposal and carrying out his activity or duties, in accordance with national laws and/or practice”. “Rest time” is defined as “any period which is not working time”. In its decision, the ECJ determined that: (1) travelling is a necessary part of the technician’s job and is a work activity; and (2) workers are at the disposal of Tyco when travelling to and from the first and last customers each day, because Tyco could change or add appointments during that time. Because during that travel time peripatetic workers are not free to pursue their own interests, such time constitutes “working time” as defined in the Working Time Directive.

Employers of mobile workers who have no habitual or fixed place of work should review their policies to ensure compliance with this definition of working time. Employers will also need to consider this new definition of “working time” when they calculate each worker’s weekly hours – to ensure that the weekly maximum is not exceeded.