



Minimum Wage for Sleep in Staff. Case Law

Esparon t/a Middle West Residential Care Home v Slavikovska 8th May 2014

Does the National Minimum Wage apply to workers who provide 'sleep in' cover?

There have been a number of cases on the issue of workers entitlement to receive the National Minimum Wage (NMW) when 'on call'. In this recent case the Employment Appeal Tribunal has upheld an earlier decision that NMW applied to the claimant for her 'sleep in' duties.

The case involved a senior care assistant who was employed at a care home. She worked during the day but had a 'sleep-in duty' between the hours of 9 p.m. to 7 a.m. for which she was paid a sum of £25. She argued that this amounted to a failure to pay the NMW. The care home argued that she was not entitled to be paid for the whole period as she would only be required to work if there was an emergency, but otherwise she was permitted to sleep.

One of the factors that the court looked at was the reference in the care assistant's contract to her on call duty being required for the purpose of the care home complying with 'regulatory requirements' to 'provide back-up in emergency situations'. Interestingly the Court specifically took into account the statutory regulations that applied to the operation of the care home which included a requirement to ensure that there were suitably 'competent and experienced persons working [as emphasised by the Court] at the care home...'

The decision that she was entitled to receive NMW for all hours of the 'sleep-in duty' seems to have been very much influenced by the fact that the care home had a legal obligation to ensure that it had staff available at all times and that she was therefore entitled to be paid NMW for all of the time that she was required to be at the care home.

For agencies supplying staff in similar circumstances it is worth noting the relevance of the client's need for staff particularly in relation to statutory staffing requirements when determining whether NMW applies to all hours staff are required to be available even when permitted to sleep.