

ELiACTION

Employment Law in Action

Working Practices

Employed, Worker or Self Employed

Employed:

- The three principle tests that must be met are:
 - personal service;
 - mutuality of obligation; and
 - control.

Employment rights such as unfair dismissal, redundancy, working time, contractual terms, family leave, right to request flexible working, discrimination claim

Employed, Worker or Self Employed

Worker:

- The elements required to satisfy the statutory definition of a worker under section 230(3)(b) of ERA 1996 are:
 - There must be a contract between the worker and the employer
 - The contract must require personal service
 - No mutuality of obligation (unless accepted work)
 - The other party to the contract is not the customer or client of any business undertaking or profession carried on by the individual

Rights

- Holiday
- National minimum wage
- Working hours
- Discrimination claims
- No right to bring an unfair dismissal or statutory redundancy

Employed, Worker or Self Employed

Self employed:

- ✓ run your business for yourself and take responsibility for its success or failure
- ✓ have several customers at the same time
- ✓ **can decide how, where and when you do your work (control)**
- ✓ can hire other people at your own expense to help you or to do the work for you
- ✓ **Right of substitution (same level)**
- ✓ **provide the main items of equipment to do your work**
- ✓ are responsible for finishing any unsatisfactory work in your own time
- ✓ charge an agreed fixed price for your work
- ✓ sell goods or services to make a profit

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Cases

- Yorkshire Window Company Ltd v Parkes UKEAT/0484/09
- McKinven and others v Sobchak and others ET/2205260/13
- Uber BV and others v Aslam and others [2021] UKSC 5
- Pimlico Plumbers Ltd and Mullins v Smith [2018] UKSC 29

Working Time

- Required to work an average of / no more than 48 hours a week, unless they specifically opt-out.
- Entitled to 5.6 weeks' paid time off per year.
- 20-minute rest break (for working days longer than six hours)
- 11 consecutive hours rest between working days
- Given a minimum of one day off per week or two days every 2 weeks.
- Night shifts limited to eight hours - in any 24-hour period.
- Restricted to 8-hours per day and 40-hours per week if aged 16-18.

Working Time

Time that is normally included:

- The following will normally be treated as working time:
- Paid overtime and some unpaid overtime (unless it is purely voluntary in which case the worker is arguably not at the employer's disposal).
- Time spent waiting or "on call" at the workplace (or at another place chosen by the employer), even if the worker is allowed to sleep.
- Responding to telephone calls while on call (at any location).
- Travelling to incidents while on call.
- Travel time where travel is part of the job, such as travelling sales reps.
Working lunches.
- Work taken home at the request of the employer.
- Attending work-related training

Working Time - On Call

If the employee is required to be in the workplace rather than at home, even if the worker is asleep (at the workplace) for some or all of that time.

The current position under the WTR 1998 is that on-call spent at a place or narrowly defined places (for example within a small geographical area) determined by the employer is likely to be working time, even if the chance of being called upon to perform duties is slight.

Davies v London Borough of Harrow ET/3301124/02, reported in Local Government Employers Advisory

MacCartney v Oversley House Management UKEAT/0500/05

Working Time - Compensatory Rest

- In limited circumstances, the WTR 1998 allow employers to require certain workers to work during periods that would otherwise be a **rest** period or a **rest** break.
- Where the worker is "engaged in security and surveillance activities" requiring a permanent presence in order to protect property and people. This may include security guards and caretakers (regulation 21(b)).
- Where the worker's "activities involve the need for continuity of service or production" as may be the case in relation to:
 - services relating to the reception, treatment or care provided by hospitals, residential institutions and prisons
- Compensatory rest should equal the length of the interruptions to the period of rest, and not the entirety of that period. Within a reasonable period?

Salary Structure

Designed to:

- Align the reward strategy with the employer's mission, vision, purpose and culture, and business strategy by encouraging required behaviours and performance.
- Bring order and clarity in managing pay rises and career development.
- Help ensure fairness and lawfulness, for example by avoiding pay discrimination.

Salary Structure

Salaries driven by

- Market rate (may vary across region)
- Employment rates
- Skills and experience required

Other areas can influence

- Holiday entitlement
- Benefits - pension, sick pay, enhanced benefits
- Health care - BUPA etc
- Training