

Firefighter ruling sparks new heat for employers

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The standby arrangements for Belgium’s volunteer firefighters are set to cause new headaches across the European Union for employers with workers who are paid flat rates for time on-call or when sleeping in the workplace.

In February, the Court of Justice of the European Union (CJEU) [ruled](#) that volunteer firefighter Rudy Matzak was a ‘worker’ and that within the meaning of the [Working Time Directive](#) his time on standby was ‘working’ time.

Under that Directive, ‘working time’ refers to “*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*”. It applies to all sectors, including both public and private, and ‘rest period’ refers to any period not classed as working time.

When he was on call, Mr Matzak had to be at home and able to fulfil the requirement of an eight-minute response time to reach the fire station, and the Court said that this obligation to remain “*physically present at the place determined by the employer and the ... constraints resulting from the need to reach his place of work within eight minutes*” meant that he was limited in how he could pursue his personal and social life. This contrasted with a worker who may be asked simply to be contactable.

The knock-on effect for employers of standby time being deemed to be working time is that it must be taken into account when complying with rest periods, working hours and the National Minimum Wage.

The judgment follows hard on the heels of last year’s hearing by the Employment Appeal Tribunal of three cases:

1. [Focus Care Agency Ltd v Roberts](#)
2. [Frudd v The Partington Group Ltd](#)
3. [Royal Mencap Society v Tomlinson-Blake](#)

The Employment Appeal Tribunal said that businesses must conduct a ‘multifactorial evaluation’ as there is no clear, hard and fast way to distinguish between on-call workers who are considered to be ‘at work’ and those who are not. The factors highlighted as likely to be a ‘working’ situation included whether an employee was on site to comply with a regulatory or contractual obligation, whether they would be disciplined for failing to remain on stand-by, if they had to keep a listening ear and respond and the extent to which they had to initiate action.

Employment lawyer, Karen Cole, said:

“Whether or not a worker on standby is ‘working’ will depend on the circumstances of each case, but the fact that the issue is complicated with grey areas does not mean that businesses can ignore it. Back-pay for up to six years could be due and that could mean substantial sums for businesses to find.

For any situation that seems unclear, it’s worth seeking independent advice. An easily made change to the way that on-call systems are operated might clarify things and take an employee out of a potential ‘working’ situation.”

In any situation where the on-call claim is found to be ‘working’ time the National Minimum Wage Regulations will apply. The Regulations apply to any eligible worker, whether or not they are paid by the hour and calculations must be made according to the payment basis, to check if the equivalent hourly rate is at the right amount.

2018’s [National Living Wage and the National Minimum Wage](#) are:

Year	April 2018
25 and over	£7.83
21 to 24	£7.38
18 to 20	£5.90
Under 18	£4.20
Apprentice	£3.70

For more information on 'working', speak to [Karen Cole](#) today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

