

Case Update



Follow the Employment team on LinkedIn



December 2019

Working hours – what records should be kept?

A recent European Court ruling suggests that employers should be required to set up a system of measuring working time for all workers. The ruling involved a claim from a Spanish trade union against a bank in Spain, arguing that the bank was under an obligation to set up a system to record the actual number of hours worked each day by staff. The Spanish courts referred the case to the European Court of Justice (ECJ) to understand what the requirement is under EU law.

The ECJ has ruled that, under EU law, member states must require employers to set up an "objective, reliable and accessible" system of measuring working time for all workers. Without this, there is no way of ensuring that employers are complying with working time rights, such as the limit on weekly working time and the right to daily and weekly rest periods.

In the UK, employers are only required to keep records to show (i) compliance with the weekly working time limit (for workers who have not opted out of the limit) and (ii) that limitations on night work are being complied with. However, employers are not required to keep records of all working time for all workers to show, for example, that rest breaks and daily rest requirements are being complied with. There is therefore a question over whether the UK law complies with EU law. Some commentators are suggesting employers immediately need to implement new time recording systems. However, the full impact of the ruling is not known and it is unlikely that employers will want to change their time recording practices straight away. For many organisations, it is simply not practical to require all workers to keep a record of all hours worked. Having said that, the UK Government may decide to change the law or case law may develop to introduce such a requirement in the UK in future. Until then, many employers will be adopting a "wait and see" approach.

FEDERACIÓN DE SERVICIOS DE COMISIONES OBRERAS (CCOO) V DEUTSCHE BANK SAE