



HR Broadcast – Rest Breaks

A question that I am regularly asked concerns the law as regards rest breaks. The law is quite straightforward on this issue. If an employee works one minute more than 6 hours in a working day then they have a statutory right to a 20 minute, uninterrupted break. If however they work only 6 hours or less then they have no statutory entitlement to a break (although there may be a right contained within the contract of employment).

However this is only part of it, there are a few other factors to be considered;

- If a working day exceeds twelve hours, only one rest break needs to be provided – there is no statutory entitlement to two 20 minute breaks.
- Where the employee is entitled to this 20 minute break this should be taken at some point during the working day and not at the beginning or end of it. It cannot be used so that the employee can start later or finish earlier.
- Please remember that you cannot force an employee to take any rest breaks indicated by the Working Time Regulations (WTR). If an employee chooses to work right through the 20 minute rest break, that is entirely down to the employee.

At a recent Tribunal case, the Judge was asked to consider rest break entitlements under the WTR, especially with reference to whether the employee must request the break or whether the employer is obliged to ensure that they are provided. This was

the question before the Employment Appeal Tribunal (EAT) in *Grange v Abellio London Limited* 2016. Mr Grange (G) was employed by Abellio London Ltd (A) as a relief roadside controller to monitor and regulate A's bus services.

G initially worked 8.5 hours per day, the intention being that he would take a half hour unpaid rest break during his working day, although he often found this difficult due to the nature of his work. On 16 July 2012 A e-mailed G stating that he was to now work straight through for eight hours, i.e. without any break, and leave 30 minutes earlier than he would have done under the previous arrangement. This is clearly in breach of the WTR.

G worked this way but in July 2014 raised a grievance claiming that A had failed to provide him with any statutory rest breaks. When this grievance was rejected, he brought a claim in the tribunal claiming that he had been denied his right to rest breaks under the WTR. The tribunal found that G had not been denied this right as he had never made an actual request to A for any rest breaks. G appealed to the Employment Appeal Tribunal (EAT).

The EAT held that an employer has a duty to provide a worker with a statutory rest break and confirmed that the rest break does not need to be requested. It went on to say that the entitlement under the WTR will be deemed to be "refused" if the employer puts in place any working arrangement that fails to allow a 20 minute rest break to be taken. However, please keep in mind that the Employee does not have to take the rest break if they do not wish to.