

opt out to opt in for overtime

The Working Time Regulations 1998 provide for minimum periods of rest and regulate the hours that can be worked. The maximum weekly working hours should not on average exceed 48 unless the worker has signed an opt out agreement in which they agree that the limit should not apply.

In a number of work sectors it will be standard practice for workers to sign an opt out agreement when they begin work. However, they have a statutory right to opt back into the limits on working hours and they will be protected against any detrimental treatment if they decide to do so.

In the case of *Arriva London South Ltd -v- Nicolaou*, the issue was whether the employer's policy not to allocate overtime to any worker who refused to sign an opt out agreement amounted to detrimental treatment.

Prior to the introduction of the policy, Mr Nicolaou had regularly worked overtime on what would have been rest days for him. Since the policy had been introduced and he had refused to sign the Working Time opt out agreement, he had not been allocated any overtime. He brought a claim that this amounted to an unlawful detriment as he was missing out on the enhanced rates of pay that were only payable for overtime. The company defended the claim on the basis that the policy was there to ensure compliance with the limits imposed by the Working Time Regulations and not to subject any workers to a detriment.

The Employment Appeal Tribunal agreed with the employer. It was held that the policy to restrict overtime was reasonable for the purposes of ensuring compliance with the limits on working hours. There were serious sanctions for an employer that breached the regulations so having a policy in place was a reasonable precaution.

Comment

The decision will be welcomed by employers with similar working arrangements. It would be open for the employee to become eligible for overtime at any time by signing an opt out agreement with the knowledge that they had the statutory right to opt back in by giving their employer the prescribed notice.

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