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Mencap case: No entitlement to National Minimum Wage for sleep-in shifts

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19 March 2021

In a pivotal and much anticipated judgment for the social care sector, the Supreme Court has ruled that workers are not entitled to the National Minimum Wage for all time spent on a sleep-in shift. In a judgment which will be welcomed by the care industry in particular, the appeal of Mencap worker Mrs Tomlinson-Blake was dismissed on the basis that the sleep-in provisions in the National Minimum Wage Regulations are clearly intended to mean that a worker who is permitted (and expected) to sleep during a shift and only required to respond to emergencies, is not entitled to have those hours included in the NMW calculation. In reaching their decision, the Supreme Court Justices were guided by the recommendations of the Low Pay Commission, which the Government is bound to follow and which are clear that sleep-in shifts should not attract NMW.

Employers in the care industry have been anxiously awaiting a decision in this case, which could have had potentially catastrophic consequences for the sector had it gone the other way. In the end, the Supreme Court was unanimous in its decision and employers in the sector can continue with the practice of paying a flat rate for sleep-in shifts safe in the knowledge that they are not falling foul of the NMW Regulations. However, employers should still take steps to ensure that any time which their sleep-in workers spend awake for the purposes of working is remunerated at NMW rates. Employers should also be mindful of the distinction between sleep-in shifts and on-call arrangements (e.g. where a worker is required to be at the workplace outside of normal working hours with the expectation that he or she will be required to work) as the latter would attract NMW.

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