

## **Labour Court Warning to Employers on Excessive Working Hours**

*The Labour Court has ordered an employer to pay a former business development executive €7,500 for persistent breaches of the Organisation of Working Time Act, 1997 (the Act). With many employers now arming their workforces with mobile phones, laptops, and tablets, a culture of requiring employees to be available round the clock has developed. The decision of the Labour Court reaffirms that the onus is squarely on employers to ensure that staff are not required to work more than the statutory maximum of 48 hours per week.*

### **The facts**

The employee joined the company as a Business Development Executive in 2016. Her normal place of work was the company's premises in Blanchardstown. Her role also required site visits to locations around Leinster including Portlaoise and Wicklow.

She found the working hours arduous when site visits, processing orders, and reporting requirements were included. She often felt obliged to work late into the evenings at her home and over weekends. She calculated that her working week would often exceed 60 hours.

She presented email records as evidence of the out of hours work she completed. The company submitted that it never requested the employee to work in excess of the statutory maximum, provided the employee with all necessary resources and structured the employee's workload to facilitate completion in less than 48 hours.

### **The law**

Section 15 of the Act states that employers shall not permit an employee to work more than an average of 48 hours in each period of 7 days. The Labour Court deemed that the operative words in the legislation are "*that an employer shall not **'permit'** an employee to work in excess of 48 hours in the relevant statutory period*".

### **The decision**

The Labour Court found that the company was aware of the hours the employee was working through the operation of its software and the out of hours' email correspondence. As the company was aware of the employee's working pattern, it failed to monitor and curtail her hours of work and was thereby guilty of "**'permitting'**" her to work in excess of the statutory maximum. The employer was ordered to pay its former employee €7,500 in compensation.

### **Employer vigilance required on working time and rest periods**

Employers should note that working time under the Act is net-working time, in other words, working time exclusive of breaks, on-call or standby time. Every employee also enjoys a general entitlement to daily and weekly rest periods along with rest breaks during the working day depending on the nature of the role. If a rest period is postponed, the employee must be allowed to take a compensatory rest period within a reasonable period of time.

## **Employers' takeaway**

The prevalence of smartphones, tablets, and laptops has muddied the working time waters and given rise to an employment culture of so-called “digital presenteeism”. While mobile technology helps businesses to be more agile, there is a risk that “always on” employees feel obliged to work more than the law permits. The Labour Court decision emphasises that it is the responsibility of employers to monitor their employees’ workload and working patterns to ensure that the relevant working time thresholds are not being breached.

**To find out more about employer obligations in relation to working time, call Peninsula’s 24-hour advice line on 1890 252 923**