

How employers can say no, without saying a word

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As the countdown to the festive season gets underway, employers juggling the pre-Christmas workload need to ensure workers are enabled to take their rest breaks.

The warning comes after an employer was found to have failed to take the necessary steps to facilitate rest breaks, despite the employee not having made any specific request.

The case was brought by an employee who was running a roadside traffic management system. He argued that he had been denied his legal entitlement to rest breaks under the [Working Time Regulations 1998](#).

The job with Abellio London Ltd involved regulating bus services to match road traffic conditions. Mr Grange, the employee, had a working day of 8.5 hours, including a half-hour lunch break. When it proved difficult for him to take a break, because of the nature of the job, his employer changed his working day to 8 hours. The idea was that he would work without a break, but finish half an hour earlier.

All workers are entitled to a 20-minute rest break after six hours of working under the Working Time Regulations, and if the entitlement is breached then an employee can make a claim if the employer 'has refused to permit him' to exercise the right. The key question, which took Mr Grange's case to appeal, was whether an employee could make such a claim when he had not actively requested the break, and so had not received a direct refusal from the employer.

Although the Employment Tribunal first held that there had to be an actual refusal of a request, the Appeal Tribunal held that workers should be positively enabled to take breaks by the employer.

In making the decision, the Employment Appeal Tribunal highlighted that minimum rest periods are essential for the

protection of [health and safety](#) and said there should be no distinction between entitlements and obligations.

Employment expert, Karen Cole said "The important thing to take away from this is that employers should not wait for rest breaks to be requested, instead they must be proactive in making sure that working arrangements enable workers to take those breaks. Otherwise, where the arrangement of the working day makes it difficult or prevents workers from taking a break, this may be taken as a denial of a right."

She added: "It's important to have a clear policy, and to make sure that everyone in the company knows and understands how to take their break. This is particularly relevant to employers in sectors where employees often work long shifts and it is difficult to stop and take a break, such as social care, where continuity of care is vital. But it is equally important that all employers take it into account at busy periods, such as the run up to the Christmas holiday, and make sure that workers can take the required rest breaks, even if they choose not to."



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