

GMS Flash Alert

Employment Law

2021-085 | March 15, 2021



European Union – When Is Stand-by Time Working Time?

The European Court of Justice recently delivered rulings in two cases¹ about “stand-by” time. The rulings clarify that there are situations where employers cannot disregard stand-by time as working time that must be remunerated and treated accordingly.

WHY THIS MATTERS

If an employee experiences constraints that significantly affect her ability to manage her own free time while on stand-by, then this time must be regarded as working time and treated accordingly.

Employers who have stand-by systems in which stand-by time is not treated as “working time” should assess if this is contradictory to the EU legislation.

Description of Cases

One case concerns a specialist technician who was responsible for operating television transmission centres which are situated in the mountains in Slovenia. The technician worked daily shifts of 12 hours and he had six hours of stand-by time per day. During the stand-by time, the technician was not obliged to remain at the transmission centre, but had to be available by telephone and he had to be able to return to the transmission centre within one hour.

The access to the transmission centre is very difficult and the geographical location of the transmission centre is very remote. For those reasons, the technician had to stay at the work site during his stand-by hours in service accommodation and he had very few opportunities for leisure activities at the location.

The second case concerns a public official carrying out activities as a firefighter. In addition to his regular service hours, he had to carry out periods of stand-by time. During the stand-by hours, he had to be reachable and be able to reach the city boundaries within 20 minutes with him wearing his uniform and the service vehicle made available to him.

Claimants in both cases put forth that the restrictions put on them during stand-by time should make it possible to recognise these hours as working time. This would mean that stand-by hours would have to be remunerated and processed as working time irrespective of the fact they are called “on duty” or not.

European Court of Justice

The European Court of Justice ruled that stand-by time must be regarded as working time in its entirety when the constraints imposed on the person during stand-by time significantly affect that person’s ability to freely manage his time during which his professional services are not required. In the absence of such constraints, only the working time when actual work is performed must be classified as working time.

Highlights from Court’s Observations

- Stand-by time must be classified as either working time or a rest period.²
- A period during which a person does not perform actual activity is not necessarily a rest period.
- A period of stand-by time must be classified as working time automatically when a person is obliged to remain at his/her workplace and at the disposal of his/her employer.
- When determining whether stand-by time is working time, only constraints imposed by the law, a collective labour agreement, or the employer, on the person may be taken into consideration. For example, organisational difficulties are not relevant in such an assessment.
- EU legislation does not preclude a national law, collective labour agreement, or employers from remunerating differently any stand-by working time during which active duty is executed and stand-by working time during which no active duty is performed.

KPMG NOTE

Companies that have stand-by systems and whose employees are not remunerated for their stand-by hours should review their policies to establish if their stand-by hours policies are a breach of EU legislation for working time.

An assessment of what constitutes “working” must be done according to the rules and standards in the competent EU member state and according to the way in which the relevant EU rules are enforced in that member state.

FOOTNOTES:

- 1 Full text (in English) on the InfoCuria - Case-law website: Case [C-344/19 D.J. v Radiotelevizija Slovenija](#); Case [C-580/19 RJ v Stadt Offenbach am Main](#).
- 2 Certain aspects of working time are regulated in [Directive 2003/88/EC](#).

* * * *

Contact us

For additional information or assistance, please contact your local GMS or People Services professional or the following professional with the KPMG International member firm in The Netherlands:



Daida Hadzic
EMA Head of Quality
Tel. +31 6 532 54 599 (m)
Hadzic.daida@kpmg.com

The information contained in this newsletter was submitted by the KPMG International member firm in The Netherlands.

© 2021 Meijburg & Co., Tax Lawyers, is an association of limited liability companies under Dutch law, registered under Chamber of Commerce registration number 53753348 and is a member of KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



© 2021 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. Printed in the U.S.A. NDPPS 530159

The KPMG name and logo are registered trademarks or trademarks of KPMG International. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG LLP is the U.S. firm of the KPMG global organization of independent professional services firms providing Audit, Tax and Advisory services. The KPMG global organization operates in 147 countries and territories and has more than 219,000 people working in member firms around the world.

Each KPMG firm is a legally distinct and separate entity and describes itself as such. KPMG International Limited is a private English company limited by guarantee. KPMG International Limited and its related entities do not provide services to clients.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our GMS practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.