



**Travelling time to
and from work:
Do I need to pay it?**





A regular question we get is if the employer is legally required to pay for work connected travel time?

This question arises as some employees come across the infamous Tyco case held by the European Court of Justice, where the court ruled that traveling time should be considered for peripatetic workers. What should be understood is that Tyco was considered under the Working Time Directive, which is brought into effect nationally by the Working Time Regulations 1998 (WTR).

As The WTR mainly concern hours worked, then it down to the contract of employment to define any pay for commuting to and from work. It is down to what is negotiated and agreed, between the employer and employee.

That said, many jobs do pay for travel for what is known as peripatetic working – where an employee visits a number of locations in a working day to undertake their employment. This means that they may visit two or more sites in a working day, as part of their normal routine, and that they go straight from their home to the first site, without going to a head office location or company yard first. Peripatetic workers typically include service engineers, forestry workers, postal staff, social workers, sales representatives and staff receiving training off-site or attending conferences.

The court ruled that the time spent travelling for the peripatetic workers between their homes and their first job was ‘working time’ – this would therefore be the case under the WTR also. The effect of Tyco in this context is that employers must consider implications of this working time on breaks, rest periods and in computing an employee’s weekly working time in respect of the 48-hour average cap (unless they have ‘opted out’). It does not imply that travelling time should be paid or considered in working out National Minimum Wage calculations.





For National Minimum Wage purposes, the travelling between a worker's place of residence (including temporary residence) and the place of their work is not considered as travelling for the purposes of work. Any time spent on such "home to work" travelling is not considered as working time and not treated as time worked. This is particularly relevant to workers who move from job to job, but only when the task is complete, for instance construction workers.

Travelling for the purpose of working for National Minimum Wage purposes includes the time a worker spends travelling between assignments which need to be carried out at different places, to which the peripatetic worker is obliged to travel.

Duties to protect mobile workers

The Health and Safety Executive (HSE) defines a mobile, or peripatetic worker as "someone who works at a variety of locations and travels between them." There are no specific laws or regulations relating to mobile working. However, the Health and Safety at Work, etc Act 1974 and other health and safety regulations apply. The HSE take such an interest as the WTR's are classified as health and safety laws.

It is the employers' duty to organise and control their own mobile workers. Furthermore, anyone "hosting" a mobile worker within their undertaking also has duties under health and safety legislation.

Relating to mobile workers, The Management of Health and Safety at Work Regulations 1999 specify that employers must:

- Have a safety management system in place that takes mobile workers into account
- Carry out the necessary risk assessments for mobile workers before work commences, and keep all risk assessments up to date and relevant





Duties to protect mobile workers continued

- Implement any control measures necessary to protect mobile workers
- Provide comprehensible information and training on health and safety risks and control measures to mobile workers
- Only employ people capable of undertaking the job from a physical and psychological aspect
- Develop and maintain procedures for dealing with serious and imminent danger and for contacting emergency services
- In addition, as many mobile workers are also lone workers, specific issues faced by lone workers need to be considered too.

In conclusion:

- ✓ Travel to and from work does not need to be paid;
- ✓ Working time only covers mobile, or peripatetic workers and minimum wage laws need to be complied with;
- ✓ Workers travelling to and from temporary sites, as with construction, are not covered under working time or pay obligations;
- ✓ Health and Safety duties apply to the employer and the place the mobile or visiting worker attends.

