
Sleep-in shifts

What is a sleep-in shift?

A sleep-in shift is a night shift where a PA is required to be at the employer's premises overnight and be on call in case of a, generally unexpected and certainly infrequent, need to attend to the person receiving support. Please note that this is distinct from what is known as a waking night shift where the worker is expected to be awake throughout the night. The major distinction between a waking night and sleeping night is that sleep-in's have a reasonable *expectation* that the worker will be asleep and resting. Note that particular caution should be taken where a worker is merely allowed to have a nap during the shift rather than sleep is fully expected and work less so.

Does National Minimum Wage apply to each hour of a sleep-in shift?

No, it doesn't. But it would still be sensible to pay a worker an allowance for the night shift which will help to cover any time they may be woken and engaged on activities during the shift.

Many PA's are paid on a 'time work' basis which means that they are paid according to the hours of work that they complete. Section 32(2) of the National Minimum Wage Regulations 2015 confirms that time work includes time when a worker is available at or near a place of work, but subsection 2 confirms that being 'available' only includes hours *when the worker is awake for the purposes of working*, even if a worker by arrangement sleeps at or near a place of work and the employer provides suitable facilities for sleeping.

Case law took a different approach to this and for some years there has been an understanding that NMW is payable for each hour, asleep or otherwise, however the position has been confirmed recently in the Supreme Court judgement of Tomlinson-Blake and Shannon so we can be certain that as of March 2021 the position is clear and sleep-in workers are not entitled to the national minimum wage for each hour.

I pay National Minimum Wage for each hour of the night shift; can I continue to do so, or do I have to comply with the new ruling?

Yes, you can. In many cases employers will have contracted to pay more for a sleep-in shift than is necessary under the regulations which is fine as employers are able to offer terms of employment which are more generous than statutory minimums. Where there is enough budget available you can continue to pay your workers at the current rate of pay.

DISCLAIMER

The content of this guide is offered for general information purposes only and should not be considered legal advice for any specific matter. For legal advice on a specific issue relating to an individual employer you must ensure to take legal advice on the particular facts of the case. Please call ILG Support on 01476 512 192.

[I pay National Minimum Wage for each hour of a night shift, does the Supreme Court's judgment allow me to reduce the rates of pay to my employees?](#)

First of all you must review the express terms of any contract of employment agreed with your worker, it may be that there is already an agreement contained within it that allows you to make changes to the terms of the contract.

If you do not have a condition of the contract already set out and you find that you are being put under pressure from the funding body to reduce rates of pay then it is likely you will need to consult with your PA to seek an agreement to the change. This should be done giving the worker time to properly understand the reason why the change is being made and raise any objections they may have. If the pressure of a budget is the reason for the change, ask for more time to be able to follow this process. Even if employer's have good reasons to make changes, disputes can be avoided by careful management of the process which must be concluded before deductions are made from pay which would be unlawful.

In some cases where an agreement hasn't been found it may be that we can support an employer to terminate the original contract and re-instate the worker on new terms. Legal advice should always be taken before taking this step.

[Is sleeping time a rest break under the Working Time Regulations 1998?](#)

No.

Whilst the National Minimum Wage Regulations 2015 provide that time spent sleeping is not time work, this is not the case under the WTR 1998 which provides for rest periods including the daily rest period of 11 consecutive hours.

The Working Time Regulations were implemented in the UK in line with the Working Time Directive. European case law has developed to show that the worker cannot be seen to be on a rest period if they are required to be at the employer's premises and at the disposal of the employer.

If possible, an employer should ensure that the sleep-in night doesn't interfere with their right to daily rest breaks. There are some exemptions to the rule and ways to amend provisions from the regulations so you should take legal advice before setting a shift pattern that stops a worker from being able to leave your home to take their daily rest.

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