

Comparing U.K. and U.S. Wage and Hour Laws

By Michelle Haste and Christopher Calsyn

As U.S. companies increasingly employ workers all around the world, HR professionals are being asked to understand the similarities and differences between the employment laws that apply to employees in their domestic and foreign offices. Few employment laws are as near and dear to employees' hearts as ones affecting their pocketbooks. This article compares and contrasts the wage and hour regulations in the United States and United Kingdom.

WTR and EC directive

Wages and working hours in the United Kingdom are governed by the Working Time Regulations of 1998 (WTR). The regulations implement the European Council (EC) Working Time Directive. As a member of the European Union (E.U.), the United Kingdom is subject to directives, which are binding on each E.U. member state but leave the member state the choice of form and implementation. The 2003 EC Working Time Directive establishes minimum conditions relating to weekly working time, rest entitlement and annual leave, and makes special provision for working hours and health assessments in relation to night workers.

In the United States, the Fair Labor Standards Act (FLSA) is the federal wage and hour law that provides for minimum standards in wages and hours. States and even some local governments supplement the provisions of the FLSA with their own laws. In most cases, the state and local laws expand on the protections provided by the FLSA. Much like the relationship between EU directives and the member state laws implementing them, no U.S. state or local law can offer fewer protections than the FLSA.

Who's Covered?

The WTR covers "workers," who are defined as including "someone who is paid a regular salary or wage and works for an organisation, business or individual" and who include part-time and temporary workers and the majority of independent contractors. Night workers—those who normally work more than three hours

between 11 p.m. and 6 a.m.—enjoy additional protections, including free health assessments and an absolute limit on work hours per week.

The FLSA is defined as much by its exemptions as it is by who it covers. Millions of workers are exempted from the FLSA's coverage as executive, administrative or professional employees. Which precise jobs fall within these exemptions is the subject of extensive ongoing litigation in the United States. As a general matter, though, the EC directive and WTR cover a broader range of employees than the FLSA.

What Is Working Time?

The WTR defines "working time" as when someone is "working, at his employer's disposal and carrying out his activity or duties."

The FLSA does not define working time per se.

In both the United Kingdom and the United States, workers typically are not paid for normal travel to and from work or rest periods during which they are not required to perform any duties; certain exceptions to that rule exist under state law.

However, the question of whether certain activities, such as the donning and doffing of safety gear or performing "on-call" time, classify as working time (and therefore should be paid) is often litigated in both jurisdictions. In the United States, employees required to put on and take off safety gear that is indispensable to their work performance are generally required to be paid for that time. The determination of on-call pay is quite fact-specific, but U.S. courts usually follow the same approach

as the European Court of Justice: on-call time that frees employees to engage in leisure activities is not compensable.

As a general matter, the EC directive and Working Time Regulations cover a broader range of employees than the FLSA.

Can a Worker Opt Out?

Workers in the United Kingdom can agree to work longer than the 48-hour limit. This opt-out must be in writing and signed by the worker. Employers must keep a careful record of those who have opted out. The concept of an opt-out has been constantly under threat, although on June 9, 2008, the E.U. member states voted to allow the United Kingdom to keep the opt-out. There will be a further review in the next eight years. Night workers cannot opt out.

The FLSA does not include a similar opt-out provision. Employees may opt out of the required payment of overtime through a collective bargaining agreement (CBA). However, most CBAs in the United States do provide for some form of overtime pay protection.

Online Resources

For more information on choice-of-law contract clauses, employment laws in India, the China Labor Contract Law, and U.K. and U.S. wage and hour laws, see the online version of this issue in the Workplace Law/Legal Issues section of SHRM Online (www.shrm.org/law). There you will find links to:

- an online sidebar on two landmark expat choice-of-law cases.
- an online summary of China's Labor Contract Law.
- an online sidebar about the Working Time Regulations' basic protections.

Average Weekly Working Time

The number of hours worked each week in the United Kingdom is averaged out over a 17-week "reference period." Workers and employers can agree to calculate the average weekly working time over a period of up to 52 weeks under a workforce or collective agreement.

In the United States, a "workweek" is not determined by averaging several weeks of work, but instead is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week nor start at a particular time. An employer can establish different workweeks for individual employees or groups of employees.

Required Breaks

U.K. employees have the right to a 20-minute rest break if they work for more than six hours. The break must be in one block and it cannot be taken at the end or beginning of the working day. There is also an entitlement to daily rest (a break between working days of at least 11 hours) and an entitlement to weekly rest (the right to 24 hours clear each week or 48 hours clear each two weeks).

The FLSA fails to provide for any rest periods, either during or between workers' shifts. Several states, however, do maintain laws that require some form of rest period, either after a certain number of hours worked or in between shifts.

Vacation

There is a minimum right to paid leave under the WTR, but many employers offer more. The statutory holiday entitlement under the WTR has recently increased to 4.8 weeks with a further increase to 5.6 weeks starting April 1, 2009. Many employers state within the contract that bank and public holidays are in addition to this paid holiday entitlement. There are eight permanent bank and public holidays in Great Britain:

- New Year's Day.
- Good Friday.
- Easter Monday.
- Early May Bank Holiday.
- Spring Bank Holiday.
- Summer Bank Holiday.
- Christmas Day.
- Boxing Day.

The FLSA contains no similar provisions for mandatory paid leave, and most states do not maintain such laws. Paid leave is thus usually a matter of agreement between U.S. employers and their employees.

However, some states and local governments have started to require mandatory paid-leave coverage for employees. Among the jurisdictions with paid-leave laws are California, Washington (whose requirements will commence in 2009) and San Francisco.

Enforcement

Enforcement of the WTR is split between different authorities. The limits and health assessments (if a night worker) are enforced by the Health and Safety Executive, local authority environmental health departments, and other specialist departments relating to the sector.

The entitlements to employees for rest and leave are enforced through Employment Tribunals (the labor court in the United Kingdom).

The U.S. Department of Labor (DOL) is responsible for the enforcement of the FLSA. The DOL conducts investigations of employers through the review of pertinent payroll and time records, and interviews of employers and employees. The Secretary of Labor can also file suit on behalf

of employees, and the FLSA contemplates a private right of action for employees. In recent years, class action lawsuits alleging wage and hour violations have risen exponentially and resulted in several multimillion dollar judgments or settlements.

Policy Implications

Workers in the United Kingdom enjoy greater wage and hour protections than their counterparts in the United States.

U.S. human resource professionals adopting employment policies for their U.K. workers cannot merely apply their U.S. employee policies to workers in the United Kingdom. Instead, they must be cognizant of the wage and hour regulations that apply to all of their various employees and amend their employment policies accordingly.

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