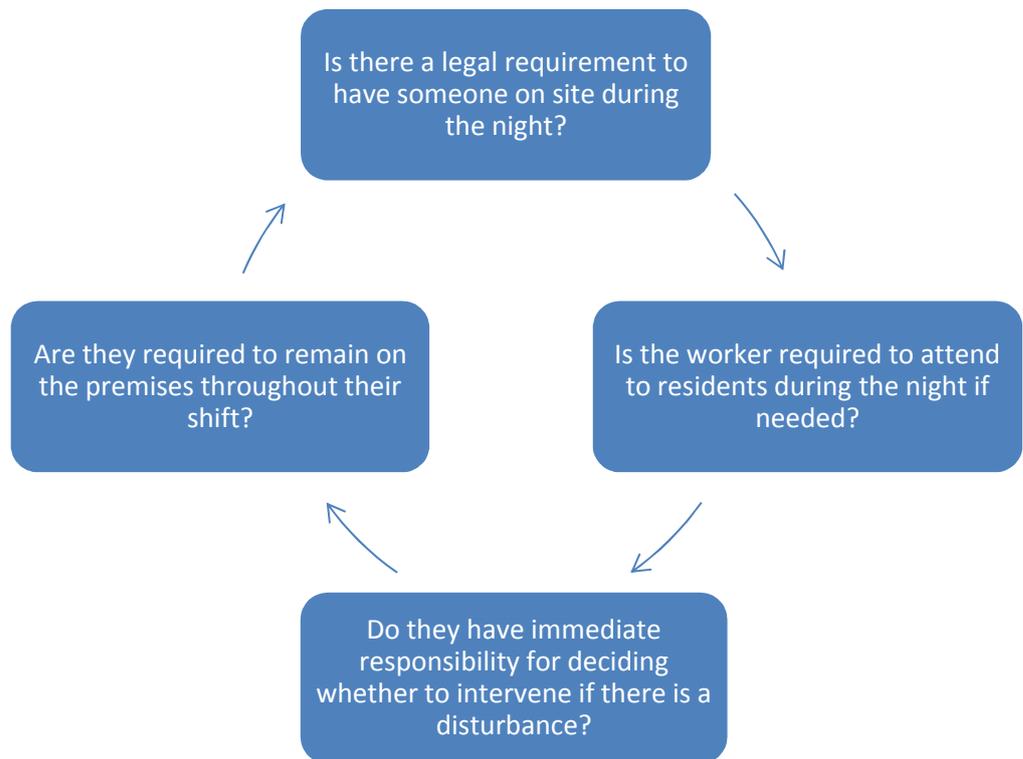


National minimum wage for workers on sleep-in shifts

Minimum wage for those sleeping on the job is no longer a day dream!

The recent case of *Focus Care Agency Ltd v Mr B Roberts* had the Employment Appeal Tribunal (EAT) considering whether those working “sleep-in” shifts were entitled to the National Minimum Wage (NMW) for just the time they were awake or the whole of their shift, even when they were asleep.

In coming to its decision, the EAT stated that a “*multifactorial approach*” must be considered when determining whether a worker is entitled to the NMW throughout their sleep-in shift, outlined below.



If the answer to all of the above is yes, there is a good chance your worker will be entitled to NMW throughout the course of their sleep-in shift.

There is no single determinative factor and cases will be considered on their own facts. This is not simply a tick box exercise.

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Being paid the minimum wage for sleeping on the job? A nightmare for employers?

Who will this apply to?

Typically, on-site night shift workers who are allowed to sleep during their shift ("sleep-ins") who are paid:

- only for the time that they are awake and working; or
- only a flat allowance for the sleep-in shift, and one which falls below the NMW (e.g. a £50 allowance for an 8 hour shift gives an effective hourly rate of £6.25).

Why is this important?

With the rate of the NMW continuing to rise, the current rate for workers aged 25 and over is **£7.50 an hour**, it is important for care sector employers to consider how they deliver their services and how staff are engaged. Paying night staff a flat rate allowance or only for the time spent awake and working may not comply with the NMW.

A failure to pay the NMW can lead to claims for compensation from current and former workers, civil penalties, damage to your reputation and in some cases criminal sanctions. If you want to know more about any of the above, please contact any member of the employment team.



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