

Working Time Directive and Drivers Hours Rules

A Legal Perspective

17 June 2014

Barrie Hall, Senior Solicitor, DAC Beachcroft LLP

Summary

- Legislation
- Case Law
- Responding to an incident

Which Law?

- EU or GB Rules?
- Maximum Permissible Weight
 - Over 3.5 tonnes – EU
 - Under 3.5 tonnes – UK
- Exemptions/Derogations from EU rules

EU Rules – Driving Time and Limits

- Driving time
 - 4.5 hours – 45 minute break
 - Split breaks
- Daily Driving Limit
 - 9 hours
- Weekly Driving Limit
 - 56 hours in a week, 90 hours in two weeks

Rest Periods

- Interrupted or not? 11 hours straight or 3 and 9.
- Reductions
- Multi-manning
- Travel Time
- Unforeseen Events

GB Rules

- Daily driving limit – 10 hours
- Daily duty limit – 11 hours
- Record Keeping
 - Record sheets
 - Tachograph
 - Exemptions
 - Emergencies

Operator Responsibilities

- To comply with the requirements of the Regulations
- Schedule work so rules are met
- Ensure record keeping methods are adequate
 - Ensure tachographs are properly calibrated and maintained
 - Make regular checks of data to ensure compliance
- Properly instruct and train employees to comply with their duties
- Take reasonable steps to prevent breach of rules
- Be able to demonstrate compliance

Employee Duties

- Comply with legal requirements
- Follow training and instruction
- Monitoring and checks

Enforcement

- Warnings
- Rectification Notice
- Prohibition
- Prosecution
 - Defence:
 - unforeseen difficulties - driver
 - other driving jobs - employer
 - proper organisation, instruction, monitoring - employer

Health and Safety

- Driver Fatigue
 - Not just VOSA limits – cause of accidents
- Fatal Road Traffic Accident
 - Police Investigation
 - HSE/VOSA Investigation
 - Corporate Manslaughter?
 - Gross Negligence Manslaughter?



Impact of breaches of Working Time

- R –v- Produce Connection – Company fined £30,000
 - Employee died in car crash on way home
 - 4 x 19 hour days
- Spree – Transport Manager for H&S offences
 - 18 months
- MJ Graves International
 - Driver jailed for causing death by dangerous driving
 - Manager jailed for manslaughter

Responding to an Incident

- Police/HSE investigation at scene
- Visit to premises – seizure of records, witness interviews
- Analysis of data
- PACE interviews
- Prosecution

Police investigation

- Cause of accident – driver error/driver error *and*?/Maintenance
- Driver interview
 - Raises working hours?
 - Blames employer?
- Gathering of evidence – for this accident and overall view

What are they looking for?

- Driver training – competence and accident history
- Maintenance records
- Working time – policy and records
- Tachographs

Bad People or Bad Policy?

- Robust health and safety system *and* culture?
- Proper training of new employees
- Regular re-training
- Checks and monitoring

- “Good on paper” = Not good enough

Public Inquiry

- Consideration of fitness to hold licence
- Following investigation/prosecution
 - Review considered failings
 - Rectify ahead of inquiry
 - Demonstrate improvements

Outcomes

- Terminate
- Suspend
- Conditions
- Formal warning
- Disqualification

Practical Advice

- Prepare for the worst
 - Who will be the point of contact?
 - Know where everything is supposed to be (and is!)
 - Provide what is asked for when it is asked for
 - Support employees
 - Review and improve

beachcroft