



AUTHOR / KEY CONTACT

Sleep-In Shifts



Emma Starmer

Senior Employment Law and HR Advisor

✉ emma.starmer@la-law.com
☎ 01202 786276

As anticipated, the Supreme Court has this morning handed down its decision in *Mencap v Tomlinson-Blake* on whether staff who are required to 'sleep-in' on their shifts are entitled to receive the National Minimum Wage, in the same way as they would be for a standard working shift.

As most care providers are aware, in 2018, the Court of Appeal found that Ms Tomlinson-Blake, who was a care worker, was 'available for work' rather than actually working when she was sleeping in a service users' home providing 24-hour support to the client, and so she was not entitled to the National Minimum Wage. Ms Tomlinson-Blake was unhappy about this decision and appealed to the Supreme Court who heard her case in February 2020.

We learned today that the Supreme Court unanimously dismissed the appeal, and concluded that, if the worker is permitted to sleep during the shift, and only required to respond to emergencies, the hours in question are not included in the National Minimum Wage calculation.

Had the situation been different, and the Supreme Court agreed with Ms Tomlinson-Blake, there may have been large numbers of claims for backdated payments, together with the risk of fines for employers for breaching relevant regulations.

If you have any questions about the above information, please contact our team of specialist Employment lawyers by emailing online.enquiries@la-law.com or calling 01202 786183.