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## July 2015 Update

Welcome to this month's edition of Employment Law update - where we discuss the latest legislation and guidance.

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### What counts as working time - in what circumstances is travelling time included in the working time calculation?

In advance of the final European Court of Justice (ECJ) judgment on working time for travelling workers, Advocate General Yves Bot has said that employers must treat journeys by workers between customers or clients as working time.

The AG opinion although not binding, made it clear that employers should include the first and last journeys of the day where the worker goes straight to or from the customer or client's place of business as working time. The key factor in his opinion was whether or not the workers are "*at the disposal of the employer*".

This is a very helpful indicator for employers and managers about what the scope of working time may encompass. As home working becomes an increasingly common approach in a wide range of sectors, this opinion, if followed by the European Court of Justice, could have huge implications for employers in relation to a vast array of issues including pay, the national minimum wage and the health and safety of employees, among others.

**Employers:** There has been a surprising lack of case law confirming this, and the issue of whether travel to and from home where the worker goes straight to or from their first or last appointment is a particularly tricky one.

The certainty that the forthcoming ECJ decision should provide for employers will be welcome. However, employers should bear in mind that it is unlikely that a travelling workers' travel will count

where, at the start and end of the day, the worker visits a central premises such as a depot to pick up a vehicle.

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## When is an adjustment reasonable?

Last week the Employment Tribunal ruled that Lewisham Southwark College had discriminated against a blind employee by failing to make a reasonable adjustment to his working conditions.

Mr Lambert, the disability officer at the College was blind. He made repeated requests over a number of years asking the College to make software changes to enable him to access the student database. The software he requested read text on the screen out loud, allowing him to access it. However, he was repeatedly told that the software was too expensive to install and that his role did not require it.

The matter came to a head when Mr Lambert applied for a new position at the College and needed to access the database as part of the application process. He brought a claim of disability discrimination against the College. The Tribunal found against the College.

**Employers:** This case is a good reminder about the duty to make reasonable adjustments. The Equality Act 2010 places a duty on employers to help disabled job applicants, employees and former employees. The duty arises where the disabled individual is placed at a substantial disadvantage compared to non-disabled individuals.

Employers are not required to implement all adjustments, only those that are reasonable in the circumstances. In deciding what is reasonable, a tribunal will consider whether the adjustment would have ameliorated the disadvantage, the cost of the adjustment in the light of the employer's financial resources and the amount of disruption the adjustment would cause to the employer.

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## Setting Performance Targets

*"Aim for the moon. If you miss, you may hit a star."* A famous quote by self-help business guru W. Clement Stone. It says a lot about why targets are important to every company and individual – and why it's important to push yourself to aim high.

In business terms, a target is a goal that the company is aiming to reach. But targets don't just tell us what we are aiming for – they let us measure the distance by which we fall short, and the amount of work we need to do to make it up.

How should you set targets? Well, aiming high is always a good start, but here are some other tips to consider:

### **Be specific**

The more specifically defined your target is, the clearer you will be about what you are trying to achieve, to everyone involved. For example, *“To increase sales (referring to a particular product line) by 5% over the next 12 months”* would be a far better target than *“To increase sales over 12 months”*.

Being as specific as possible sets a very clear picture of what you are aiming for and focuses attention on hitting goals. Setting a specific target (which must also be realistic – see the next point) removes ambiguity and means everyone knows what they are trying to achieve when they get to work in the morning.

### **Be realistic**

Setting unrealistic targets is a recipe for disaster. You should know what your employees are capable of and what is or isn't achievable. Targets should always be stretching, and challenging – but not so far that they seem hopeless, as that will just be demoralising.

Being realistic means taking into account what is and isn't possible. You can look to your competitors or industry benchmarks for guidance, but always be aware of your own capacity. That isn't to say that capacity can't be increased – in fact hitting a vital target could be a very good reason to increase capacity, by investing in more workers and equipment or by improving the way things are done. But setting targets which can't (or are highly unlikely to) be achieved at current capacity and without willingness for extra investment in capacity will lead to failure.

### **Support top-level targets with lower level targets**

Targets can be outcome-based (i.e sales/profits) or operational – such as ensuring the quality of your products during manufacture. If your top-level targets are not supported throughout the delivery process, you will be unlikely to achieve them.

To set, and meet a challenging top-level target such as increasing company profits, other targets must be met, right across the delivery chain, from customer satisfaction to product quality to staff engagement. Any inefficiencies in the system will drag down the top-level results, making it harder to hit your target. Also, setting targets for top level outcomes without monitoring the achievement of lower level targets can cause frustration.

**Employers:** In short, the idea is to take cues from the compulsive behavior often elicited from people through games, particularly video games. Point scoring, bonus goals and a structured reward system all act as psychological “hooks” which persuade people to engage.



# Silverstone

Business Forum

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