

EMPLOYMENT LAW UPDATE *18/4/08*

In this week's update:

- Nap time for the nuclear family
- Working Time Regulations; and
- French Eurovision entry faux pas.

Team

Specialists

Caroline Walker
Neil Emery
Emma Shipp
David Sprecher

News reached me last week that the US Nuclear Regulatory Commission "may fine Florida Power & Light Co \$130,000 (£66,000) after security officers at the company's Turkey Point nuclear power plant near Miami were found sleeping on the job" (Yahoo! News). Reassuringly, this is not the first story of recent years which revealed that a sizeable proportion of nuclear power plant workers were asleep at any one time (I recall another which claimed that Sellafield workers were "too bored" to do their jobs properly), although it does at least demonstrate that The Simpsons is not so much a comedy programme as an animated documentary. Which naturally brings us on to the Working Time Regulations.

The Working Time Regulations 1998 ("WTR") came about with the intention of restricting the number of hours that workers (not just "employees") would be required to work to an average of 48 hours a week. Part of the motivation for this was related to health and safety, with the inevitable risks associated with over-tired workers. At present, workers can "opt out" of the WTR, although they cannot be forced to sign an opt-out agreement. Further, it is unlawful for a worker to be subjected to detriment as a result of refusing to sign an opt-out agreement. Importantly, it is not possible to opt-out "by implication" (as I saw in an audacious but incorrect defence to an Employment Tribunal claim, recently) because any opt-out agreement must be in writing, must be revocable, and must be made by the worker him or herself. The point about the latter element is that workers cannot be opted out of the WTR by any form of collective agreement that an employer may have with its workers.

Opt-out of the WTR must be able to be cancelled with, at most, three months' notice. This notice period will usually be identified in the opting out agreement, but if none is specified, then the notice period will be deemed to be seven days. At present, many employers include the opting out agreement in the worker's contract of employment, but there are proposals by the European Commission (which have been under discussion for some time, but are yet to be agreed) to make it unlawful for an employer to ask a worker to opt out of the WTR when the worker commences his or her employment, or during any probationary period. This is not currently the position, but it is a development that may be

introduced in the near future, and is something of which employers should be aware. If nothing else, it is advisable to follow the proposals in the meantime, and for employers to ask employees to opt out of the WTR in a separate letter, not least because there is an argument that any opt-out contained in a contract of employment is not freely-given.

Apropos of nothing, the story du jour in the world of music (albeit, loosely), is that a French politician has failed to display sang-froid over the news that his country's representative in the forthcoming musical car crash that is the Eurovision Song Contest will be singing in English, rather than French. With a shocking lack of joie de vivre, Jacques Myard, of the UMP party, claimed to be "outraged" that, to quote the BBC, "Sebastien Tellier's entry, entitled Divine, combines both English and French lyrics with electro music", although if he has taste, it may be the electro element that he finds particularly offensive. M. Myard, whom the BBC describes as "a fluent English speaker", also said that it was inappropriate for France to "monkey another's culture"; a statement that is very hard to argue with, for obvious reasons. Au contraire, I think that M Myard should adopt a more laissez-faire attitude to the matter, before his critique turns into, for want of the mot juste, something of an idée fixe but, as they say in France, "such is life".

Neil Emery

WOULD YOU LIKE TO ASK ANY EMPLOYMENT RELATED QUESTION FOR FREE?

If so, please contact carolinew@sghlaw.com or telephone 0207 544 5625

This update is issued by the Employment Law Department and is provided for information only. It summarises complex law and should not be relied upon in any way as a definitive statement of the law, nor is it intended as a substitute for legal advice. Should you require further help or advice, please contact Neil Emery at neile@sghlaw.com.

Please feel free to forward this update to others whom you believe would find it interesting, or provide us with the email address of anyone who wishes to be sent future updates. Short extracts from this update may be copied, provided that copyright of Sprecher Grier Halberstam LLP is acknowledged in writing in any reproduction.

[To unsubscribe from this service, please click here](#)