

SUMMARY

Case C-147/17. Working time and health and safety

Must Article 1(3) of Directive 2003/88/EC in conjunction with Article 2 of Directive 89/391/EEC be interpreted as excluding from the ambit of the directive activity such as that of parental assistants, performed by the applicants?

If the answer to the first question is in the negative, must Article 17 of Directive 2003/88/EC be interpreted to the effect that an activity such as that of parental assistants, performed by the applicants, may be the object of a derogation from the provisions of Article 5 of the directive in accordance with paragraphs 1, 3(b) and (c) or 4(b) [of Article 17]?

If the answer to the preceding question is in the affirmative, is Article 17(1) or, if applicable, Article 17(3) or (4) of Directive 2003/88/EC to be interpreted to the effect that such a derogation must be explicit, or may it also be implicit as a result of the adoption of special legislation laying down other rules for organising working hours for a particular professional activity? If such a derogation need not be explicit, what are the minimum conditions for it to be considered that national legislation introduces a derogation and may such a derogation be expressed in the terms deriving from Law No 272/2004?

If the answer to questions 1, 2 or 3 is in the negative, must Article 2(1) of Directive 2003/88/EC be interpreted to the effect meaning that the period spent by a parental assistant with the assisted minor, in his own home or in another place of his choice, constitutes working time even if none of the activities described in the individual employment contract is performed?

If the answer to questions 1, 2 or 3 is in the negative, is Article 5 of Directive 2003/88/EC to be interpreted as precluding national provisions such as those in Article 122 of Law No 272/2004? And if the answer should confirm that paragraph (3)(b) and (c) or paragraph 4(b) of Article 17 of the directive is applicable, must that article be interpreted as precluding that national legislation?

If the answer to question 1 is in the negative and the answer to question 4 is in the affirmative, may Article 7(2) of Directive 2003/88/EC be interpreted to the effect that it does not, however, preclude the award of compensation equal to the allowance that the worker would have received during annual leave, because the nature of the activity performed by parental assistants prevents them taking such leave or, even though leave is formally granted, the worker continues in practice to perform that activity if, in the period in question, he is not permitted to leave the assisted minor? If the answer is in the affirmative, must the worker, in order to be entitled to compensation, have requested permission to leave the minor and the employer have withheld permission?

If the answer to question 1 is in the negative, the answer to question 4 is in the affirmative and the answer to question 6 is in the negative, does Article 7(1) of Directive 2003/88 preclude a provision such as that contained in Article 122(3)(d) of Law No 272/2004 in a situation in which that law gives the employer discretion to decide whether to authorise separation from the minor during leave and, if so, is the inability de facto to take leave as a result of the application of that provision of the law an infringement of EU law that meets the conditions for the worker to be entitled to compensation? If so, must such compensation be paid by the State for infringement of Article 7 of that directive or by the public body, as employer, which has not provided for separation from the assisted minor during the period of leave? In that situation, must the worker, in order to be entitled to compensation, have requested permission to leave the minor and the employer have withheld permission?

Creator: European Court of Justice (ECJ)

Verdict at: 2017-03-23

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