Sleep-ins and the national minimum wage

A white paper from the experts at International Workplace
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the national
minimum wage

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Introduction

In an age of flexible working, there are some areas of work that require an on-site presence around the clock, quite commonly within the FM sector and care industry. This can be the security guard who is only meant to be on-site as a presence overnight in case of emergency, or a care worker who will only be woken up if the client they support has an emergency need. However, that doesn’t always mean that the worker will be actively working throughout that time.

In these cases, current legislation states that if the individual is not in ‘time work’ (i.e. available and awake for the purposes of working) overnight then their presence does not attract the national minimum wage.

In place of being obligated to provide a salary in line with the National Minimum Wage Regulations, this leads to employers looking at other ways to pay for their employees’ presence, most commonly an allowance of some kind to be ‘on call’ (i.e. to be available to work outside of normal working hours).

Being ‘on call’ is a common approach across business but the challenge comes when the person is required to be ‘on call’ within a place of work rather than having the freedom to be tucked up in bed at their own home.

In principle, you can be ‘on call’ anywhere within reason but, in reality, the security guard or on call estates manager really needs to be on-site to meet the requirements of their role, resulting in a ‘sleep-in’ arrangement.

Additionally, they may well be on a paid shift just prior to the sleep-in shift, which has further potential for confusing the matter. Needless to say, there can be a myriad of alternatives and nuances that can impact upon whether the worker should be receiving an amount equal to or above the national minimum wage or not.

There are a number of advantages to operating sleepover shifts for companies, but recent case law has also highlighted some of the disadvantages.
Advantages

Cost

Unexpectedly, it is the lack of substantial cost of providing this ‘cover’ that is a great advantage, but it is not usually a penny-pinching exercise. The care industry has been at the forefront of legal challenges in this area, so it is worth reviewing a particular example from that industry.

In the case of Mencap, a ‘sleep-in’ shift is put in place ahead of paid night working only after an assessment of the needs of the people it supports is made. Being a tightly regulated sector, it can only realistically put this type of arrangement in place for the people it supports who do not need 24-hour care and support. Instead, this is a ‘just in case’ approach and any disturbances during the night are recorded and reviewed in case the care support arrangements evolve over time. Additionally, Mencap then pays for any time worked during the night. The funding for these services derives from local authorities who are closely involved with the support that is being provided by Mencap or any care provider.

It’s also fair to say that in less regulated sectors, such as FM, the need to balance the provision of a service versus the cost of providing that service has some considerable bearing. In both cases, an outsourced service is being offered whereby cost is often the higher priority for some customers.

Flexibility

For customers and service providers, the ‘sleep-in’ shift can also provide for flexibility in case urgent work is required. For example, in the care industry this could be when there is a medical emergency or other issue with the person they support; in FM, it’s having a security guard around if there’s a break-in or some other disturbance. Whilst technological solutions are being looked at for both scenarios, having someone in place for such eventualities means that the service being provided is more responsive and effective.

Jobs

In a job market where technology is, in some cases, replacing humans in roles of increasing complexity, there is value to utilising workers in areas of work that cannot yet be performed or their tasks replaced in whole or in part by a technological solution.

In FM, there are plenty of alarms and monitoring systems that can be put in place, but technology is yet to be so advanced that a robot plumber can arrive to deal with a water leak. In the care sector, a quick response to an emergency situation may be the critical factor between life and death, and decisions made on the spot are something that technology cannot yet adequately replicate.

In this regard then, there is still a need to have workers within these kind of roles, which is great in terms of job availability. Artificial or augmented intelligence technologies haven’t reached the level of sophistication to replace workers but that advantage will inevitably erode over time as new ways of working and cheaper, smarter technologies develop.
Disadvantages

Working status
There can be a very fine line drawn between ‘waking nights’ where an employee is expected to be awake and, if not servicing the needs of the client, then undertaking other work for the company such as monitoring or administration duties, and that of a ‘sleep-in’ presence. The line can become vague at the point that there are frequent interruptions to the worker’s sleeping time, so that the on call nature becomes more constant work for a few hours. These cannot necessarily be predicted but they can be monitored, and a view taken as to what level of resource is required at these times.

One-sided flexibility
For a worker, whilst they can rest, sleep, watch TV and engage in any other kind of activities that they could reasonably do within their own home, there are often restrictions. For instance, most employers will not allow these shifts to be an opportunity for members of staff to have friends or family on-site with them. The worker may not have the same facilities that they enjoy at home and they are usually bound to remain on-site, and not leave for any period of time during the shift. As a consequence, the time is theirs but there are limitations that may impact upon their social and personal lives. In essence, they are not designated as working but also do not have the same freedom as if they were not working and away from the place of work.

Pay
This non-working status means that companies are not obliged to pay the national minimum wage (NMW) for a ‘sleep-in’ shift. Instead, an allowance is paid to those who work these shifts, usually as an addition to their usual working day shifts. Given the inconvenience mentioned above then, for some, the allowance is considered poor reward for sacrificing time they could be spending at home with their family.

Recruitment
Given this inflexibility and poor remuneration, there are challenges in recruitment as an individual has to be able to effectively balance any commitments they have outside of work with the need to be ‘present’ at a location for a period of time. In some sectors, the day jobs are also not well paid so employers are looking for staff who are committed to the type of work they are offering in the hope that job satisfaction outweighs the salary that the companies can pay them. It’s a very difficult juggling act and can lead to a high turnover of staff who may choose to look elsewhere for an alternative job that doesn’t have the inconvenience of low pay and unsociable hours.

The need to have on-site staff overnight who may not be required to carry out any tasks may be important for the service provision of a contract, for example as a security guard or caretaker. Given the advantages and disadvantages, an FM company might decide that for a low cost it is worth taking on a contract that provides for this type of sleepover shift but the pay element is worth considering, and there is case law to support it.
Case law

Until 2018, case law on the subject of payment for ‘sleep-in’ shifts had all tended to lean towards the need for employers to pay the national minimum wage when tested, but each case outcome was based upon the individual facts of the case. The cases below highlight the journey that the courts have been on over the past 20 years. It is interesting to note that the healthcare sector has been prominently involved in these cases, often because it works within tight financial margins due to funding. However, these cases do provide insight into any associated risks with providing sleepover shifts as part of an FM contract.

Mr Wright v. Scottbridge Construction Ltd (2002)

One of the earliest cases was outside of the healthcare sector and cited for many years afterwards when the courts decided upon similar claims.

Mr Wright was employed by Scottbridge Construction Ltd as a night watchman. He was required to be on the company’s premises seven nights a week from 5pm until 7am. He had to perform some minor tasks, which took a maximum of four hours during the 14 hours he was on the premises each night. There were also situations whereby he would have to answer a telephone call or deal with a worker returning from site for additional materials.

His main function, however, was to be available to respond immediately to any alarm that might go off, for example, in the event of fire or if an intruder entered the premises. Mr Wright was permitted to sleep (or read or watch television) when not performing the tasks required of him and sleeping facilities in the form of a mattress were provided by the company.

Mr Wright was paid £210 a week. He claimed before an Employment Tribunal that the company was in breach of its obligations under the National Minimum Wage Act 1998. He was, he said, entitled to payment at the rate set by the National Minimum Wage Regulations 1999 for all the hours he was required to be on the company’s premises.

The Tribunal’s view was that Regulation 15(1) applied in this case, and that Mr Wright was only required to be awake for the purpose of working for four hours a night and was only entitled to be paid the national minimum wage in respect of those hours. Mr Wright did not agree and appealed the decision.

The Employment Appeals Tribunal (EAT) took the view that Regulation 15(1) did not apply to Mr Wright’s employment. That Regulation envisaged the situation where an employee is permitted by his or her employer to sleep during specifically allocated hours. The essential requirement in Mr Wright’s case, however, was that he was on the premises for 14 hours every night. If he was present during those hours, he fulfilled the basic function of a night watchman, even if he was asleep, as he was able to respond to an alarm immediately on waking. There was no question of his being entitled to take time off to sleep during specified hours. Accordingly, all 14 hours a night should be regarded as ‘time work’.

The company appealed to the Court of Session, which noted that the terms on which Mr Wright was engaged made it clear that he was required to

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1 Regulation 15(1) states that: “In addition to time when a worker is working, time work includes time when a worker is available at or near a place of work, other than his home, for the purpose of doing time work and is required to be available for such work except that, in relation to a worker who by arrangement sleeps at or near a place of work, time during the hours he is permitted to sleep shall only be treated as being time work when the worker is awake for the purpose of working.”
attend the company’s premises between 5pm and 7am each night. The work that was paid for under his contract by reference to the time for which he worked was as a night watchman for all those hours, notwithstanding that he had little or nothing to do during some of that time when he could sleep. On the facts, they concluded that the whole 14-hour period must be regarded as ‘time work’ for the purposes of the Regulations.

This meant that a normal salary, not less than the national minimum wage, should be provided for those 14 hours due to the fact that he had tasks to carry out during that time, in and around the four hours specified.

**Mr Rossiter v. Burrow Down Support Services Ltd (2008)**

Mr Rossiter worked for Burrow Down Support Services Ltd between November 2001 and July 2006. He attended work from 10pm to 8am, two nights a week. His job involved ensuring the security of the premises and monitoring health and safety. Apart from a 15-minute handover and an hour to help with breakfasts he could sleep, except where his duties required him to be awake, for example if he needed to investigate noises or deal with anything untoward. His job title reflected the expectations of his role – a ‘Night Sleeper’. He was paid £20 per night for being present, with a separate payment made for when he was awake and working. Mr Rossiter felt he should be paid national minimum wage for the entire ten-hour shift. An Employment Tribunal upheld his claim that Burrow Down Support Services had breached its obligation to pay the national minimum wage. Burrow Down appealed.

It was accepted that Mr Rossiter fell within the category of someone doing time work. The issue was whether he should have been paid the national minimum wage for the whole of the shift, including the time that he was asleep.

Mr Rossiter was at work for the whole of his shift, and, like Mr Wright, the night watchman at Scottbridge, he had to deal with anything that arose during his shift, even if he was able to sleep. This was not a case where he was deemed to be at work while only available to work. It was decided that the Scottbridge case should be applied and Mr Rossiter should be paid the national minimum wage for the whole of his shift.

This highlights that the courts will look at the specifics of each case, and what a job is labelled as isn’t as important as to what the actual situation is.

**Mrs Whittlestone v. BJP Home Support Ltd (2013)**

In this case, the claimant, Mrs Whittlestone, was employed by BJP Home Support Ltd to provide care services to clients. She was paid £6.35 per hour under her contract for the time which she spent giving care. It was agreed that there were no fixed hours, but she was required to undertake shifts from 11pm – 7am, which were considered to be “sleepover” shifts.

These shifts were to provide potential physical care for three young adults who suffered from Downs Syndrome. Mrs Whittlestone was provided with a camp bed and bedding which she could use to sleep overnight in the living room of the house occupied by the three young adults. Although she could be woken up, there was no evidence that she was required to do so to provide any specific care. She received a £40 per week allowance in respect of these sleepovers. Mrs Whittlestone claimed that she had not been paid national minimum wage because all sleeping hours should attract the minimum wage rate.

The Tribunal dismissed the claim that sleeping hours should attract the payment of minimum wage. It stated that there is a difference between an employee who is merely working by being present at the employer’s premises and an employee who is simply on call (i.e. not working but available to work if needed. For example, a caretaker or estates manager may be ‘on call’ overnight if they live on-site and must respond to emergencies, but are not expected to work during that time).

Mrs Whittlestone, it decided, was on call during her sleeping time.

The Employment Appeal Tribunal (EAT) reversed the decision. It did not agree with the reasoning of the original Tribunal and decided that a different test should apply. It said the distinction should be drawn between an employee whose presence on-site means that they are working and those whose presence does not mean that they are working. The EAT criticised the usage of ‘on call’ as anything more than shorthand to understand the intention of the shift as it was not terminology used within the Regulations.
An example of the latter might be where a person is required to live at or near a particular place, but it is not necessary for them to spend designated hours there for the better performance of the contractual duties. It said that the following constitutes ‘time work’:

- specific hours where the individual is required to be at a particular place;
- failure to be present will be a disciplinary offence; and
- the worker is at the disposal of the employer during that period.

The EAT also noted that if an individual is not able to simply ‘pop out to the shop’ in the time during which they are permitted to sleep, then this time will attract the national minimum wage.

The employer had therefore breached national minimum wage obligations and Mrs Whittlestone was entitled to be paid at the minimum rate for all hours spent during which she was able to sleep.

This case distinguished some key points that apply not just to care workers, but across all roles where individuals are obligated to be on-site and would be penalised if they left, even if for a short period.

Ms Tomlinson-Blake v. Royal Mencap Society (2018)

In the most recent significant case of this type, the Court of Appeal looked at a similar situation last year regarding the issue of whether the national minimum wage applies to those who have ‘sleep-in’ shifts at a place of work. The Royal Mencap Society has been battling through the legal system in recent years following a Tribunal claim from one of its support workers, Ms Tomlinson-Blake.

The Court of Appeal made two important decisions; the first defining whether the national minimum wage should be paid to workers who sleep-in at a home or the location for where they have caring responsibilities. In the case of Ms Tomlinson-Blake she worked sleep-in shifts of 10pm-7am, for which she received a flat payment of £22.35 plus one hour’s pay at the national minimum wage. Whilst she had no specific tasks during this shift, the additional hour was paid for the possibility that she may have been disturbed by the people she was supporting and would have been entitled to further payment if that disturbance exceeded one hour. She was provided with sleeping facilities including a bed in a separate lockable room within the house where her clients were living.

Mencap was relying upon Regulation 32 of the National Minimum Wage Regulations 2015, which stated that “Time work includes hours when a worker is available, and required to be available, at or near a place of work for the purposes of working unless the worker is at home... hours when a worker is ‘available’ only includes hours when the worker is awake for the purposes of working, even if a worker by arrangement sleeps at or near a place of work and the employer provides suitable facilities for sleeping.”

The Court of Appeal’s decision took a straightforward interpretation of the Regulation and stated: “...sleepers-in... are to be characterised for the purpose of the regulations as available for work... rather than actually working... and so fall within the terms of the sleep-in exception... The result is that the only time that counts for national minimum wage purposes is time when the worker is required to be awake for the purposes of working.”

This had the effect of deciding that employers with workers who may sleep on-site are exempt from paying them the national minimum wage, providing they have suitable facilities for sleeping and are not required to be awake and working during that time.

The trade union that supported this case has successfully been given the opportunity to take this further at the Supreme Court, and this is expected to be heard in the latter part of 2019. So whilst the tide has turned slightly in favour of the national minimum wage not being applicable in certain circumstances, the outcome still has one more chapter to go.
Reactions to the *Mencap* case

The *Mencap* decision has, in some respects, simplified the argument of what is (or isn't) working time by focusing very directly on a worker having to be awake for the purpose of working for it to count as time work, and therefore does not attract the national minimum wage.

The impact of this decision was huge and whilst it is impossible to conclude that there was any political dimension to this decision (*Mencap* is a large national charity so had the capacity and resources to lobby at some of the highest levels of the UK parliament) it certainly ensured that the care sector within the UK could rest easy that similar claims may not succeed in the future and that they weren’t going to be left with an insurmountable bill for back pay. That could well be the key to the issue.

This was highlighted by Derek Lewis, chair of *Mencap*, who said that:

> “The court’s decision has removed the uncertainty about how the law on the National Living Wage applies to sleep-ins... We did not want to bring this case. We had to do so because of the mayhem throughout the sector that would have been caused by previous court decisions and government enforcement action, including serious damage to *Mencap*’s work in supporting people with learning disabilities.”

The decision may have been met with dissatisfaction but as Harry Abrams, a solicitor at the law firm Seddons, was reported as saying in the publication, *Personnel Today*, the most recent decision means that “We now have confirmation that it is not sufficient for the worker to be at the care home and ready for work if needed but in fact they need to be awake and working *(in the ordinary meaning of the word)* to be entitled to NMW [national minimum wage] and for it to count as working time.”

Whilst we now have some clarification as a result of this most recent decision, it is clear that it is still open to challenge. Matthew Wort, partner at Anthony Collins solicitors, said he expected the Supreme Court to grant permission and for it then to list the case for a hearing in the latter part of 2019 and this has now been granted.

The picture here is one of reprieve for now. The issue will be taken to the Supreme Court some time later in 2019 as UNISON secured leave to do so. However, the implications are broad. The reason that the care sector seems to be at the forefront of these cases is because, as highlighted by Derek Lewis of *Mencap*, the care system would be put in a position of crisis in the event that it had to pick up the bill for sleep-in shifts and any associated back pay.

The government will have some sympathy for that position and, regardless of who is in office, they will not want the system failing on their watch. It’s unlikely that they would also want to look at a two-tier system whereby the care sector does not have to pay national minimum wage but other industries do, so whatever happens in the current landmark case will follow for all other employers who operate a similar sleep-in or sleepover shift for which only an allowance is paid.

At the moment there is an element of ‘wait and see’ but the cases outlined above do tell us something about how companies can mitigate any risk to their business if operating similar arrangements.

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2 Court of Appeal overturns £400m sleep-in shift ruling in favour of *Mencap*, Civil Society, 13 July 2018
3 Care workers not entitled to minimum wage when sleeping, *Personnel Today*, 13 July 2018
4 Unison Lodge Appeal with Supreme Court in the *Mencap* Case, Anthony Collins Solicitors, 7 August 2018
Sleep-in shifts – assessing the risk

The case law since 2002 has highlighted common themes to ensure that all companies, regardless of the sector that they operate within, who employ staff with shifts that include some sort of sleep-in or sleepover arrangement, paid for with an allowance, can reasonably safely continue to do so. No one situation is ever completely the same as another, even within the same organisation, so a review of each arrangement is of vital importance to assess the risk factors.

Points for assessment are:

- **The employer’s particular purpose in engaging the worker.** As per the case law examples, the more emphasis there is on completing any task as part of the sleep-in shift, the more likely it is that the national minimum wage will be payable for all or part of the shift. Consider why the employee needs to be present on-site; is it to work or be there in case of a specified emergency? If there is an emergency, do they attract at least the national minimum wage at that point? An example would be that a security guard who has a responsibility to patrol an area or monitor CCTV would be working. One who is on-site purely for emergencies with no other responsibilities may not. The same would apply to an estates or facilities manager who has to stay on or near site on an ‘on call’ basis.

- **Is the employer subject to a regulatory requirement to have someone present?** If there is some regulation built into a service contract that demands that there is a presence required on-site, then it would indicate that the individual should receive payment for being there.

- **The extent to which the worker’s activities are restricted by the requirement to be present and at the disposal of the employer,** e.g. would the worker be disciplined for leaving the premises? This is quite key to understand – if the worker left the site for ten minutes to go down to a nearby shop (for example), is this something that they could be disciplined for? On its own it may not be the crucial factor in determining pay status but it does point towards the control of the employer in the situation.

- **The immediacy of the requirement to provide services if something untoward occurs or an emergency arises** – the question to ask here is whether urgent action by the member of staff on-site might be required? For example, a medical emergency for a care worker, or a fire breaking out in the case of a night watchman, security guard, reception or concierge staff or estates manager. The answer to this would help to point towards whether there is a need to have someone on-site rather than work remotely and if it justifies the need for a sleep-in shift and an allowance or an overnight worker.

- **Facilities for sleeping** – this is a fairly important consideration. In the case of Scottbridge, the night watchman was provided with a mattress to sleep on. Mrs Whittlestone was provided with a camp bed within a public area of the patient’s house. Arguably then, these are not comparable facilities with what the majority of people would reasonably expect within their own homes and therefore may prevent or discourage sleeping during the shift. As part of its response to the Employment Tribunal claim raised by Ms Tomlinson-Blake, Mencap reviewed the sleeping arrangements at each location to ensure that the sleep-in staff were provided with a permanent bed (as opposed to the likes of a camp bed or futon) and that it was situated in a separate room in the property with a lock on the door, so as to provide privacy. This then suggests that the need is just to be on-site, much like providing facilities for a caretaker to live on-site.
• **Call out frequency** – another action that Mencap took that can be applied in tests across sectors was a review of each location to obtain and assess any disturbance data, i.e. how many times a week or month was a sleep-in worker disturbed and have to undertake paid work. This helps to assess what sort of shift is required (a sleep-in shift or a paid night shift), whether the cost of running the contract added up financially, and highlighted the risk of any claims arising from the workers. This action could easily be transferred to other work types and locations, for example by analysing how often a caretaker is having their sleep disturbed whilst ‘on call’. If it is occurring with some sort of regularity then it is worth trying to eliminate these disturbance factors (e.g. faulty alarms or equipment, other forms of security such as CCTV or physical barriers).

Assessing the above factors would prove to be of vital importance to understand the areas of risk as highlighted by previous case law and the ability to minimise that with some potentially quite simple actions, or to review whether the service provided is viable if the method of cover needs to change or if contracts need to be reviewed in light of an assessment.

It’s also a valid concern when tendering for contracts that there are some hidden liabilities. In that regard it is useful to understand what staff you are inheriting (under a TUPE transfer situation) or how the need to provide an overnight worker on some kind of ‘sleepover’ shift adds up in relation to any tasks they are expected to undertake during that time.

If there is some disconnect, this should be addressed before signing up to it, or ensure you have a financial contingency if you feel that there is a risk of challenge.
## Impact on FM

Whilst case law can seem like a rollercoaster at times, it can guide us on a path of enlightenment towards positive measures that companies can take to review working practices and avoid putting themselves in similar situations in the future. Sleep-in shifts on-site should be focused on the employee being able to sleep in safety and comfort with rare disturbances. Their role should genuinely be for those ‘what if’ moments rather than to carry out specific tasks. The more control there is for them to do that, or some other requirement for them to be there, then the scope of what the person is needed on-site for alters substantially and the question of payment arises.

Mencap had the ability and resources to challenge this, and its fight continues, but other providers backed down, altered their ways of working, pulled away from costly contracts and reduced their risks. The cost of not doing so for many, if not all, was too high.

Had Mencap lost the Court of Appeal case then it and other organisations that offer similar sleep-in shifts would have been liable to pay back pay of £400 million. It would have critically damaged these companies, and the threat isn’t entirely over.

The world doesn’t stand still of course, and the care industry is looking at alternative solutions to replacing on-site staff in all but those locations with a real critical need, whilst maintaining the required service standards and managing risks. Technological alternatives are a key consideration and some organisations are reviewing the options available.

### Mitigating risks

1. Initial actions would be to review any ‘sleepover’ staff within your business and assess them against the risks highlighted above, especially if their roles are not currently attracting the national minimum wage. The appendix below contains a tool for assessing that.

2. If you identify a problem area or several areas of risk, then consider how this can be resolved, such as:
   a) Investigate whether there is an option to change the payments of these kinds of shifts to comply with the national minimum wage from a certain date.
   b) Assess what the impact on budgets will be if you had to pay national minimum wage on the shift/s you have reviewed.
   c) If there is a contractual or regulatory requirement for this type of shift, look at whether there is any scope to review the value of the contract with the commissioning party.
   d) If there are various points during a sleepover shift where this is likely to be or has been instances where the worker has been disturbed, either to answer an urgent call-out or deal with an ongoing issue such as a faulty alarm or that the needs of the site are such that disturbances are regular, review this to see if they can be minimised or revisit the contract as above.
   e) Ensure that the sleeping facilities contain a bed (rather than a temporary bed or sofa-bed) and is in a secure room accessible only to the person on the sleepover shift.
   f) Clarify whether the individual would be penalised for leaving the site for any period of time (the shop test). This can help determine the level of control over the worker during the shift.
   g) Take legal advice to assess the overall risks of a claim across your business, including the likelihood of back payments, and decide what the business would have to do to afford that, such as terminating high-risk contracts, restructure of business, scaling back on resources and facilities.
3. By assessing the situation now and scheduling periodic assessments every six to 12 months or so, all businesses who operate these kind of sleepover shifts stand a much better chance of avoiding a lengthy and potentially costly legal case and demonstrate their commitment to fairly remunerating their workers and supporting their health and safety.

4. If you find that there is a risk that the sleep-in staff you are paying an allowance to may be eligible to receive the national minimum wage for this time, seek specialist advice. Each situation is unique and so having someone to review your particular situation is highly recommended to establish a way forward.

The Mencap case will be heard and an outcome delivered by the Supreme Court later in 2019. In the meantime, FM companies should review the status of any sleepover workers to see if there is a risk that can be mitigated against should a challenge come from employees or if the Supreme Court goes against the ruling of the High Court, which is entirely feasible.

Understanding your areas of risk now will allow you the opportunity to reduce or eliminate them, rather than face a potential costly and, due to the nature of case law, reputational, challenge.
This table can be used as a tool to consider the key elements derived from case law (as at time of writing) when assessing sleepover shifts that do not attract the national minimum wage.

Please note: Completing this form does not guarantee immunity from a claim. It’s included here as a useful tool to analyse the risks and actions can be added or deleted as per your requirements. Always take legal advice on any findings to decide upon whether there is any risk to your business of operating sleepover shifts.

### ACTION

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<td>Tasks to be completed</td>
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<td>How are workers being remunerated for these tasks?</td>
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<td>What is the risk if these tasks were not carried out?</td>
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<td>Regulatory requirements</td>
<td>Is there any risk of breaching the contract if someone wasn’t on-site?</td>
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<td>Is there any legal or health and safety risk of someone not being on-site?</td>
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<td>Can this need be met by a remote worker or via assisted technology?</td>
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<td>Presence and availability</td>
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<td>Would their absence from site (regardless of length of time) potentially result in disciplinary action being taken against them?</td>
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<td>Is a bed and bedding provided?</td>
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<td>Does the room provide for privacy (lockable door for example)?</td>
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<td>What other facilities are available within the room (TV, washing facilities, computer, etc.)</td>
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<td>Disturbances</td>
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<td>How long did these take to resolve?</td>
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<td>How do you remunerate the worker for this type of disturbance?</td>
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Every business, regardless of size and industry, needs to understand the parameters within which it employs or engages staff. That's where our experienced and friendly HR consultants fit in – supporting our clients with comprehensive and pragmatic advice helping them get from A to B, often via C if that helps and is legal! For the clients who want to be told, we tell; for those who want an informed ear to discuss ideas, we act as a sounding board. We work with clients who have in house HR teams already and with clients who have little or no HR experience.

Our consultants are all MCIPD qualified or above, and will tailor their delivery to fit your needs and style. Our clients range from FM to hospitality; healthcare to manufacturing, across both public and private sectors. We aim to understand your business, your policies and more importantly, your company culture in order to provide you with the best possible bespoke advice.

The International Facility Management Association is the world’s largest and most widely recognised association for facility management professionals. Its mission, in collaboration with the Royal Institution of Chartered Surveyors (RICS), is to improve the practice and visibility of facility management on a global scale by providing industry leading research and educational resources to IFMA members. The IFMA UK chapter exists to enhance, evolve and expand the knowledge of facility managers, with a focus on the United Kingdom, while also providing pathways to career success for professionals within the built environment. A key part of IFMA UK’s strategy involves engaging FM and workplace professionals who are committed to the betterment of the industry in order to co-curate engaging thought leadership that explores important and relevant topics.