

We wish to bring to your attention an issue that has come to light following a WRC inspection of a member hotel recently.

The WRC inspector formed the view that the hotel was in contravention of the Payment of Wages Act 1991 for making “deductions” from pay, in circumstances where employees had been clocking in earlier and / or later than their rostered time, but were being paid as per their rostered hours only. On the face of it, employees appeared to be working 5/10 minutes each day more than they were being paid for, which is a deduction from wages by law. In reality, employees either (i) occasionally clocked in a few minutes early; or (ii) delayed a few minutes after finishing work before clocking out (sometimes due to delay in actually getting to the clock machine).

We sought a legal opinion in relation to this issue.

In summary, unless there is persuasive evidence to show that an employee has only worked the rostered hours and has not worked the additional time as per the clocking in records, employers should pay employees in accordance with the clock in records.

If persuasive evidence exists to show that employees are incorrectly clocking in early or late, and are not actually working the additional time, then the relevant amount of wages does not need to be paid and this will not be an unlawful deduction, as such wages are not “properly payable” as set out in the Payment of Wages Act 1991.

However, it will be difficult to provide such evidence. Therefore, “prevention is better than cure” and so we recommend that where clocking in is being used, members should frequently remind employees that they should only clock in when they actually commence their shift, and that they should clock out immediately once they finish their shift (unless required to work overtime). Ideally, members should have a policy setting this out. Employees should also be told they must notify management if there is a delay in getting to the clock in machine. Members should also have a system in place to monitor the situation (periodic checks to ensure employees are clocking in/out on time) so that the problem can be minimised or avoided.

Finally, allow sufficient time for employees to travel to the clock at the end of shift, as they are deemed to be working until they clock out!

Please contact Nuala McLoughlin at [mcloughlin@ihf.ie](mailto:mcloughlin@ihf.ie) if you have any queries in relation to this issue.