

Statement of Interpretation on Article 2§1 – The right to just conditions of work – on-call periods

The Committee recalls its case-law according to which on-call periods (“périodes d’astreinte”) during which the worker is not required to perform work for the employer, although they do not constitute effective working time, cannot be regarded as a rest period in the meaning of Article 2 of the Charter (Confédération Générale du travail (CGT) and Confédération française de l’encadrement-CGC (CFE-CGC) v. France, Complaint No. 149/2017, decision on the merits of 19 May 2021, §56). On-call periods are periods during which the worker is obliged to be at the disposal of the employer with a view to carrying out work, if the latter so demands. However, this obligation, even where the possibility of having to carry out work is purely hypothetical, unquestionably prevents the worker from pursuing activities of their own choosing (ibid., §57). The Committee considers that the equivalisation of an inactive part of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both in respect of standby duty at the employer’s premises and of on-call time spent at home (ibid., §61)

The Committee wishes to further clarify its position regarding on-call periods. Active parts of on-call period where work performed during an on-call period, irrespective of whether the worker is present at the employer’s premises or at home or at another designated place outside the employer’s premises, should be considered as working time and remunerated as such.

Inactive parts of on-call period during which no work is carried out but the worker must be present at the employer’s premises should also be considered as working time and remunerated accordingly.

With regard to inactive parts of on-call period during which no work is carried out and where the worker stays at home or is otherwise away from the employer’s premises, the Committee considers that under no circumstances should such periods be regarded as rest periods in their entirety.

However, there are two situations that need to be examined. Firstly, where the worker, who is on-call away from the employer’s premises (at home or at another designated place by the employer), is under an obligation to be immediately available or available at very short notice and on a recurring basis to the employer, and where there are serious consequences in cases of the failure to respond, such on-call periods, including where no actual work is performed (inactive on-call), must be classified as working time in their entirety and remunerated accordingly in order to be in conformity with the Charter. Secondly, where the worker who is away from the employer’s premises (at home or at another designated place by the employer) has a certain degree of freedom to manage their free time and is allowed time to respond to work tasks (i.e. they do not have to report for work immediately or at a very short notice or on a recurring basis), the inactive on-call periods amount neither to full-fledged working time nor to genuine rest periods. In such cases the situation may be considered as being in conformity with the Charter if the worker receives a reasonable compensation. The Committee will assess the reasonableness of the nature and level of such compensation on a case-by-case basis and will take into account circumstances such as the nature of the worker’s duties, the degree of the restriction imposed on the worker and other relevant factors.