

technical factsheet 149

Working time

The Working Time Regulations were introduced in 1998 to give effect to the European Working Time Directive. They are primarily intended to ensure that working hours are limited, proper breaks are taken and that workers receive paid holidays.

Who is covered?

The Regulations cover employees and workers eg direct casuals and agency workers, but not self-employed people who are free to work for clients and customers as they choose. A person doing in-house training or a trainee on work experience is also a worker. A young worker is someone who is above the minimum school leaving age, but under 18.

There are certain sectors of work where the Regulations do not apply, as they have their own sector specific legal requirements, and this is mainly in transport related areas eg sea transport, workers on fishing vessels and those covered by the Aviation Directive.

Mobile workers in road transport are covered by the EU drivers' hours rules. This includes drivers, members of the vehicle crew and any others who form part of the travelling staff. They are entitled to paid annual leave and health assessments for night workers under the Working Time Regulations.

The armed forces, the police and emergency services are outside the scope of the Regulations in certain circumstances but young workers in these areas are covered.

What are the limits?

Workers cannot be forced to work for more than 48 hours a week on average. The average weekly working time is normally calculated over 17 weeks. This can be longer in certain situations and it can be extended by agreement up to a maximum of 52 weeks by agreement with the workforce.

Workers can agree to work longer than the 48-hour limit. This agreement is generally referred to as an 'opt-out', and it is in writing and signed by the worker. It can be for a specified period or an indefinite period. There is no opt-out available from the Young Workers limits. However, workers can give notice to cancel the opt-out agreement whenever they want, and this is a minimum of 7 days notice or up to three months by agreement with their employer. Workers cannot be fairly dismissed or subjected to detriment for refusing to sign an opt-out.

All employers must take all reasonable steps to ensure that their workers are not required to work more than an average of 48 hours a week, unless they have signed an opt-out agreement.

Young workers are subject to tighter limits Young workers may not ordinarily work more than eight hours a day or 40 hours a week, although there are certain permitted exceptions, and the averaging provisions and opt out are not applicable to them.

Flexible Working

From 1 April 2009 the government has extended flexible working eligibility, introduced by the Employment Act 2002. The extension relates to the increase of age limit, now relates to children up to the age of 16 (previously up to six).

What is 'working time'?

The Regulations define working time as when someone is "working, at his employer's disposal and carrying out his activity or duties".

This includes:

- Working lunches, such as business lunches.
- Travelling as part of your work eg going to clients if you are a travelling salesman, or a mobile repairman
- Job related training
- Time spent abroad working if the employer carries on business in the UK

Working time is not

- Routine travel between home and work.
- Rest breaks when no work is done.
- Time spent travelling outside normal working hours
- Training such as non-job-related evening classes or day-release courses.

Recent European case law has stated that when the worker is at his place of work, and on call at any time, he is working throughout, although the EU has agreed that this is to change in the near future with working time only be counted when the worker is performing work related duties. If a worker is on call at home, but free to pursue leisure activities, he is not working for these purposes.

How is working time averaged?

The average weekly working time is calculated by dividing the number of hours worked by the number of weeks over which the average working week is being calculated, normally 17 unless otherwise agreed (this is the reference period).

If the worker is away during the reference period because he or she is taking paid annual leave, maternity, paternity, adoption or parental leave, or is off sick then the averaging is done by ignoring this period and averaging the last 17 weeks at which the worker was actually working.

Night workers

A night worker is someone who normally works at least three hours at night. Night time is between 11pm and 6am, although workers and employers may agree to vary this.

Night workers should not work more than eight hours daily on average, including overtime where it is part of their normal hours of work, and this is averaged in the same way as ordinary work above. A night worker cannot opt out of the night work limit and young workers are not normally permitted to work at night. Mobile workers are excluded from the night work limits and are entitled to 'adequate rest', which is sufficiently long and continuous to ensure that workers do not injure themselves, fellow workers or others and that they do not damage their health, either in the short term or in the longer term. Where the night work involves particular hazards or heavy physical strain, there is an absolute limit of eight hours on the working day. Night workers must be offered a health assessment by the employer at least annually involving a questionnaire, and, if there are any doubts about the worker's health, a medical examination. There is also a right to a health assessment for mobile workers and workers subject to the Road Transport Directive who are 'night workers'.

Daily rest

A worker is entitled to a rest period of 11 uninterrupted hours between each working day.

Weekly rest

A worker is entitled to one whole day off a week. Days off can be averaged over a two-week period, meaning workers can take two days off a fortnight. Days off are taken in addition to paid annual leave.

Employers must make sure that workers can take their rest.

Mobile workers are excluded from the usual rest break entitlements under the Working Time Regulations. Instead, these workers are entitled to 'adequate rest'. 'Adequate rest' means that workers have regular rest periods. These should be sufficiently long and continuous to ensure that fatigue or other irregular working patterns do not cause workers to injure themselves, fellow workers or others, and that they do not damage their health, either in the short term or in the longer term. There are special rules for young workers.

Rest breaks

Workers are entitled to a rest break of 20 minutes after six hours of work in the absence of any agreement that states otherwise.

The break should be taken during the six-hour period and not at the beginning or end of it. The exact time the breaks are taken is up to the employer to decide.

Employers must make sure that workers can take their rest.

Mobile workers are excluded from the usual rest break entitlements under the Working Time Regulations, as are some other specific types of worker such as emergency services. Instead, these workers are entitled to 'adequate rest', on the same basis as weekly rest above.

Paid annual leave

Every worker – whether part-time or full-time – covered by these Regulations is entitled to 4.8 weeks (24 days if a five day week is worked) pro-rata for those working part-time. This will increase to 5.6 weeks (28 days for a five day week) from 1 April 2009. This includes workers who are subject to the Road Transport Directive.

A week's leave should allow workers to be away from work for a week. It should be the same amount of time as the working week: if a worker does a five day week, he or she is entitled to 24 days' leave; if he or she does a three day week, the entitlement is 14.4 days' leave.

The leave entitlement under the regulations is not additional to bank holidays. There is no statutory right to take bank holidays off. Therefore a worker who is not otherwise paid in respect of bank holidays may take bank holidays as part of his or her annual leave entitlement in order to receive payment for these holidays.

Workers must give the employer notice that they want to take leave and employers are entitled to set the times that workers take their leave eg Christmas shutdown.

If a worker's employment ends, the employer must include payment for any annual leave due and untaken in his final pay.

The entitlement to paid annual leave begins on the first day of employment, but an accrual system can be used for the first year so that the proportion of the leave which may actually be taken (with the employer's agreement) builds up over the year. The amount of leave which may be taken builds up monthly in advance at the rate of one-twelfth of the annual entitlement each month.

How 'leave years' work

If you are entitled to paid leave, it will be based on a 'holiday year'. This is normally specified by the employer, but if not the leave year will start on 1 October if you started work on or before 1 October 1998, with every leave year then starting on that date. If you started work after 1 October 1998, each leave year will then start on that date.

If a worker starts work part of the way through an existing company leave year, their leave entitlement will be proportionate to the amount of time left during that year. If s/he leaves their job part of the way through a leave year, the annual leave entitlement will be proportionate to the amount of the leave year that they have worked.

Unmeasured working time

The working time limits and rest entitlements, apart from those applicable to young workers, do not apply if a worker can generally decide how long he or she works because of the particular nature of their job.

A test, set out in the regulations, states that a worker falls into this category if "on account of the specific characteristics of the activity in which he is engaged, the duration of his working time is not measured or predetermined, or can be determined by the worker himself".

An employer needs to consider whether a worker passes this test. Workers such as senior managers, who can decide when to do their work and how long they work, are likely to pass the test. Those without this freedom to choose are not.

It is accepted that workers who fall into this category may have an element of their working time measured or pre-determined, but otherwise decide how long they actually work. It is likely that very few workers, including some of those that fall into this category, have complete control over their entire working time.

This exception would not apply to:

- Hourly paid workers and those claiming paid overtime;
- Those working under close supervision;
- A worker who is implicitly required to work, for example because of specific output requirements to be achieved in a specified period.

No one can be forced to work more than an average of 48 hours a week against his or her will; this exception does not remove this protection from any worker. The exception applies to individuals (apart from young workers) where the specific characteristics (i.e. the nature) of their work meet the test set out above.

More on keeping records

What records do employers need to keep?

If you are an employer, you need to keep records that show the weekly working time and night work limits are complied within your business. It is for you to determine what records need to be kept for this purpose. You may be able to use existing records maintained for other purposes, such as pay, or you may need to make new arrangements.

You do not have to keep a running total of how much time workers work on average each week. How you monitor your workers' hours depends on particular contracts and work patterns.

You need only make occasional checks of workers who do standard hours and who are unlikely to reach the average 48-hour limit. However, you should monitor the hours of workers who appear to be close to the working time limit – and make sure they do not work too many hours.

You need to keep an up-to-date record of workers who have agreed to work more than 48 hours a week, but you do not need to record how many hours they actually work.

You must offer regular health assessments to night workers. You should keep a record of: the name of the night worker, when an assessment was offered (or when he or she had the assessment if there was one) and the result of any assessment. Records must be kept for 2 years.

More about enforcement

How are the regulations enforced?

Enforcement is split between different authorities. The limits and health assessment requirements (for night workers), are enforced by the Health and Safety Executive (HSE), local authority environmental health departments, the Civil Aviation Authority (CAA), the Vehicle and Operator Services Agency (VOSA) and the Office of Rail Regulation (ORR). The entitlements to rest and leave are enforced through employment tribunals.

These regulations are very detailed and more information can be obtained at <http://www.berr.gov.uk/whatwedo/employment/employment-legislation/working-time-regs/>