

WORKING TIME REGULATIONS – HOURS & BREAKS FACTSHEET

Oct 09

The **Working Time Regulations (WTR)**, which became law in October 1998, aim to improve health and safety at work. They set maximum working hours, minimum daily and weekly rest breaks, restrictions on night work and minimum rights to paid holidays.

The Working Time Regulations

These regulations do not affect contractual agreements that offer terms which are as good as, or better than, these statutory rights.

This briefing sheet covers the provisions covering **maximum hours of work**, both **per week** and, for night workers, **per night**. It also looks at the provisions on **rests** and **breaks**. It explains who is and who is not covered by the regulations, and the particular cases where exceptions apply.

The rights to **paid holiday** are dealt with in PERS leaflet no 4 “Paid Holidays”.

Who is covered?

Most workers over the school leaving age, including agency workers, temporary and freelance workers, people doing in-house training and trainees on work experience, are covered by the regulations on maximum hours, night working, rests and breaks.

Special provisions apply to **young workers** – that is, people over the minimum school leaving age but under 18 – in relation to limits on hours, night work, breaks during working time and daily and weekly rest periods and to flight crew – in relation to flying time and breaks.

Please note that the Regulations have been amended since 1 August 2003 (in the Working Time [Amendment] Regulations) so more people now fall within their scope.

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Workers who were previously excluded but are now included are:

- workers in rail transport (but note the ‘special cases’ category on page 4)
- workers in air transport
- workers in road transport
- workers in sea fishing, sea and lake transport, mainland waterways
- workers in offshore work in the gas and oil industry and any other workers at sea other than seafarers in sea transport and sea fishing.
- Doctors in training, from graduation to consultant status, are restricted to 52 hours per week till 31/7/11

However there are still some specific exemptions:

First: those who are exempt from the parts of the Working Time Regulations concerning hours and breaks because they are covered by other workplace agreements, such as:

- in certain circumstances, people in the armed forces, the police and emergency services, *unless they are a young worker over the school leaving age but under 18*
- domestic workers
- seafarers in sea transport and on board sea going fishing vessels, as other regulations apply

Second: those to whom the hours and breaks part of the WTR do not apply because they have **unmeasured working time**. They include:

- people who are self-employed
- managing executives or people with autonomous decision-taking powers i.e. “the duration of their working time is not measured or pre-determined, or can be determined by the worker himself” *or*
- anyone with “partly unmeasured working time” – that is, anyone who **voluntarily** works extra hours beyond the requirements of the employer “the duration of which is not measured or pre-determined, or can be determined by the worker himself”.

Workers with unmeasured working time are still entitled to paid annual leave.

For the purposes of the WTR, working time is defined as:

- any period during which a worker is working, at the employer’s disposal and carrying out their activity or duties, including working lunches and travel as part of their work (e.g. travelling salesman, mobile repairman)
- any period during which a worker is receiving relevant job-related training
- time spent abroad working for an employer who carries on business in Britain

but not:

- routine travel between home and work

What is working time?

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- rest breaks when no work is done
- travelling time outside normal working time
- non-job-related training *or*
- on the basis of recent case law, 'on-call' time spent away from the workplace, not working but available for work.

What are workplace agreements?

Employers and workers can agree together to adapt some aspects of the WTR to meet their particular workplace needs. Agreements can apply to part or all of the workforce and can be made with regard to:

- a definition of '**night time**' (although this must be 7 hours long and include the period from midnight to 5am)
- a '**reference period**' for calculating average weekly/night-time working hours (although this reference period cannot be less than 17 weeks or more than 52 weeks)
- a pattern for taking **rest periods and rest breaks** (although this must ensure an average of at least 90 hours of daily and weekly rest periods).

These workplace agreements can be made:

- as collective agreements with an independent trade union, *or*
- where there is no recognised union, with elected workplace representatives, *or*
- in firms that employ 20 workers or less, with elected representatives or with a majority of individual workers.

The regulations state how representatives are to be elected.

Agreements must:

- be in writing
- have been circulated in draft to all workers to whom it applies, with explanation
- be signed before coming into effect by all the elected representatives or, in firms that employ 20 or fewer workers, by all representatives or by a majority of workers affected
- have effect for a maximum of 5 years.

The 48-hour week

The Working Time Directive introduces the right to a maximum working week of 48 hours.

The 48 hours figure is an average, usually worked out over a 17-week **reference period**. This reference period can be **extended** - up to 26 weeks under certain exceptional circumstances as listed below, or up to 52 weeks by 'workplace agreements'. The reference period must only include time actually worked. Time when a worker is absent from work (for instance on paid annual leave, maternity or paternity leave, or off sick) should be excluded from the calculation by adding the hours worked over a number of days equivalent to the days of absence at the end of the reference period before calculating the average.

Young workers may not ordinarily work more than 40 hours a week or more than 8 hours a day. These hours cannot be averaged out over a reference period and no opt-out is available. However, they *may* work longer hours where necessary to maintain continuity of service or production *or* to respond to a surge in demand for the service or product *but only if there is no adult available to perform the task and the training needs of the young worker are not adversely affected*. Additionally, young workers employed on ships or as part of the armed forces are excluded from the working time limits (and the night working limits) under the WTR, although other aspects of the regulations concerning young workers still apply.

Workplaces or employers cannot have a 'blanket' opt-out from the regulations unless they fall into one of the exempt groups listed on page 1. However, individuals may *voluntarily* agree to work for longer hours each week. In this case, certain requirements apply:

- the agreement must be in writing
- it may specify the duration of the agreement, or be of indefinite length. In either case, the worker must be able to end the opt-out with seven days' notice – or longer, if agreed, up to a maximum of three months
- the employer must maintain records of agreements with workers who opt out.
- workers cannot be fairly dismissed or subjected to detriment for refusing to sign an opt-out.

Is it possible to opt out of the regulations?

Opt-out agreements are not available for **young workers**.

Night work

Night time is defined as a 7-hour period which includes the hours between midnight and 5am. If there is no agreed night time period, it will be between 11pm and 6am.

A **night worker** is defined as someone who in the 'normal course' of their work – that is, on a regular basis, though not necessarily all their working time - will do at least three hours of their daily work during the night.

A night worker can do a maximum average of 8 hours in any 24 hour period. The reference period for calculating the average is usually 17 weeks.

If the job involves special hazards or heavy physical or mental strain, the limit will be 8 *actual*, not average, hours in a 24-hour period. 'Special hazards' should be identified in risk assessments carried out under Health & Safety at Work Regulations.

Mobile workers – that is, travelling or flying personnel working in transport of passengers or goods by road or air – are excluded from the night working limits but are entitled to 'adequate rest', which must be sufficiently long and continuous to ensure that their own and others' health and safety is not damaged.

Young workers may not ordinarily work at night between 10pm and 6am (or between 11pm and 7am) *unless the following conditions apply:*

- ❑ they may work **throughout the night** if they are employed in hospitals or similar establishments, or in cultural, artistic, sporting or advertising activities or
- ❑ they may work **up to midnight or from 4am** if they are employed in agriculture, retail trading, postal or newspaper deliveries, catering, a hotel/pub/ restaurant or bar, or a bakery *but only if*
- ❑ the work is necessary to maintain continuity of service or production or to or to respond to a surge in demand for the service or product *and* there is no adult available to perform the task *and* the training needs of the young worker are not adversely affected *and* they are allowed an equivalent period of compensatory rest *and* they are adequately supervised.

Only young workers employed on ships or as part of the armed forces are totally excluded from the young workers' night working limits under the WTR.

Adult night workers are entitled to a **health assessment** before being required to do night work and periodically (at least annually) thereafter. Health assessments should include a professionally devised and assessed questionnaire and, where there are doubts about a worker's fitness, a medical examination. If a medical practitioner advises that night work would cause or make worse a health problem, the worker should, where possible, be transferred to daytime work

New and expectant mothers should be given special consideration.

In the limited cases where they may do night work, **young workers** are entitled to a **health and capabilities assessment** before starting night work and periodically thereafter. This should take account of their physique, maturity and experience. The aim is to ensure that they do not have excessive demands made on their health or development.

Breaks during working time

If daily working time is more than six hours, **adult workers** are entitled to a minimum break of 20 uninterrupted minutes. They must be able to take this break away from their workstation.

Mobile workers are not entitled to daily breaks but should get 'adequate rest' as above.

Young workers are entitled to a 30-minute break if working time is more than 4½ hours. Breaks can only be reduced or excluded in exceptional circumstances. Where this occurs, compensatory rest must be taken.

Daily rest breaks

Adult workers are entitled to a minimum of 11 hours consecutive rest in each 24-hour period.

Mobile workers are excluded from the usual rest break entitlement but are entitled to 'adequate rest' as above.

Young workers are entitled to 12 hours in each 24-hour period. This need not be continuous, but can only be reduced or excluded in exceptional circumstances. Where this occurs, compensatory rest must be taken within 3 weeks.

Monotonous work

Where the pattern of work is deemed to be monotonous and may put the health and safety of the worker at risk, an employer should ensure "adequate rest breaks". The guidance is not clear, but it is assumed that more frequent breaks of shorter duration should be given.

Weekly rest breaks

Adult workers are entitled to an uninterrupted weekly rest period of 24 hours in each 7-day period. This rest can be averaged out over a 14-day reference period, either taken as two 24-hour breaks or as one 48-hour period. This rest is in addition both to the daily rest period of 11 hours and to paid annual leave entitlement.

Mobile workers are excluded from the usual rest break entitlement but are entitled to 'adequate rest' as above.

Is there any scope for flexibility in special cases?

Young workers are entitled to a weekly rest period of 48 hours (2 days) in any 7-day period. This can be averaged over 2 weeks and should normally be two consecutive days. If the nature of the job makes it unavoidable, weekly time off can be reduced from 48 hours to 36 hours, but compensatory rest must be taken.

In some **special cases**, an employer may

- extend the reference period from 17 to 26 weeks or
- increase the hours worked overnight, or temporarily alter the duration and frequency of daily and weekly rest periods. However, whenever one of these exceptions is applied, the employer must ensure **compensatory rest** (of at least 90 hours in a week) is given to the worker.

Exemptions may apply when:

- the worker's activities are such that their place of work is far away from where they live, or they constantly work in different places without a set pattern
- the work involves security and surveillance activities requiring a permanent presence to protect property or individuals, such as security guard work and caretaking
- the worker's activities involve the need for continuity of service or production, particularly concerning:
 - hospitals, residential institutions and prisons
 - media production companies, postal and telecommunications services and civil protection services
 - public utilities
 - industries in which work cannot be interrupted on technical grounds
 - certain transport activities, including urban passenger transport, rail transport and activities linked to transport timetables ensuring the continuity and regularity of traffic
- there is a foreseeable surge of activity, particularly in agriculture, retail, tourism, postal services
- the worker's activities are affected by an emergency or an unusual or unforeseen occurrence.

Records

Employers need to keep records to show that the weekly and night time working limits are being complied with. These do not have to be separate records – they could be, for instance, pay records. Employers do have to keep up-to-date records of which workers have agreed to work more than 48 hours a week but do not have to record the actual number of hours they work. Employers must also keep records of health assessments offered to night workers and the result of any assessment made. Records should be kept for at least two years. Employers do not have to keep records for rest breaks or days off.

Enforcement

The limits on weekly hours and on night working hours, along with health assessment requirements for night workers, are enforced by the Health and Safety Executive, local authority environmental health departments and other agencies with responsibilities for enforcing health and safety regulations in particular industries.

Entitlements to rest and leave are enforced through Employment Tribunals (ETs).

Individual workers will also be able to make a complaint to an Employment Tribunal if they suffer a detriment or are dismissed because:

- they refuse to exceed the weekly (or nightly) work limit
- they refuse to work when entitled to a rest break
- they refuse to sign a workforce agreement or make allegations in good faith that the employer has contravened a right.
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They must make a claim within three months of the action complained of. For further information and obtain a claim for see: <http://www.employmenttribunals.gov.uk/>