

The Working Time Regulations 1998

The Working Time Regulations 1998 govern the maximum working week and employees' entitlements to holidays and work breaks. This guide summarises the Regulations and the penalties employers will face for any breach, but not the provisions regarding paid annual leave. For further information on paid annual leave under the Regulations please see our client information sheet on 'Holidays'.

The Working Time Regulations 1998 include provision for:

- maximum average weekly working time of 48 hours
- minimum daily and weekly rest periods
- in-work rest breaks
- paid annual leave
- maximum average normal hours for night workers of eight hours
- free health assessments for night workers

What is working time?

Working time is any period when a worker is working, at his employer's disposal and carrying out his duties.

Travel to and from work is unlikely to count as working time but travel as part of a job will. Job related training will count as working time.

Lunch breaks and other periods of rest spent at leisure are not working time. It is open to employers to agree with their workforce the time that is to be counted as working time for the purpose of the Regulations.

There are different provisions for young workers – ie those above the minimum school leaving age, but under 18.

Special considerations apply to workers who are 'on call', either in the work place or at their own home.

Who is covered by the Regulations?

The Regulations apply to 'workers', not just employees. This is likely to include the majority of agency workers and freelancers as well as trainees and those participating in work experience. Only those who are genuinely self-employed and free to work for different clients or customers are outside the Regulations.

Exceptions

Excluded sectors

Historically, some categories of workers were completely excluded from the Regulations, such as transport workers, police, armed forces and trainee doctors. The Regulations have been amended so that working time measures extend to transport workers (in varying degrees) and junior doctors. The hours for junior doctors are gradually being reduced in phases so that by 31 July 2009 they will also be subject to the 48 hour working week.

Special circumstances

Where the following special circumstances exist, night work limits and the rights to rest periods and in-work rest breaks do not apply:

- a worker lives a long distance from his workplace and wants to work longer hours over fewer days to complete his task more quickly, or he constantly has to work in different places making it difficult to work a set pattern
- a worker is engaged in security and surveillance activities
- a worker's activities involve the need for continuity of service or production, such as hospitals, prisons, public utilities or industries where work cannot be interrupted
- there is a foreseeable surge of activity, such as may occur seasonally, eg agriculture
- a worker's activities are affected by unusual and unforeseeable circumstances or an accident or imminent risk of an accident
- a worker works intermittently either in railway transport on-board trains or his activities are linked to railway transport timetables

If these circumstances apply, workers are entitled to compensatory rest periods. Also, the reference period for the weekly working time limit is extended from 17 weeks to 26 weeks.

Agreements to exclude or modify the Regulations

Opt-out agreements

Currently any individual worker can agree in writing to work more than the 48 hour average working week (an opt-out agreement). The agreement must be terminable by the worker. The employer must keep an up-to-date list of all those workers who have signed opt-out agreements.

Collective and workforce agreements

A 'collective agreement' can be made between an independent trade union and an employer or employer's association. A 'workforce agreement' can be made between employers and all or part of their workforce not covered by a collective agreement.

They must be in writing and cannot last longer than five years. Collective and workforce agreements can be used to:

- define working time
- determine the reference period over which weekly and night working time limits are averaged
- determine the duration of 'night time'
- determine who is a night worker
- vary or exclude night work limits
- vary or exclude daily and weekly rest periods and in-work rest breaks

Unmeasured working time

The Regulations, apart from the annual leave entitlement, do not apply if a worker has control over the hours he/she works. The Regulations state that a worker falls within this category if “the duration of his working time is not measured or pre-determined, or can be determined by the worker himself”. Government guidance states that only senior managers, who can decide when to do their work and how long they work, are likely to pass this test. In practice, therefore, this derogation is restrictively interpreted.

The previous exemption for 'partly-measured working time' was revoked in 2006.

Enforcement

Workers can enforce the Regulations relating to daily and weekly rest and in-work rest breaks, compensatory rest and annual leave by presenting a complaint to an employment tribunal.

In addition, under the Employment Rights Act 1996:

- workers can go to an employment tribunal to enforce their right "not to be subjected to any detriment" for refusing to comply with a requirement of their employer contrary to the Regulations or to forgo a right conferred by the Regulations
- dismissal of an employee on account of any refusal to comply with a requirement of their employer contrary to the Regulations will be automatically unfair, irrespective of the employee's length of service

In addition to the worker's right to enforce the legislation, it is subject to external enforcement.

The following provisions of the Regulations are enforced by the Health and Safety Executive, local authority environmental health departments, or other relevant body (such as the Vehicle and Operator Services Agency, 'VOSA', for road transport workers) as appropriate.

It will be a criminal offence if an employer fails to comply with the Regulations relating to:

- the maximum average weekly working time
- average normal hours of night workers
- health assessments for night workers
- adequate rest breaks for monotonous work which might jeopardise health and safety
- the keeping of records

Working time limits

48 hour week

A worker's maximum weekly working time must not exceed an average of 48 hours, calculated over a period of 17 weeks, (this can be extended to 26 weeks if any of the special circumstances apply and up to 52 weeks by workforce or collective agreement). The calculation must take account of periods of annual or sick leave or maternity leave - these periods count as hours worked. Records showing how many hours have been worked must be kept for two years. It is up to the employer to decide what form these records will take eg existing payroll or time recording records may suffice.

Employers should consider:

- how to monitor hours worked
- how to reduce hours if necessary
- how the necessary records are to be kept

Night work limits

Average normal hours of night workers

Night workers are those whose daily working time includes at least three hours of night time (11 pm until 6 am or other agreed period) on the majority of days they work, or regularly as part of a rota.

The average maximum is eight hours in 24 over a 17 week period (this can be modified as above). There is an absolute maximum of eight hours in 24 for those dealing with special hazards or jobs with heavy physical or mental strain. The calculation is on the basis of normal hours, so overtime and holiday periods are not considered. Where the limit does not apply because of special circumstances, or is modified or excluded by collective/workforce agreement, an equivalent period of compensatory rest must be provided. Records showing that these limits are being complied with must be kept for two years.

Employers should consider:

- whether they employ night workers
- whether a worker is dealing with 'special hazards' - these can be defined by agreement between employers and workers or be assessed by the employer under the Management of Health and Safety at Work Regulations 1999

Health assessments for night workers

A health assessment must be provided free to any worker who is to become a night worker, and at regular intervals thereafter, to determine whether the worker is fit for the night work to which he has been assigned. If health problems are discovered that are connected with the night work, the worker must be transferred to day work where possible. Young workers working between 10 pm and 6 am, are entitled to a health and capacities assessment considering physique, maturity and experience as well as health issues. Records of assessments and results must be kept for two years.

Employers should consider:

- how to conduct the assessment (the minimum requirement is a screening questionnaire)
- how often to re-assess

Work breaks

Daily

Workers are entitled to 11 consecutive hours rest in each period of 24 hours, and young workers are entitled to 12 hours in every 24.

Weekly

Workers are entitled to an uninterrupted period of 24 hours rest in each seven-day period. For adults, this may be averaged over two weeks. Young workers should have two days rest in each week, which may not be averaged out.

The only time a young worker's entitlement to daily or weekly rest may be modified is in exceptional circumstances, where the work is "of a temporary nature and must be performed immediately", and where no adult worker is available to do the work instead. There must be equivalent compensatory rest time in the following three weeks.

An adult worker's entitlement to rest may not apply:

- where the special circumstances apply
- where a change of shift makes it impossible for a worker to take their full rest entitlement

In either of these situations or where a collective or workforce agreement has been reached, workers will be entitled to an equivalent period of compensatory rest.

Rest breaks

Workers are entitled to an uninterrupted break of 20 minutes when working for more than six hours in a day. Case law has shown this means only one rest break - a worker is not entitled to another rest break after 12 hours. Young workers should have a break of 30 minutes when working for more than 4.5 hours in a day.

Modifications to this regulation can only be made in the same circumstances outlined as for daily and weekly breaks.

Paid annual leave

For information about paid annual leave under the Regulations please see our client information sheet on 'Holidays'.

Contacts

For further information or guidance on this subject, please contact the Employment law team at employmentinfo@bllaw.co.uk or call us:

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