



WORKING TIME REGULATIONS

The European Working Time Directive was introduced into UK law by the Working Time Regulations 1998 (as amended).

Many more workers are protected by the Regulations than by the Employment Rights Act. For example, temps working through an employment agency for clients, under a contract for services with the agency, are considered to be the same as employees and are covered by the regulations. In fact the only real exclusions other than those working in certain occupations are those workers who are genuinely self-employed.

The Regulations were amended, with effect from 1st August 2003 to extend working time measures to all non-mobile workers in road, sea, inland waterways and lake transport, to all workers in the railway and offshore sectors and to all workers in aviation and to junior doctors (from 1st August 2004).

The regulations give the following rights to workers:-

Working hours

A maximum average working week of forty-eight hours over 7 days, normally worked out over a reference period of seventeen weeks.

Workers and employers can agree to calculate the average weekly working time over a longer period, up to fifty-two weeks, under a workforce or collective agreement. This may be helpful for employers with seasonal peak periods.

Any worker can agree to work over the limit (opt-out), provided the agreement is in writing and signed by the worker. It must be possible for the worker to terminate the agreement. The minimum notice to be given by the worker, as part of the agreement, is 7 days, and the maximum allowed is 3 months. Employers must keep records showing all workers who have agreed to work in excess of forty-eight hours and the average working time per week of each of these people since the written agreement came into effect. The latter records need to be kept for 2 years.

Any opt-out by a worker must be agreed to; employers cannot force workers to opt-out. Workers cannot be fairly dismissed or subjected to detriment for refusing to sign an opt-out agreement.

Working time does include travelling where it is part of the job, working lunches and job related training. It does not include travelling from home to the normal place of work, lunch breaks, or non-job related evening classes or day release courses.

Rest Breaks

- A rest of eleven hours consecutively in every twenty-four hour period worked;
- Twenty-four hours rest in every 7 days, averaged over 2 weeks;
- Twenty minutes when working more than 6 hours;
- Where work is monotonous, 'adequate' rest breaks.

Paid Holidays

- Paid holiday of 5.6 weeks (twenty-eight days if you work a 5 day week);
- There is no statutory right to paid bank or public holidays which may be included in the 5.6 weeks/twenty-eight days (subject to the employment contract);
- Employees must give double the amount of notice for the time they want to take off, e.g. 1 week holiday will require 2 weeks notice;
- Employers may not make payments in lieu of holiday (within the statutory minimum) which has not been taken at the end of the statutory year. There is nothing to stop holiday in excess of the minimum being carried forward, depending on the contract, providing the minimum has been taken in that holiday year;
- Payments in lieu of holiday accrued, yet not taken, must be made if the employment terminates;
- Part-timers get pro-rata holidays.

Night Work

- A night worker is someone who normally works at least 3 hours at night;
- Night time is between 11pm and 6am, or a period of at least 7 hours and including the hours between midnight and 5am, agreed between employers and workers;
- Periods of night work, shifts for example, must not be more than 8 hours in every twenty-four hour period, averaged over seventeen weeks-if the work is particularly hazardous, then the averaging does not apply, and the maximum is 8 hours;
- Workers are entitled to a free health assessment before starting night work for the first time, and existing night

workers who can show that it is affecting their health have the right to transfer to day work;

- A night worker cannot opt-out of the night work limit.

Exceptions to the Working Time Regulations are those working:-

- As mobile workers in the inland waterways and lake transport sectors;
- In sea transport as governed by the Seafarer's Directive (1999/63/EC);
- In sea fishing and other work at sea;
- In some activities of the armed forces, police etc.

There are others who are excluded from everything except the holiday provisions including:-

- Domestic servants;
- A person whose working time is not measured or pre-determined, or can be determined by the worker himself, e.g. senior managers.

There are also exclusions from the rest period and night work provisions as long as they are given compensatory time off, as follows:-

- Staff where constant presence is required such as caretakers, dock and airport workers, security staff;
- Those who live at a distance from their place of work such as sales engineers and oil rig workers;
- Those whose work cannot be interrupted on technical grounds, e.g. assembly lines;
- Research and development workers;
- Seasonal workers, e.g. agriculture and tourism;
- Some media and telecommunications workers;
- Ambulance fire and civil protection workers;
- Civil utilities, e.g. refuse collection;
- Shift workers whose periods between shifts are too short to allow for the proper breaks (rest period exclusion only);
- Workers who split shifts or whose work is otherwise;

Lastly, there is the provision for exceptions due to force majeure-when events happen outside the employer's control, e.g. fire, flood or blizzard.

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If you require further assistance please do not hesitate to contact the Legal Department Tel: 0845 3450373 or email: legal@rya.org.uk.

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