

Guide to Working Time Rights

HUMAN RESOURCES

This guidance offers practical advice to businesses in complying with their rights and obligations under the Working Time Regulations. Following this guidance will help to reduce the risk of successful claims by employees.

Various rights relating to working time are contained in the Working Time Regulations 1998 ("WTR"). These rights apply to "workers", a term which encompasses all employees and also includes individuals who may not be employees but who provide services personally, provided that in doing so they are not working for a client or a customer of a business or profession they are carrying on.

Core rights and obligations

Those who employ or engage workers (for simplicity, "employers") must take certain steps to comply with the WTR to ensure the health and safety of their workers. The core rights and obligations provided by the WTR are:

- Workers must not work for more than 48 hours per week on average (judged over a 17 week reference period).
- Workers are entitled to 5.6 weeks' of paid holiday per year (which corresponds to 28 days per year for a worker working five days a week).
- Workers are entitled to daily and weekly breaks and rest periods (generally, a 20 minute break where the working period is longer than 6 hours, 11 hours of rest per day, and a weekly period of 24 hours' uninterrupted rest).
- Employers should also provide "adequate" rest breaks where the pattern of work is such as to put workers' health and safety at risk, in particular where work is monotonous.

Night workers

Special provisions apply to night workers:

- Normal hours of work must not be more than eight hours per day on average.
- Workers working with special hazards or heavy physical or mental strain must not work for more than eight hours in any day (i.e. a maximum limit of eight hours on every day, not eight hours per day on average).
- All night workers are entitled to a free health assessment prior to commencing night work and at intervals during employment.

Records

Employers are obliged to keep records showing whether the limits on average working time, night work and provision of health and safety assessments are being complied with for individual workers.

Exemptions and modifications

Some exemptions to the rules relating to rest periods and night work apply where the work in question falls within one or more of the categories specifically listed in the WTR. A few categories of worker are excluded altogether from the scope of the WTR – including some working in the transport sector, at sea, or in the armed forces, emergency services and police – but in many cases equivalent provisions apply to such workers under other legislation.

The WTR also provide a means for workers, either collectively or individually, to modify or opt-out of some of the provisions of the WTR. This may either be through a collective agreement negotiated between an employer and an independent trade union, or a similar agreement between an employer and employee representatives who are not part of a trade union, or an agreement between an employer and an individual employee. The most well-known modification is the “opt-out” given by individual workers from the 48 hourly maximum working week.

Remedies

Failure to follow the WTR may result in employers being liable to penalties. These may include:

- fines;
- imprisonment for directors; and
- compensation payable to workers.

This article is not intended to constitute a definitive, up-to-date, or complete statement of the law, nor is any part of it intended to constitute legal advice for any specific situation. You should take specific advice when dealing with specific situations and jurisdictions outside England & Wales.

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