

A Guide to Working Time Regulations

This employment law briefing summarises a business' obligations under the Working Time Regulations.

Employers' obligations under the Regulations

The 48-hour working week

- A business must take all reasonable steps to ensure that workers' average working time (including overtime) does not exceed 48 hours each week. If the business fails to make sure these steps are complied with, criminal sanctions can be imposed on the business.
- However, if workers have signed an opt-out agreement, the limit on average working hours will not apply. The business must keep records covering the last two years, showing which workers have opted out.

Special measures for night workers

- A night worker is any person who works for at least three hours between 23:00 and 06:00 on the majority of their shifts.
- The business must take all reasonable steps to ensure night workers' normal hours of work do not exceed eight hours each day, on average.
- The business should ensure that no night worker doing work involving special hazards or heavy physical or mental strain, works for more than eight hours each day.
- All night workers should be given the opportunity to take a free health assessment when they start night work and at regular intervals thereafter.
- If a doctor advises that night work is causing a worker health problems, the business should transfer the night worker to day work, where possible.

Give workers adequate rest breaks

A business must provide its workers with adequate rest breaks where their health and safety could be put at risk due to their pattern of work (for example, where the work is particularly monotonous).

Keeping accurate records

The business must keep and maintain records showing whether the limits on average working time, night work and provision of health and safety assessments are being complied with for each worker.

Rest periods

The business must allow all its workers the following rest periods unless they are exempt, in which case compensatory rest will usually have to be given:

- 11 hours' uninterrupted rest each day.
- 24 hours' uninterrupted rest each week (or 48 hours uninterrupted rest each fortnight).
- A rest break of 20 minutes when working more than six hours each day.

Paid holidays

A business must allow its workers 5.6 weeks' paid holiday each year (this is equivalent to 28 days for a full-time worker).

Penalties for breaching the Regulations

There are a wide range of penalties that can be imposed on a business for breaching the Regulations, including:

- A fine of up to the statutory maximum (on summary conviction) or a potentially unlimited fine (on indictment).
- "Improvement" or "prohibition" notices issued by Health and Safety Executive or local authority inspectors. If the business fails to comply with the notice:
 - potentially unlimited fines and up to two years' imprisonment for directors on conviction on indictment can be imposed; or
 - a fine up to the statutory maximum and up to three months' in prison on summary conviction can be imposed.
- Compensation for workers in an employment tribunal.

Practical steps for a business to take in relation to the Regulations

- Reach an agreement with workers about what "working time" actually means. Working time is defined as:
 - any period during which a worker is working, carrying out his duties, and is at the business's disposal;
 - any period during which the worker is receiving "relevant training"; or
 - any additional period agreed in a relevant agreement to be "working time" (for example, in an employment contract).

Time that is not normally classed as "working time" includes:

- attending work-related social events;
- travelling to the workplace; and
- attending evening classes that are not a requirement of the job.

- Identify which workers, if any, are likely to exceed the 48-hour average and try to enter into opt-out agreements with them to exclude the limit on their average working time.
- Ask any workers who have not opted out for details of any other work they do for another employers and the hours they work each week.
- Keep a list of opted-out workers.

This employment law briefing just provides an overview of the law in this area.

For a complete understanding of how it may affect your particular circumstances, please contact our Employment Team for a free consultation.

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