

Employment Law Fact Sheet No. 17

WORKING TIME REGULATIONS



The Rights

The Working Time Regulations provide all workers with the following rights:

- A limit of 48 working hours in any one working week averaged over a 17-week period;
- 5.6 weeks paid leave in each year;
- An uninterrupted rest break ('Rest Break') of at least 20 minutes if the working day exceeds 6 hrs;
- At least one 24-hour rest period ('Rest Period') per week; and
- A limit on the working hours of night workers to an average of 8 hours in any 24-hour period.

Compensatory Rest

Where a worker is required to work over their rest period or break, the employer must wherever possible allow the employee to take an "equivalent period of compensatory rest". Provided that the break has the same value to the employee then it may not exactly mirror the break sacrificed.

Neither does the compensatory rest break/period have to follow immediately on the heels of that sacrificed although it seems that 'the sooner the better' is the general rule.

Potential Exemptions to the provisions on Rest Breaks and Rest Periods

The Regulations contain a statutory exemption for activities where there is a foreseeable surge of activity (examples being agriculture, tourism or postal services), and TBA has taken legal advice to the effect that it is likely that this exemption would also apply to the foaling season, albeit this has not been tested in Court. Studs should bear in mind that this exemption may be initiated only for the period of the foreseeable surge of activity (being – in most cases – the foaling season).

The employer will have to determine and communicate how extra hours worked will be compensated, and this ideally within the 17-week reference period. There will not be however any necessity to pay for compensatory time off unless the employee has worked sufficient hours to be eligible for overtime. It will be sufficient to allot compensatory rest periods as non-working time.

NOTE: The need for diligent and exemplary record keeping is vital to avoid challenges. Employers should also ensure that they comply with the National Minimum Wage requirements and any contractual obligation with respect to hourly rates of pay. Here again diligent record keeping should mean that this period of non-standard working should not spiral out of control.

Opting out of the 48-hour Week

Workers are able to opt out of the weekly working time limits voluntarily. However, an employee cannot be forced to opt out of the 48-hour working week and in the absence of any specified notice period can retract any consent already given on 7 days written notice. It is possible to agree a longer notice period (up to 3 months) in any written opt out agreement.

Night Work

Night work would appear to be a regular part of stud workers' work during the foaling season. The Regulations state that night workers should have an initial health assessment repeated at 'regular' intervals. This could be done before the start of each foaling season. For more details including a questionnaire see <https://www.gov.uk/night-working-hours/health-assessments>.

Holiday Entitlement and Bank Holidays

Most workers are entitled to 5.6 weeks' paid annual leave towards which bank holidays (typically 8 per year) may be counted. They are entitled to paid holiday regardless of whether they work part time or full time and if they work part time entitlement is calculated on a pro rata basis – e.g. if a worker works a 5 day week they will be entitled to 28 days and if a worker works 3 days they will be entitled to 16.8 days.

If it is impossible to allow your employees time off on a bank holiday then the alternative will be to give them a day off at another time instead. It is not lawful to offer payment for the statutory holidays as an alternative to the time off.

<https://www.acas.org.uk/holiday-sickness-leave>

Young Workers

For those workers between the minimum school leaving age and 18, the following rights apply:

- A limit of 8 hours working time a day;
- A limit of 40 working hours in any one week (no opt out is available);
- 12 hours' rest between each working day;
- An uninterrupted rest break of at least 30 minutes if the working day is more than 4.5 hours; and
- Two days off per week.

Short term/ self-employed workers and holiday entitlement

It is assumed that such workers deal with their own holiday entitlement. Accordingly, employers do not need to provide them with paid time off.

Possible Claims

A worker can complain to an employment tribunal if being denied rest periods, breaks or annual leave entitlements or if dismissed or subject to detrimental treatment as a result of attempting to enforce his or her rights under the Working Time Regulations.

For further information on working time/rest breaks see: <https://www.gov.uk/rest-breaks-work> and the TBA's sample 48 hour opt out agreement.

Action points

- If studs wish to avail of the statutory exemption for activities where there is a foreseeable surge of activity, remember this is for a short period of non-standard working time only. The employer will have to determine and communicate to the employees how extra hours worked will be compensated.
- The need for diligent and exemplary record keeping is vital to avoid challenges. Employers should also ensure that they comply with the National Minimum Wage requirements and any contractual obligation with respect to hourly rates of pay.
- Remember that young workers have greater protection under the Working Time Regulations.
- Invite staff who regularly work more than a 48-hour working week to sign an opt-out. Remember that they can retract that consent. If they withdraw their consent, they must not suffer victimisation.

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