

Working Time Regulations

Background

1. This policy covers regulations arising from the Working Time Directive of the European Union, introduced as a health and safety measure which came into force in the UK on 1 October 1998.
2. This legislation lays down minimum conditions relating to weekly working time, rest entitlements and annual leave, and makes special provision for working hours and health assessments in relation to night workers.

Principles

3. Oxfordshire County Council believes the Working Time Regulations are a positive step in improving the health and safety management of employees. The County Council accepts the working time limits specified under the Regulations will be applied to all employees except where:
 - The operational needs of the service require working hours to be extended beyond the specified limits; and
 - Employees agree to work hours which are in excess of the working time limits; and
 - the Regulations allow the working time limits to be exceeded.

Who does this affect?

4. The entitlements and limits contained in the Working Time Regulations apply to 'workers'. The definition of 'worker' is widely drafted and includes, but is not limited to, individuals employed under a contract of employment. It also includes a wide range of individuals who provide personal services under a contract, including many casual, freelance and self-employed workers.
5. Certain workers are specifically excluded from the Working Time Regulations. The armed forces, the police and the emergency services are outside the scope of the regulations in certain circumstances.

Working time limits

6. Working time in relation to a worker, means any period during which he or she is working, is at the employer's disposal and is carrying out activities or duties. This includes any period during which an employee is receiving relevant training and any additional period under a relevant agreement (ie a collective or workforce agreement). For example, working time includes working lunches and time spent travelling as part of a job. It does not, however, include routine travel between home and work.
7. In 2000, the European Court of Justice considered the status of 'on-call' time. It indicated that 'on-call' time would be 'working time' when a worker is required to be at his place of work. When a worker is permitted to be away from the workplace when 'on-call' and accordingly free to pursue leisure activities, on-call time is not 'working time'.
8. The number of hours worked each week should be averaged over 17 weeks. This period of time is called the 'reference period'. Workers cannot be forced to

work for more than 48 hours (including overtime) in each seven-day period of a reference period.

9. A worker may choose to opt out of the 48-hour week. Opt-out agreements must be in writing and they must be entered into on an individual basis; it is not possible to dis-apply the 48-hour limit by means of a collective or workforce agreement. Employers must keep a record of who has agreed to work longer hours. Opt-out agreements can relate to a specified period or apply indefinitely. They may also be terminated by the worker on not less than seven days' notice in writing to the employer.

Rest requirements

10. The Working Time Regulations provide for:

- A daily rest period of not less than 11 consecutive hours in each 24-hour period (12 hours for young workers).
- An uninterrupted rest period of not less than 24 hours in each seven-day period or two uninterrupted weekly rest periods of 24 hours each in every 14-day period (48 hours in every seven-day period for young workers).
- A rest period of at least 20 minutes where the working day is more than six hours (or 30 minutes after 4.5 hours for younger workers). Workers are entitled to take these breaks away from their workstations.
- Adequate rest breaks where the pattern of work is such as to put the worker's health and safety at risk, in particular because the work is monotonous or the work rate predetermined.

Annual leave

11. Oxfordshire County Council provides in excess of the statutory minimum of paid holiday in each leave year, in accordance with salary grade and length of service. A worker is entitled to a week's pay in respect of each week of leave.
12. The Working Time Regulations also provide that a worker has the right to be paid the minimum holiday entitlement; and to receive a payment in lieu of unused annual leave on the termination of his or her employment.

Daily breaks

13. Adult workers (aged 18 and over) whose daily working time is more than 6 hours are entitled to an uninterrupted rest break of 20 minutes.

Young workers

14. Following the Young Workers Directive 94/33/EC, as implemented by the Working Time (Amendment) Regulations 2002, certain provisions relate to 'young workers' (ie those over school-leaving age but under the age of 18):
 - A limit on the hours of work to eight per day.
 - A maximum working week of 40 hours per week.
 - An uninterrupted rest period of 30 minutes where their normal working day is more than 4.5 hours.
 - A rest period of not less than 48 hours in a seven-day period and this cannot be aggregated over a 14 day period.

- There is no provision for averaging working weekly time over a reference period.
- There is no opt-out.
- Night work is permitted up to 22 00 or 23 00, but the worker will not be able to work again before 6 00 or 7 00, depending on the terms of the contract. This is known as the 'restricted period'.
- Night work is prohibited during the restricted period unless there is a need to maintain continuous service or production, or to respond to a surge in demand.

Workers under 16 years of age

15. Children aged 13 or 14, can only work up to two hours a day on school days, one hour before school and one hour after school. In the school holidays s/he can work up to five hours a day by for no more than 25 hours in a week and for two weeks of the school holidays, cannot work at all. On Saturdays, s/he can work up to five hours and two hours on a Sunday.
16. Individuals aged 15, can only work up to two hours a day on school days, one hour before school and one hour after school. On Saturdays, s/he can work up to eight hours and two hours on a Sunday. In the school holidays s/he can work up to eight hours a day, but no more than 35 hours in a week. For two weeks in the school holiday, s/he cannot work at all.
17. Workers under the age of 16 must have a permit issued by the local authority in order to work legally.

Night work

18. A 'night worker' is anyone who works at least three hours of his/her regular working time during night time (ie between 11pm and 6am if there is no agreement stating otherwise).
19. Night workers are given the opportunity of a free health assessment and night work must not exceed an average of eight hours in 24 hours. For more information about these, contact Occupational Health Service or see the relevant pages on intranet (link).

Management Responsibilities

20. Managers of employees whose working hours exceed the working time limits are responsible for taking all reasonable precautions to ensure that these arrangements do not jeopardise the health and safety of the individual employees concerned, their colleagues, clients or members of the public.
21. Employees should request permission to undertake secondary employment and managers should make every effort to ensure any agreed secondary employment undertaken by a member of staff is taken into account when establishing regular working hours do not exceed the maximum of 48 hours per week.

22. In addition to the working time directive and other Health & Safety legislation, a general duty to take care of employees means that employers should be proactive about ensuring that employees work sensible hours and take breaks.
22. Employees who choose to accept working hours which exceed the working time limit, will be consulted regularly on the suitability of the agreement. It is the employee's shared responsibility to bring to the attention of management difficulties which arise from these agreements.
23. Directors will delegate to designated persons the responsibility for keeping records of working time and agreements to exceed working time limits.
24. It is automatically unfair to dismiss an employee who refuses to opt out of his/her rights under the Working Time Regulations.
25. The Working Time Regulations also contain provisions which protect workers subjected to any detriment by their employer either because the worker has insisted on his rights under the Working Time Regulations or has refused to forego a right provided to him by the Working Time Regulations. This will, for example, protect a worker from facing any detriment for his refusal to sign an agreement to opt out of any of the Working Time Regulations where this is possible.
26. The following posts are regarded as special cases under the regulations: Directors, Deputy Directors, operational fire fighters, workers in residential homes.

Monitoring & Review

27. This policy has been subject to an Equality Impact Assessment and will be reviewed in 2011.

Related policies and procedures

Driving at Work Policy
Flexible Working & Work-Life Balance Policy
Health & Safety at Work Policy
Wellbeing at Work
Working Time Regulations Opt Out Form (On the intranet under HR>Forms)

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