

Working time

A TUC guide for trade union activists

This is a chapter of the TUC Workplace Manual. To buy the full version, go to www.tuc.org.uk/TUCworkplacemanual

Working time

For Trade unions have long campaigned for decent working time. Setting a limit on the number of hours workers can be forced to work is one of the oldest and most fundamental trade union demands, dating back to the struggles of the 1880s and earlier.

In 1919, the very first international convention on working conditions established the eight-hour working day and the 48-hour week. The European Union has acknowledged these principles since its foundation. The European Social Charter, dating back to 1961, commits member states to ensure “reasonable daily and weekly working hours”, and to a progressive reduction in the length of the working week, while the EU Charter of Fundamental Rights (2000) declares that “every worker has the right to limitation of maximum working hours”.

Working time in the UK

Working time in the UK compares poorly with many other EU member states. Full-time workers put in some 43 hours a week on average, compared with around 41 in other countries of the EU. About 13 per cent of employees – 3.3 million people – work more than 48 hours a week. The number of long-hours workers has declined from a peak of four million since the Working Time Directive came into force in the UK. However, two-thirds of British workers are unaware of the 48-hour limit, and one-third of those who have signed opt outs say they were given no choice. And yet surveys

suggest that only around a half of those covered by opt-outs actually work more than 48 hours a week. In short, British employers seem to be using the ‘opt-out’ as a lazy catch-all to avoid modernising work organisation and thereby – far from making business more competitive – contributing to low productivity and poor management.

The law

The European Working Time Directive

The 1993 Working Time Directive (93/104/EC) was a major step forward, setting a 48-hour average maximum working week and laying down the framework for rest and leave periods. It aims to ensure that working time is organised in a way that safeguards workers’ health and safety. The Directive was enacted in the UK in 1998 as the Working Time Regulations. The aim of the legislation was to set a minimum standard for working time across all the member states of the European Union.

Extensive research had demonstrated the link between excessive working hours and injury and ill-health, particularly heart disease, stress and depression. The regulations are therefore a health and safety measure. However, the UK and a number of other EU countries have retained an opt out from the 48-hour maximum working week. This means that a worker is able to work above 48 hours if they wish, though an employer is prohibited from imposing a

working week in excess of 48 hours against the wishes of the employee.

The main provisions of the legislation cover:

- a maximum weekly working time of 48 hours on average, including overtime
- at least four weeks' paid annual leave (this increased in April 2009 to 5.6 weeks, but this is not in addition to bank holidays)
- a minimum rest period of 11 hours in each 24, and one day in each week
- a rest break if the working day is longer than six hours
- a maximum of eight hours' night work, on average, in each 24.

The Directive allows for the average working week to be calculated over a longer 'reference period' of up to four months or up to 12 months by collective agreement, and gives member states some leeway to define terms such as 'rest period' and 'night work' through national legislation.

Different rules for mobile transport workers

There are different rules for mobile workers in the maritime, aviation and road transport sectors. Non-mobile workers such as office and depot staff are covered by the general regulations.

The opt-out (Article 18)

The 1993 Directive contains an opt-out clause (largely at the demand of the UK government) that enables employers to get round the maximum 48-hour working week under certain conditions:

- Workers must sign individual opt-out agreements, and must not suffer any penalty if they refuse to do so.
- Employers must keep records of staff who work more than 48 hours a week, and make the records available to the appropriate authorities.

What is working time?

For the purposes of the Regulations the following count as working time:

- time spent carrying out work for the employer
- job-related training
- job-related travelling time
- working lunches
- time spent working abroad for a UK-based company
- paid and some unpaid overtime
- time spent on-call at the workplace.

In addition, where workers are required to undertake sleeping-in duties at work, for example care or support workers, this is considered to be working time and is calculated in the average. The average is usually taken over a reference period of the previous 17 weeks.

The following do not count as working time:

- breaks when no work is done
- travel to and from work
- being on-call when away from the workplace
- classes that are not related to work
- paid or unpaid holidays
- unpaid voluntary overtime
- travel outside normal working hours.

Night workers

- Night work is limited to an average of eight hours in any 24-hour period.
- Night workers are entitled to receive regular health checks. Workers undertaking sleeping-in duties are classed as night workers, therefore they are entitled to health checks.

- The night work limit sets an average ceiling of 48 hours' work per week (six days x eight hours).
- Note that the opt-out does not apply to the night work limit.

Weekly rest

Over a seven-day period a worker is entitled to at least 24 hours' rest.

Daily rest

- Workers are entitled to a daily rest period of 11 hours; therefore there should be a break of at least 11 hours between the end of one shift and the beginning of another.
- A worker is entitled to a break of 20 minutes if they work for six hours or more in one shift.
- Breaks are mandatory; that is, a worker cannot waive their rights to rest breaks.
- Rest breaks cannot be taken at the beginning or end of the shift.
- Where the worker is unable to take their breaks, such as when continuous care needs to be provided, then the worker is entitled to compensatory rest; that is, the employer has to provide the rest break at another time.

Annual leave

- Every worker is entitled to a minimum of 5.6 weeks paid leave in a year including bank holidays – 28 days per year for a five-day per week worker.
- The worker is entitled to receive normal pay when taking annual leave. This means that a worker will receive their normal pay taken from a reference period from the previous 13 weeks, including unsocial hours payments, bonuses and commission.
- Holiday pay calculation can now include pay intrinsically linked to the tasks of the

worker (i.e. overtime). It applies to the first 4 weeks holiday under the Working Time Directive.

Who is covered by the Regulations?

The Working Time Regulations apply to all workers from the first day of employment, whether full or part-time and including the majority of agency workers, though certain categories of worker are excluded.

Excluded workers are:

- workers in the armed forces
- people working as servants in private houses
- sea transport workers, mobile workers on inland waterways and lakes, those on sea fishing vessels, mobile workers on planes, and heavy goods and coach drivers.

These workers are covered by the regulations operating in their sectors.

Young people

Young people (those aged 16 and above the school leaving age but below the age of 18) are covered by different rules within the Regulations. These are:

- a limit to the working day of eight hours
- they cannot work between the hours of 10pm and 6am or between the hours of 11pm and 7am
- a minimum of 12 hours' rest between each working day
- a minimum of two days' weekly rest
- a daily rest of 30 minutes where the working day is more than 4.5 hours.

The Part-Time Workers Regulations

The Part-Time Workers Regulations were another piece of legislation to come from the European Parliament. They were introduced in 2000 with the aim of providing for the removal of discrimination

against part-time workers and to improve the quality of part-time work. Part-time workers should be treated the same way as full-time workers and leave, holidays and bank holidays should be allocated on a pro-rata basis (see more in the section on Contracts).

▣ Examples of the Working Time Regulations in practice

A hotel receptionist is required to be on duty from 9am until 11pm for five days per week. She is allowed 30 minutes for lunch and another 30 minutes at teatime. Her employer is breaking the law in the following ways:

- the length of the working week exceeds 48 hours
- the break between shifts should be at least 11 hours.

.....

A carer in a hospital works a night shift on a regular basis. Her hours are 8pm until 8am.

Her employer is in breach of the law because the night work limit is eight hours. This worker is working for 12 hours each shift.

.....

A shop worker works a six day week from 9am until 5pm straight through without a break.

His employer is in breach of the law because the worker is entitled to a 20-minute break where the working day is six hours or more.

▣ Unions in action

The European legal case of Stringer and Pereda (2009) ruled on the interaction of sick leave and annual leave. The case established that statutory entitlement to paid annual leave continues to accrue during periods of sick leave, even if the worker is off for the whole year. The worker can take annual leave at the same time as sick leave and be paid at the normal rate. Payments in lieu of leave upon termination must include any untaken leave, even if the worker has been off sick for the whole year. The whole of the untaken leave can be carried over to the following leave year. The case of SIMAP v. Conselleria de Sanidad y Consumo de la Generalidad Valencia (2000) IRLR 845 established that time spent on call where the worker was required to be on the premises was working time. Therefore this time was counted as part of the two other important judgements on cases supported by Unite and UNISON respectively ruled that overtime and commission payments must be included in the calculation of holiday pay. They are:

Bear Scotland and others v Fulton and others (UK Employment Appeal Tribunal (EAT) 2014)

Lock v British Gas Trading Ltd (European Court of Justice (ECJ) 2015) 48-hour maximum working week.

The role of the representative: working time

It is important to remember that the Working Time Regulations are a minimum requirement and that many contracts of employment will contain more favourable provision. However, there are industries such as catering and care that flout the law, often saying that they could not operate their businesses if they complied with the Regulations.

- Improving on the law: if a member approaches you with a complaint about long hours or being denied breaks, check that the Regulations are being complied with. If not, make a direct approach to the employer. This could be a collective issue and may provide the opportunity to make agreements that will improve terms and conditions for the members and provide a way for the employer to comply with the Regulations and to improve on them.
- Advice and keeping informed: know the Regulations so that you can improve on the law when supporting members in grievances or disciplinaries or in negotiations around the issue. Keep up to date with the key points in the legislation as it changes frequently.
- Networking: as the Regulations are closely linked to health and safety legislation, meet regularly with health and safety representatives to ensure that employers are aware of the negative impact on health of long hours.
- Education and awareness: ensure that your employer is aware of the Regulations and raise awareness of the Regulations with your union membership. Ensure that they know the risks of excessive working time.
- Information: ensure that part-time and casual workers have information made available so that all workers can make

informed decisions about changes in hours and other working arrangements.

- Work/life balance: check that flexitime, compressed hours, home-working and other work patterns comply with the Working Time Regulations.

Work/life balance

There is an increasing expectation that workers will work flexibly to meet the demands and needs of the customer and business. With the demands of the 24/7 society, workers and employers are putting more pressure on workers to work flexibly. In law there is the provision to ask for flexible working and parents of children aged 16 or under, or those of disabled children below age 18, have a statutory right; this means that if a request is refused the employer is required to give good reason. There is a procedure to go through and it helps if people have a plan about the hours they want to work. (See also the section on Work/life balance).

Enforcement

If an employer is not willing to negotiate, the Regulations are enforceable by the Health and Safety Executive, which will enforce breaches of the maximum weekly working limit, night-work limits and health assessments. Local Authorities fulfil this function for those working in shops and offices. The right to holiday and rest breaks is enforced by employment tribunal.

More information

The following organisations have published guides to working time:

Acas

www.acas.co.uk

Department for Work and Pensions

www.dwp.gov.uk

Health and Safety Executive (HSE)

www.hse.gov.uk

Thompsons Solicitors

www.thompsons.law.co.uk

TUC

www.worksmart.org.uk

Publication – Your Rights at Work, 3rd edition

Find out more

This is a chapter of the TUC Workplace Manual. To buy the full version, go to www.tuc.org.uk/TUCworkplacemanual

For more information about workplace guidance, go to:

tuc.org.uk/union-reps

Follow the TUC on:

Twitter @The_TUC

Follow the campaign on Facebook at:

facebook.com/tradeunioncongress