

## LICHFIELD DISTRICT BUSINESS CLUB

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### **Working Time Regulations and your business**

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### **The Working Time Regulations limit the number of hours you and your staff can work each work. So what are they and how do they affect your business?**

The Working Time Regulations came into force on 1 October 1998 to implement the European Working Time Directive. They basically mean that:

- A worker can only be required to work a 48 hour week on average, though workers can choose to work more if they want to.
- Nightworkers can only be required to work 8 hours in ever 24 hours
- Nightworkers have the right to receive free health assessments
- All workers have a right to 11 hours uninterrupted rest a day
- All workers have a right to one whole day off a week
- If the working day is longer than six hours they have a right to an in-work rest break
- Workers have a right to four weeks paid leave per year

### **Who do they apply to?**

The regulations apply to anyone who has a contract of employment, and someone who is paid a regular salary or wage and works for an organisation or an individual.

This includes agency workers and freelancers, as well as people doing in-house training or on work experience under the New Deal, for example.

Special regulations apply for **young workers** – people who are over the minimum school-leaving age but under 18. And also for **nightworkers** – people who normally work more than three hours of their shift between 10pm and 6am.

### **Who do they not apply to?**

If you are self-employed, run your own business and are free to work for different clients and customers then these regulations do not apply to you.

There are also several industries that have their own sets of regulations. These include:

- Air transport
- Rail transport

- Road transport
- Sea transport
- Inland waterway and lake transport
- Sea fishing
- Other work at sea such as the oil and gas industry

If the employee is young enough to be covered by the Working Time Regulations' special provisions for young people, however, then these regulations still apply.

#### **What's the definition of Working Time?**

It includes travelling when it is part of the job (eg a travelling sales rep) as well job-related training and working lunches. If a company's business is normally based in Great Britain, time spent working abroad also counts.

#### **Working time does not include:**

- Journeys between home and work
- Evening classes
- Day-release courses
- Rest-breaks when no work is done (eg lunch hour)

#### **I have employees who have to be on call, does that count as working time?**

The legal precedent for this has not yet been set. An interim judgement from a European court case indicates that on-call time where a worker is restricted to their workplace is working time. If they are free to do what they want, it is not working time. The case is still awaiting a final judgement.

#### **How do I calculate the average hours my employees work?**

The average working week is normally calculated over 17 weeks – this is called the reference period.

The reference period can be extended up to 52 weeks, if a collective agreement is reached between the workforce and the employers. This should help companies with strong seasonal peaks and troughs cope with the regulations.

It is up to the employer to keep records of how many hours each employee works, unless they have voluntarily agreed to work longer hours. You can then divide the total number of hours worked by the number of weeks worked to get the average.

#### **What if an employee is off sick, on holiday or on maternity leave during the reference period?**

Simply add on the numbers of hours worked during the days that immediately followed the 17-week period. Use the same number of days as those when work was missed.

### **What if my workers want to work longer?**

That's fine, but you must get agreement in writing, signed by the employee. This is called an opt-out and does not need to be renewed.

Once you have it, you don't need to keep time records for that employee, but you must keep a record of all the opt-outs. Workers can cancel this agreement whenever they want – but they must give their employer between 7 days and 3 months notice, depending on the notice laid down in the opt-out.

You cannot force a worker to sign an opt-out, nor can you dismiss or otherwise penalise someone who refuses to sign an opt-out.

### **I don't measure my employee's working time – does it still apply to me?**

Apart from the four weeks annual leave, the regulations do not apply if a worker can set his or her working hours or if those hours are unmeasured. An employer needs to carefully decide whether or not his workers come into this category. It is most likely to apply to senior managers, for example, who have the freedom to control their own working day.

If a worker chooses to do additional work, which is not required by his employer, this does not count as working time. But it has to be a choice the employee can make without detriment.

The following scenarios are not covered by this exemption :

- Working time which is hourly paid
- Prescribed hours of work
- Situations where the worker works under close supervision – eg he is told what to do and when to do it
- Time where a worker is expressly required to work – eg meetings
- Time when a work implicitly required to work – eg unfair volume of work or the threat of disciplinary or punitive procedures if he doesn't.
- It is unlikely that a worker earning close to the National Minimum Wage would qualify for this exception.

### **What about time off?**

A worker is entitled to a rest period of 11 uninterrupted hours between each working day, and one whole day off a week. Days can be averaged over a two week period – allowing workers to take off two days a fortnight. Days off are taken in addition to paid annual leave.

### **And annual leave?**

Every worker – part-time and full-time – is entitled to four weeks' annual leave. He or she qualifies for this leave after he or she has been employed for 13 weeks. A week's leave should allow the worker to be away for a week – if they work five days, it's five days, if they work three days, it's three days etc.

This entitlement is not additional to bank holidays – there is no statutory right to give bank holidays. And employers can set the times that workers take their leave, for example, the Christmas shut-down.

The employer has to agree to the leave, but he or she must agree to give the leave at some point during the year.

**I don't know whether my employers think they have to work the long hours they do or not – what should I do?**

Contact each one and make it clear, in writing, that they are not expected to work beyond the hours fixed in their terms and conditions. If this is made clear, and workers are not required to work above these hours, it's reasonable to assume the additional hours are voluntary.

**Who enforces the regulations?**

It depends what sort of business you run. The Health and Safety Executive enforces it in factories, building sites, mines, farms, fairgrounds, quarries, chemical plants, nuclear installations, schools and hospitals. Local authority officers ensure the regulations are followed in shops and retailing, offices, hotels and catering, sports, leisure and customer services.

**What happens if I break them?**

A claim could be made against you at an Industrial Tribunal. The DTI does, however, advise workers who don't feel they are receiving their full entitlements to talk to their managers or get their trade union (if they are a member) involved to help resolve the dispute first.

If a claim is made, the Advisory, Conciliation and Arbitration Service (ACAS) will offer the services of a conciliator to help the employer and employee reach a settlement without the need for a tribunal. This service is free of charge