

WORKING TIME

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THE BACKGROUND

The Working Time Regulations (WTR) 1998 were introduced under the “*enabling*” provisions of the ***Health and Safety at Work Act 1974 (HASAWA)***.

Working time is viewed primarily as a health and safety issue.

THE BACKGROUND

- The Regulations implement the ***EU Working Time Directive*** in the UK.
- The stated aim of the EU Working Time Directive is to:

“Improve health and safety at work by introducing minimum rules for employees relating to daily and weekly rest periods, rest breaks, annual paid leave entitlements, the length of the working week, and night work”.

THE REGULATIONS AND THE NHS

Despite the claims of some midwifery managers, the NHS is **not** exempt from the Regulations.

THE REGULATIONS AND THE NHS

Despite the claims of some midwifery managers, NHS staff are **not** covered by the requirement, which states that workers must have a break of 11 **consecutive** hours between shifts.

THE REGULATIONS AND THE NHS

- The application of the Regulations in the NHS requires an understanding of:
 - the Regulations themselves, some of which apply to **all** workers in the UK;
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 - definitions provided in the Regulations, and how these relate to working time issues for NHS staff;
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THE REGULATIONS AND THE NHS

- the exceptions provided for in Regulation 21, which relate to workers involved in providing health care;
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- the duty on employers in Regulation 24, to provide compensatory rest in **exceptional circumstances** when staff are unable to take rest at the appropriate time;
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THE REGULATIONS AND THE NHS

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- Section 27 of the NHS Terms and Conditions of Service Handbook, which applies to all staff in the UK.

KEY REGULATIONS FOR RCM MEMBERS

- Regulation 2 – *Interpretation*: (“*Day*” is a period of 24 hours beginning at midnight and working forward for 24 hours);
- Regulation 10 – *Daily rest**;
- Regulation 11 – *Weekly rest period**;
- Regulation 12 – *Rest breaks**;
- (* *exemptions for NHS employers.*)

EXEMPTIONS AND THE NHS

The exemptions affecting NHS staff are covered by:

- Regulation 21 – *Other special cases*

subject to the requirements of:

- Regulation 24 – *Compensatory rest,*

and taking into account the requirements of:

- Regulation 23 – *Collective and workforce agreements.*

EXEMPTIONS AND THE NHS

Regulation 21 – “Other Special Cases”

Subject to Regulation 24 (“Compensatory Rest”), Regulations 10, 11 and 12 do not apply in relation to a worker:

“where the worker’s activities involve the need for continuity of service or production, as may be the case in relation to services . . . provided by hospitals or similar establishments.”

EXEMPTIONS AND THE NHS

Regulation 24 – “Compensatory Rest”

Where Regulations 21 applies and a worker is required to work during a period which would otherwise be a rest period or a rest break, his employer shall wherever possible allow him to take an equivalent period of compensatory rest.”

EXEMPTIONS AND THE NHS

Regulation 23 – “Collective and Workforce Agreements”

A collective agreement . . . may modify or exclude the application of

Regulation 10 – (daily rest);

Regulation 11 – (weekly rest period);

Regulation 12 – (rest breaks).

EXEMPTIONS AND THE NHS

In the NHS, this means the National Agreement on Working Time contained within Section 27 of the NHS Terms and Conditions of Service Handbook.

WORKING TIME AND ON CALL

Section 27: On-call staff

- 27.13 Staff who are on-call, i.e. available to work if called upon, will be regarded as working from the time they are required to undertake any work-related activity. Where staff are on-call, but otherwise free to use the time as their own this will not count towards working time. This method of calculating working time will not affect on-call payments.
- 27.14 Where staff are required to '*sleep in*' on NHS premises for the duration of a specified period, local agreements should be made for compensatory rest.

WORKING TIME AND ON CALL

Regulation 10 – ‘Daily Rest’.

Minimum daily rest periods

- *27.17 Employees should normally have a rest period of not less than 11 hours in each 24-hour period.*
- *In exceptional circumstances where this is not practicable because of the contingencies of the service, daily rest may be less than 11 hours. In these circumstances records should be kept by the employer that will be available to locally recognised unions.*
- *Local arrangements should be agreed to ensure that a period of equivalent compensatory rest is provided. **Any proposed regular amendment to the minimum daily rest period must be agreed with locally recognised unions.** It is recognised that in some emergency situations compensatory rest may not always be possible.*

WORKING TIME AND ON CALL: AN EXAMPLE

A midwife finishes work on Tuesday at 10pm and is rostered to begin work again at 7am the following morning (Wednesday), to work a 12 hour shift – 13 hours including the 1 hour rest break she is entitled to.

- Starting at midnight, there is a 7 hour break before her Wednesday shift begins.
- She's then at work for 13 hours, concluding at 8pm.
- There remains a further 4 hours, until midnight, before the end of the 24 hour period.
- In total, the midwife has had 12 hours away from work in the period of 24 hours (providing she was able to take her 1 hour break during her shift), but not 11 consecutive hours of uninterrupted rest in that period of 24 hours.

WORKING TIME AND ON CALL: AN EXAMPLE

This working pattern would be unlawful for employees in many industries.

However, as a result of Regulation 21 it is lawful for those employed in the NHS.

WORKING TIME AND ON CALL: AN EXAMPLE

BUT . . .

***. . . what if the midwife, after finishing
her shift, is called out on-call at 9pm on
the Wednesday?***

KEY ISSUES FOR WORKPLACE REPS

Section 27 of the NHS Handbook states:

“Records

*27.7 Employers must keep records, **which will be available to locally recognised unions**, that are adequate to ensure that the limits specified in paragraph 27.9 (maximum working weekly time), paragraph 27.15 (rest breaks), paragraph 27.17 (daily rest), paragraph 27.19 (weekly rest periods), and paragraph 27.20 (night work) are complied with and that where there is an entitlement to compensatory rest this is provided for.”*

KEY ISSUES FOR WORKPLACE REPS

There are important issues relating to rest time, record keeping and compensatory rest for the RCM, and other Staff Side Unions, to discuss with local employers.

Key questions to be answered include the following.

- Are records of rest hours and compensatory rest kept by the employer? If so, are they made available to the Staff Side?

KEY ISSUES FOR WORKPLACE REPS

- Is on-call working included in the calculation of daily and weekly working time?
- Is the employer fully implementing Section 27 throughout all staff groups employed by the Trust/Board?
- Are all staff getting their entitlement to 11 hours rest per day and 90 hours rest per week?

KEY ISSUES FOR WORKPLACE REPS

- Are all staff getting an uninterrupted weekly rest period of 35 hours (including the 11 hours of daily rest) in each 7 day period, or equivalent rest over a 14 day period, either as one 70 hour period or two 35 hour periods?

KEY ISSUES FOR WORKPLACE REPS

ANY QUESTIONS?