

WORKING TIME – THE IMPLICATIONS FOR MIDWIFERY STAFF

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November, 2011**

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.
- There are 40 Regulations in total.

THE BACKGROUND

- The Regulations implement the ***EU Working Time Directive 1993*** 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 in midwifery,
the NHS is
not exempt from the Regulations.

THE REGULATIONS AND THE NHS

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

KEY REGULATIONS FOR RCM MEMBERS

- There are 40 Regulations in total.
- ***Regulation 2 – Interpretation:*** (“*Day*” is a period of 24 hours beginning at midnight and working forward for 24 hours);
- ***Regulation 10 – Daily rest****;
- ***Regulation 12 – Rest breaks****;
- (** exemptions for NHS employers.*)

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 NHS staff in the UK.

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 23 – “Collective and Workforce Agreements”

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

Regulation 10 – (daily rest);

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.

REST BREAKS

- **REGULATION 12**
- All workers, scheduled to work for 6 or more hours, are entitled to a minimum break of 20 minutes during their working time.
- Cannot be taken at beginning or end of shift.
- Unlawful for employers to pay workers in lieu of rest breaks.

REST BREAKS: IN THE NHS

- Section 27.15 of NHS Terms and Conditions of Service Handbook:
“Where the working day is longer than 6 hours, all staff are entitled to take a break of at least 20 minutes. Rest breaks must be taken during the period of work and should not be taken either at the start or end of a period of working time.”

REST BREAKS: IN THE NHS

*“In **exceptional** circumstances and by agreement with the worker, where a rest break cannot be taken, the unused entitlement should be claimed as a period of equivalent compensatory rest. Line managers should ensure that provision is made to allow compensatory rest to be taken.”*

DAILY REST

● REGULATION 10

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.*

DAILY REST

- *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

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 IN MIDWIFERY: 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 IN MIDWIFERY: 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 IN MIDWIFERY: AN EXAMPLE

The midwife in this example has had a total of 12 hours, albeit not 12 consecutive hours, away from work during the working day.

WORKING TIME IN MIDWIFERY: AN EXAMPLE

BUT . . .

***. . . what if the midwife, after finishing
this 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.

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 their entitlement to 11 hours rest per day and 90 hours rest per week?
- 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

- Are all staff getting their rest breaks during their working time?
- Are records of rest hours and compensatory rest kept by the employer? If so, are they made available to the Staff Side?

UNPAID WORKING TIME

- TUC research, based on official figures from the Labour Force Survey and the Annual Survey of Hours and Earnings, indicates that the number of UK employees doing more than 10 hours of unpaid overtime was 250,000 in 2010.

UNPAID WORKING TIME

- A record 5.26 million people worked an average of 7 hours 12 minutes unpaid overtime per week, worth £28.9 billion to the economy.
- This is the highest amount of unpaid working time since 1997.

UNPAID WORKING TIME

- Individuals would have earned an additional £5,485 per person in 2010 if they had been paid for these hours.
- More than 1 in 4 (26.3%) public sector workers worked unpaid overtime in 2010 worth £9 billion a year.

UNPAID WORKING TIME: AN EXAMPLE

- A midwife paid on the top of Pay Band 6.
- Hourly pay of £17.49.
- Taking into account annual leave entitlement, s/he works 46 weeks pa.
- S/he works 3 shifts a week, 13.5 hours including 1 hour break.



UNPAID WORKING TIME

- S/he never has time to take a break.
- As a result, s/he carries out 3 hours unpaid work per week.
- $3 \times £17.49 = £52.19$ per week;
- 46 weeks \times £52.19 per week =

UNPAID WORKING TIME

**Unpaid overtime every
year is £2,413.62.**

KEY ISSUES FOR WORKPLACE REPS

ANY QUESTIONS?