

THE WORKING TIME REGULATIONS 1998 & THE ROAD TRANSPORT (WORKING TIME) 2005

The Working Time Regulations were enacted to give new rights to workers and not as a vehicle to give companies greater workforce flexibility.

The regulations aim to curb the working of excessively long hours, that could have a detrimental effect on health and general well being of the individual, and to provide some protection for those who work shifts and night work.

If we are to be in a position to negotiate individual and workplace agreements then we need to fully understand what working time means.

Working time means: -

- a) **Any period when a worker is working for or carrying out the duties of their employer.**
- b) **Any period when the worker is receiving relevant training.**
- c) **Working time as defined by a collective or workplace agreement.**

As you can see working time is not just about the period of time when the nose is to the grindstone, it extends into other vocational areas.

WHAT ARE THE BASIC RIGHTS AND PROTECTIONS?

- 1) An average limit of 48 hours per week, inclusive of overtime, that a worker can be expected to work. The standard reference period is 17 weeks, although this can be extended to 26 weeks in special circumstances or up to 52 weeks by collective or workforce agreement. **An individual can work more hours if they choose and the work is available. Their employer cannot treat them detrimentally if they choose not to work more than an average 48-hour week. Any individual agreement should be in writing and the worker has the right to terminate the agreement subject to the agreed notice being given.**
- 2) A limit of an average of 8 hours work for each 24 hours, which night workers can be, required to work; again the standard reference period is 17 weeks. This average does not apply if the night workers job involves special hazards or heavy mental or physical strain. In these cases there is an actual daily limit of 8 hours. **Night time is a period of at least 7 hours including the period between midnight and 5am. A night worker is any worker whose daily work includes at least 3 hours of night time. It includes workers who work night hours on a majority of their working days, but can also cover workers who work regular or rotating night shifts. Or as agreed between the workers and the employer through a collective or workforce agreement.**
- 3) The right for night workers to receive free health assessments to determine if the worker is fit to undertake nightwork. If the worker is found to be unfit for nightwork then the employer should, where possible, transfer the worker to day work. **A health assessment is not necessarily a full medical.**
- 4) The right to a daily rest period of 11 consecutive hours and a weekly rest period of 24 consecutive hours. **The weekly rest period can be averaged over a 2-week period and is in addition to the daily rest unless justified by technical or organisational reasons.**
- 5) The right for an uninterrupted 20-minute rest break away from the workstation, when the working day exceeds 6 hours. **There is no legal right for this period to be paid. If the pattern of work puts the health and safety of the worker at risk, then there is an entitlement to adequate rest breaks. The break should not be at the beginning or the end of the shift.**
- 6) The right to 4 weeks paid holiday per year. **Workers will be entitled to 4.8 weeks' statutory holiday a year (24 days if**

they work a five-day week) from 1 October 2007 and 5.6 weeks (28 days if they work a five-day week) from 1 April 2009. The entitlement to additional statutory annual leave begins on the first day of the employee's employment and there is no qualifying period for employees to receive the additional holiday entitlement.

The regulations also give extra protections to young workers. These are as follows:

- The right to free health and capacity assessments for night work between the hours of 10pm and 6am. These assessments should look at capability, maturity, competence etc. **See section on young workers on this website.**
- The right to a daily rest period of 12 consecutive hours and a weekly rest period of 48 consecutive hours. **The weekly rest period can be reduced to 36 hours were it is justified by technical or organisational reasons.**
- The right to a rest break of 30 minutes, away from the workstation, if the working day exceeds four and a half hours.

These regulations cover most employees including temporary and agency staff. The limits and rest periods do not cover workers who have total control of their working hours and whose time is not monitored or determined by their employer.

There are also special circumstances which the length of night work or rest periods for adults can be excluded or modified, or were the reference period can be extended to 26 weeks. These include: -

- **Emergency situations.**
- **Security or surveillance activities.**
- **Continuity of production.**

If the modifications apply to rest periods or breaks, then the worker is entitled to equivalent compensatory rest or other adequate protection to safeguard their health, safety and welfare.

Whilst time limits, rest periods and breaks can be modified and reference periods extended by workforce or collective agreements, there has to be **individual** agreement to opt out of the maximum average 48-hour limit. Nobody can do it for you.

The Road Transport (Working Time) Regulations 2005 which came into force on 4th April 2005 gives many of the same protections as the 1998 provisions although there are a few extra safeguards.

For example the average of 48 hours still applies although the working week cannot exceed 60 hours.

There is no provision for an individual opt out and the reference period of 17 weeks can be extended to a maximum of 26 weeks with agreement.

The rest break for a transport worker who works more than 6 hours is a minimum of 30 minutes and this extends to a minimum of 45 minutes were the shift is of 9 hours duration.

Like all other pieces of health & safety legislation, failure to comply with these regulations is a criminal offence and leaves the employer open to a fine.

Working time for a transport worker extends beyond actual driving time to include, loading and unloading, cleaning and technical maintenance and other duties that are carried out to ensure safety.

If your employer treats you in a detrimental way for asserting your rights you must present any complaint to an employment tribunal within 3 months.

Further information on this or any other health & safety matter contact your local regional office.

THE BFAWU PROTECTING YOUR RIGHTS AT WORK