

POLICY ON WORKING TIME REGULATIONS (excluding annual leave)

Background

N.B. Medical staff are excluded from this policy as their working hours are covered by separate arrangements.

Introduction

1. The Trust is committed to the Improving Working Lives Standard which understands that staff work best when they strike a healthy balance between work and home life. The Trust is therefore, committed to tackling the long hour culture, implementing the Working Time Regulations for all staff groups. Although the law enables individuals to have a specific agreement with their employer to opt-out of the 48 hour limit, the Trust considers that this should be done advisedly, having regard to the individual circumstances, and following agreed protocol with their manager and representative.
2. Unmeasured working time covers those individuals whose working time is not measured or predetermined, or can be determined themselves. As a result these individuals are exempt from certain provisions under the regulations. However, the NHS Executive does not consider that there are any NHS workers whose work may fall into this category. Therefore all staff within the Trust, including senior managers, but excluding Medical Staff are covered by this policy. In addition to this NHS workers may also include temporary and agency workers.

48 Hour Limit

3. The regulations impose an obligation on employers to take all reasonable steps to ensure that workers do not work more than an average of 48 hours a week over a 17 week period. Individuals can work in excess of 48 hours providing that the average hours worked over the 17 weeks does not exceed 48. This includes 'homeworking' where the individual extends their working time by using non-contracted time to meet their work commitments. (See 'Homeworkers' Policy)
4. For the purposes of calculating working time, time spent on call does not count. However work carried out in response to a call-out is included, from the time of the phone call or the time of departure from home to work-base and return to home (This will include travel time). Standby i.e. time based on the hospital premises is calculated as working time. Working time includes traveling, where it is part of the job, working lunches and job-related training.

Working time does not include traveling between home and work, lunch breaks, evening classes or day-release courses.

5. Managers should ensure that records of hours worked are maintained in order to ensure compliance with the 48 hour limit. A workload review should take place on a regular basis e.g. during appraisal. Individuals who feel they are working in excess of the 48 hour limit should contact their HR Consultant/OH Health/Trade Union Representative for advice and support. Records of working time should be audited by the Trust on a regular basis

Opt-Outs

6. Individuals have a responsibility under Health & Safety legislation, to identify to their managers if they are working in excess of the 48 hour limit as defined in paragraph 3.
7. If individuals wish to work in excess of this limit, they are able to opt-out of the 48 hour limit by entering into an opt-out agreement (See Appendix 1). Managers will only agree to this in exceptional circumstances. Individuals may not be required to opt-out by their manager. Individuals wishing to opt-out should contact their Manager/HR Consultant/TU Representative to discuss opting out. A copy of the opt-out agreement should be placed on the individual's personnel file and this should be reviewed initially at three months, and thereafter on an annual basis with the individual and their manager, liaising with the HR Consultant and TU Representative where appropriate.
8. Managers are responsible for ensuring that records of hours worked should be maintained, as they have a duty of care to monitor hours and ensure that staff are not working excessive hours. If a manager discovers an individual is working excessive hours, they should arrange to meet with the individual and explain their areas of concern e.g. risk to patient care or own health & safety. A record of this meeting should be kept on the individuals HR file. The staff member should be referred to Occupational Health. If possible, the manager should try and agree amicably a reduction in the number of hours worked, e.g.; a reduction in the amount of overtime worked. Staff are requested to declare on their appointment form whether they have another job.
9. If a manager identifies a change in an individual's performance or attendance, then the relevant Trust policies and procedures should be followed in consultation with the designated HR Consultant and Occupational Health Service.

Dual Contracts

10. Individuals holding two contracts with the Trust or other employers in which their total working hours are in excess of 48 hours, should sign the opt-out agreement. Managers should monitor and review working hours as per section 2.
11. Individuals wishing to take on additional contracts with the Trust or other employers which will take them in excess of 48 hours, must speak to their Line Manager. The procedure detailed in section 2 Opt-outs should be followed.

Night Work

12. The Trust defines a 'night worker' as anyone who works at least three hours of their shift between the hours of midnight and 5.00 am on a regular basis. Night working as part of a shift system would be viewed as regular. (This will include on-call **if worked on a regular basis.**) Night workers are entitled to a free health assessment on a regular basis, the frequency of assessments will vary between individuals. If this assessment identifies any adverse effects on an individual's health, Occupational Health will follow the normal procedures for advising the appropriate Line Manager and HR Consultant. Further information can be obtained from Occupational Health or the designated HR Consultant.
13. A night worker cannot opt out of the night work limit.
14. Under the regulations, an employer is required to take all reasonable steps to ensure that the 'normal' hours of night work do not exceed:-
"an average of eight hours for each 24 hours over a 17 week reference period".
15. Departments are still able to operate 10-12 hour night shifts providing that the average is not exceeded over the reference period. Average hours are calculated as follows:

Calculation

16. $A/B - C$
Where:-
A : is the number of hours during the applicable reference period, which are normal working hours for that worker.

B : is the number of days during the applicable reference period.

C : is the number of hours of weekly rest to which a worker is entitled under the Regulations (ie; 1 x 24 hours per seven days). (It should be noted that this is not the total amount of hours that the worker is at rest each week. Only the hours making up the weekly rest period that the worker is entitled to under the Regulations is counted).

Example:

17. A night worker who normally works 4 x 12 hour shifts each week.

A = 17 weeks of 4 shifts of 12 hours

$17 \times (4 \times 12) = 816$

B = 119 days in the reference period.

C = 17 weekly rest periods(24 hours per 7 days)

Therefore $816/119 - 17 =$ an average of 8 hours in each 24 hour period.

18. If night work involves special hazards or physical or mental strain hours are limited to 8 actual hours. Work will involve a special hazard if it is identified as such by agreement between an employer and workers in a collective agreement or workforce agreement. Any special hazards or strains should be identified using the normal risk assessment process. (The Trust's Lone Worker policy may be useful for this assessment) Individuals who are concerned about the length of their night shifts should contact their Manager/HR Consultant/TU Representative.
19. If you are an employer you must offer night workers a free health assessment before they start working nights and on a regular basis while they are working nights. The health assessment should take into account the type of work that will be done and the restrictions on the worker's time under the regulations.

Rest Breaks

20. Rest breaks are unpaid unless otherwise stated.

Weekly Rest

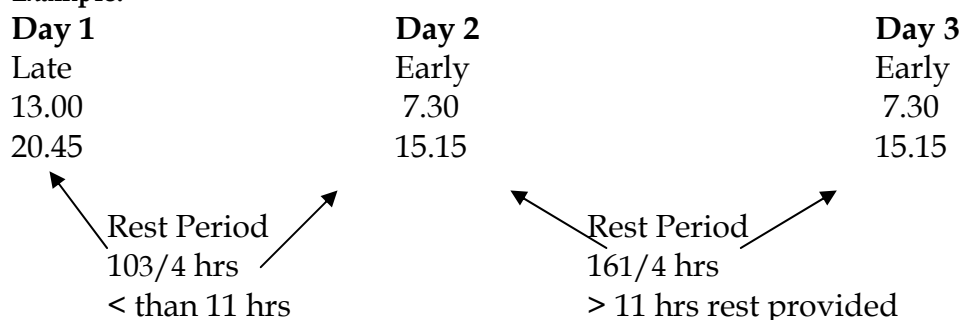
21. Individuals are entitled to an uninterrupted rest period of not less than:-

24 hours in each 7 day period or 48 hours in each 14 day period. Managers should ensure that an individual's work pattern or rota accommodates their rest periods.

Daily Rest

22. Individuals are entitled to an 11 hour break within any 24 hour period ie; from the end of their working day to the start of the next. Those individuals who work a late followed by an early, do not always comply with this requirement and an appropriate rest period should be provided. Managers should review work patterns in conjunction with their designated HR Consultant in order to ensure that individuals receive their daily rest break. (Please note that the following work pattern would comply with the regulations as an appropriate rest period is given on day 3).

Example:-



23. Alternatively, individuals can be allowed to start work late or leave early in order to ensure that an appropriate rest period is provided.

In Work Breaks

24. There is a range of good practice currently throughout the Trust, which meets the Trust's commitment to the Improving Working Lives standard. This policy is not intended to remove or replace best practice. If an individual works more than 6 hours, they are entitled to an uninterrupted break of 20 minutes. This should be taken away from their normal place of work. (A staff room or coffee room is a suitable rest area.) The break should be taken during the six-hour period and not at the beginning or end of it. The exact time the breaks are taken is up to the employer to decide.
25. In work, rest breaks are intended to allow the individual to rest within their normal working day, they should not therefore, be taken at the start or end of the working day.

26. If a rest break is interrupted, individuals are entitled to compensatory rest which is normally a period of rest the same length as the period of rest or part of a period of rest, that a worker has missed. Example: if an individual is interrupted after 15 minutes, they should be given an additional 5 minute break before the shift ends.
27. Managers have a duty of care to their staff, and should ensure that individuals are able to take their in-work rest break.

On-Call

28. Time spent on-call does not constitute working time until individuals actually receive a call to go to work. Once the call is received, the individual's working time will commence, therefore travel to and from work will also count as working time.
29. Managers should ensure that time spent working on-call is included when calculating the average hours worked over the reference period.
30. If individuals are called into work when on-call, they are entitled to a daily rest break (11 hours) before their next shift. If an individual is called out and is not able to have an 11 hour rest break before the start of their working period, they should be entitled to an appropriate rest period. Managers should allow the individual to defer the start of their shift, or if this is not possible, provide them with an appropriate rest period within two weeks. Where current practice does not allow for this, collective local options can be negotiated and agreed in liaison with the relevant HR Consultant/TU Representatives.

Sleep-Ins

31. If an individual is required to sleep-in, all of the sleeping-in period counts towards their working time.

Young Workers

32. Young workers (someone who is above the minimum school leaving age but under 18) may not ordinarily work more than:

- 8 hours a day
- 40 hours a week

33. These hours worked cannot be averaged out and there is no opt-out available.

Record Keeping and Auditing

34. Managers should ensure that working practices and individuals comply with the requirements of working time as the Trust will be monitored against the Working Time Regulations as part of the HR Performance Framework. All staff should therefore complete timesheets in order for excessive hours to be monitored effectively.
35. The Trust will audit the working time of its staff on a regular basis by means of an annual audit questionnaire which will be sent to Managers by Human Resources.



**WORKING TIME REGULATIONS
OPT-OUT AGREEMENT**

NAME OF EMPLOYEE:

JOB TITLE:

DIVISION:

WARD/DEPARTMENT:

1. I agree to work for more than an average of 48 hours per week over the 17 week reference period. If I change my mind, I will give my employer one month's notice in writing to terminate this agreement.
2. I understand that this agreement will apply from until
3. I am fully aware that I have a responsibility not to work hours so long that they may impair my efficiency or expose colleagues, the public or property to risk.
4. I agree to keep accurate records of my working hours in accordance with Trust requirements.
I agree that this agreement will be reviewed after 3 months, and thereafter on an annual basis.

Signature : Date :

Manager's signature:..... Manager's name:.....

REVIEW DATE:.....