Working Time Regulations (1998)

The Working Time Regulations have been in force since 1 October 1998. The TSSA has consulted with its legal advisors in producing the following guidance notes for lay representatives.

Until October 1998, a worker’s rights in relation to hours of work and the right to time off (with or without pay) were largely a matter of what was agreed in their individual contract.

The Working Time Regulations 1998 introduced a new statutory framework, which would in future influence the contractual relationship.

Workers’ Rights

The Regulations can be varied either by collective, workforce or individual agreements (dependent upon the Regulation concerned).

Workers cannot be required to work more than 48 hours per working week (on average).

Workers can agree individually or through a workplace agreement to exceed this limit, but an individual cannot be made to work more than the 48 hour average. The average is determined over a 17 week period.

This can include some forms of 'on-call' duty.

Night workers need not work more than an average of 8 hours in 24.

This is based on an average over 17 weeks.

'Night work' means working a number of hours between midnight and 5am as a regular course.

Night workers have a right to receive free health assessments.

This need not be a full medical, as long as the individual doing the screening has medical training.

Where a Registered Medical Practitioner has advised an employer that a worker is suffering from health problems, which are connected with working nights, and it is possible for the employer to transfer the worker to day work then the employer is under a duty to transfer the worker.

A right to 11 hours' rest a day.
Workers are entitled to 11 hours' consecutive rest in each 24 hours within which they are in employment.

**A right to a day off each week.**

Workers are entitled to one period of 24 hours of uninterrupted rest in any period of 7 days or 48 hours in 14 days.

**A right to an in-work rest break if the working day is longer than 6 hours.**

A worker is entitled to 20 minutes unpaid break from work after 6 hours employment. Whether this is paid is entirely a matter for the individual contract of employment. This is subject to variation by workforce or collective agreement.

**A right to 5.6 weeks paid leave per year.**

The number of actual days corresponds with the number of days in the week that the individual normally works.

The Regulations specify a holiday year, and any leave not taken in that year is forfeited. There is no 'carry over' right.

The employer can fix the dates of the holiday by giving proper notice to the workers.

Notice to take leave, equivalent to twice the length of the holiday period, must be given by the worker or leave can be refused.

The worker should receive their normal 'weeks pay' for this leave. This is calculated in the same way as a week's pay for redundancy payments, but without an upper limit.

There is a right to payment in lieu of any untaken leave in the final year of service, based on a pro-rata calculation modelled on the holiday year. This rate seems to exist independently of any contractual rights and irrespective of the reason for ending the contractual relationship.

**Annual leave during sick leave**

The right to annual leave continues to accrue during sick leave and a worker who is on sick leave during a period of scheduled annual leave must be permitted to take the leave at a later date, and if necessary, in the following leave year. A worker is entitled to choose not to take leave whilst off sick, and cannot be forced to accept a payment in lieu.

**Excluded classes of worker**
The Working Time Regulations 1998 were amended with effect from 1 August 2003 in relation to the classes of worker which had previously been excluded from protection under the Regulations.

Workers engaged in Sea Transport, Sea Fishing or Inland Waterway and Lake Transport do not have any protection under the Regulations. However, these workers do have protection under other Regulations which guarantee 4 week’s paid leave, limits on hours and guaranteed rest days.

In addition to the excluded sectors above, there are a number of sectors that are partially excluded from the provisions of the Regulations:

- Those employed in the Police, Armed Forces and Civil Protection where these duties conflict with the Regulations are excluded from all provisions except those specifically dealing with young workers.
- Mobile workers in the Civil Aviation Sector are excluded from all provisions except those dealing specifically with young workers. However, these workers do have protection under the Civil Aviation (Working Time) Regulations 2004 which guarantee 4 weeks paid leave, rest days and limits on flying hours and working hours.
- Mobile workers in Road Transport are excluded from all provisions except the right to paid annual leave and the right of night workers to be offered free health assessments. However, rights in relation to limits on hours and rest days are provided in the Road Transport (Working Time) Regulations 2005.
- Trainee Doctors now fall within the full scope of the Regulations, with transitional arrangements in place in relation to the limit on maximum weekly working time. The present weekly limit is 56 hours and this is in force until 31 July 2009.
- Domestic Staff are covered by the provisions on daily and weekly rest, rest breaks and annual leave.
- Workers whose working time is not measured or pre-determined, or is fixed by the workers themselves, are only covered by the provisions on the right to paid annual leave.

Conclusion

Before using the more formal and legal remedies contained within the Regulations lay representatives should always refer to the Associations paid officials for guidance.

The briefs in this section provide guidance and some basic details of employment rights. They do not attempt to be comprehensive, and should not be taken as an authoritative statement of the law.