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# WORKING HOURS AND PATTERNS

NEARLY ALL WORKERS, regardless of the number of hours per week they work, have certain legal rights.

The Working Time Regulations govern the hours most workers can work. These are particularly important to the thousands of Derbyshire UNISON members working in the care sector. They can set:

- **limits on an average working week**
- **statutory entitlement to paid leave for most workers**
- **limits on the normal hours of night work and regular health assessments**
- **special regulations for young workers.**

## Working hours

The Working Time Regulations determine the maximum weekly working time, patterns of work and holidays, plus the daily and weekly rest periods. They also cover the health and working hours of night workers. The Regulations apply to both part-time or full-time workers, including the majority of agency workers and freelancers, although certain categories of workers are excluded.

In general the Working Time Regulations provide rights to:

- **a limit of an average 48 hours a week on the hours a worker can be required to work, though individuals may choose to work longer by "opting out"**

- paid annual leave of 5.6 weeks' a year
- 11 consecutive hours' rest in any 24-hour period
- a 20-minute rest break if the working day is longer than six hours
- one day off each week
- a limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health assessments.

There are special regulations for young workers, which restrict their working hours to 8 hours per day and 40 hours per week. The rest break is 30 minutes if their work lasts more than 4.5 hours. They are also entitled to two days off each week.

### **Working Time Directive - Mobile workers**

The European Court of Justice, in a 2015 case gave the judgement that mobile workers who have no fixed place of work, and spend time travelling from home to the first and last customer should have this time considered as working time. The Court added that because the workers are at the employer's disposal for the time of the journeys, they act under their employer's instructions and cannot use that time freely to pursue their own interest.

Employers and employees should be aware that this may have an impact on breaks if the working day is extended as a result of travelling time.

### **Overtime**

Overtime is normally hours that are worked above the normal full time hours, normal working hours are the hours mentioned in the terms of employment. Overtime can be voluntary or compulsory. Compulsory overtime would form part of the terms and conditions of employer.

There is no legal right to be paid extra for any overtime worked, this may be detailed in the terms of employment.

### **Night working**

A night worker is someone who normally works at least 3 hours during the night period, which is the period between 11pm to 6am, unless the worker and employer agree a different night period.

Night workers should not work more than an average of 8 hours in 24-hour period. This average is usually calculated over a 17 week reference period, but it can be over a longer period if the workers and employer agree. Regular overtime is included in the average and workers can't opt out of this limit.

Employers must offer workers a free health assessment before they become a night worker and on a regular basis while they are working nights. Workers do not have to accept this health check.

## **48 hour working week**

Normally most workers don't have to work on average more than 48 hours per week unless they agree to. If workers agree to work beyond the 48-hour limit they must put it in writing, this is generally known as an opt-out. Workers have the right to cancel the opt-out agreement, although they must give their employer at least 7 days' notice - a longer period of notice may be agreed by the employer, but it can be no longer than 3 months.

The average working week is calculated by taking the average over a 17 week reference period.

Young people (16 and 17 year olds) normally cannot opt-out of the 48 hour working week, as they may not normally work more than 40 hours per week.

## **Compensatory rest**

In some circumstances a worker may be required to work during a rest period and may have to take rest later, this is known as compensatory rest. Compensatory rest is normally the same length of time as the break or part of the break that a worker has missed.

## **Working patterns**

Many workers have working patterns, such as flexi time, which are negotiated with their specific employers and therefore have their own specific rules. Other patterns such as flexible working under family-friendly policies are enshrined in law but open to local adaptation.

## **Flexible working**

Flexible working is a way of staggering, sharing or breaking up the traditional nine-to-five work routine in order to improve work-life balance. Flexible working can also help you maintain a balance if you care for a child or another adult.

Flexible working is beneficial to business because it can help employers retain staff and improve staff productivity.

The term flexible working can include working in the following patterns:

- **part-time;**
- **school hours;**
- **flexi-time (there's usually a core period when you have to work);**
- **home working;**
- **job sharing;**
- **shift working;**
- **staggering hours;**
- **compressing hours (working your hours over a shorter period);**
- **working hours spread over a year.**

All employees have the right to request flexible working if you:

- **are an employee, but not an agency worker or in the armed forces;**

- have not made another application to work flexibly during the previous year;
- have been in continuous employment for at least 26 weeks.

The law does not give you an automatic right to flexible working, but employers must respond to case-by-case requests.

Both you and your employer must follow a standard procedure for requesting and considering your request.

Although you have the right to request to work flexibly once a year in writing, your employer doesn't have to give you permission. You must say in your request how you think the change in your working pattern will affect your employer's business and how your hours would work in practice.

If you have the right to apply, the process to follow can take up to 12 weeks. If your employer agrees to your request, this could result in a permanent change to your employment contract. If your requested working pattern is fewer hours, your pay will reduce.

Your employer should seriously consider your request. If they refuse, it can only be due to one of the business-related reasons listed in law. Your employer must state in writing what the reason for turning down your application is. You have the right to appeal if your request was turned down. However, the employer still retains the right to refuse a request.