



Supporting the Carer Workforce

NATIONAL ASSOCIATION OF CARE & SUPPORT WORKERS

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An Outline Guide to Rest Periods & Breaks

In this guide we deal with care workers rights in the work place to rest periods and breaks, these are a necessary part of the working day; they allow that little bit of often much needed breathing space and help care workers to perform their duties to the best of their abilities. In care giving workplace scenarios matters can be complicated by the nature and sheer practicalities of the work itself: for example the need to be on call or the need for workers to support one another in the workplace.

1. What does the legislation say?

The Working Time Regulations cover many matters including limits on working hours, patterns of working hours and holidays. They also outline entitlements to breaks and rest periods. There are also special rules for young workers (those under 18, not covered in this guide.) Briefly they provide for

- A minimum Daily Rest Period of 11 hours uninterrupted rest, taken between your daily finishing time and your next following working day.
- A break of 20 minutes if your working day is more than 6 hours long.
- A Weekly Rest Period of 24 hours uninterrupted rest within each seven day period; or at the Employer's choice a Fortnightly Rest Period of 48 consecutive hours within each 14 day period.
- The weekly rest period should not include any part of the daily rest period.
- **Agency Temps, the Employer you are working for and NOT the Agency, who employs you, is responsible for you receiving these minimum rest breaks.**

These first two types of rest period are generally unpaid. A 20 minute break may be paid or unpaid; workers will most usually find details of whether their breaks are paid or unpaid in their contract of employment.

More information on rest breaks is available on the Direct Gov Website www.Gov.uk

However the legislation also provides for certain exemptions from entitlement to these basic rests break provisions. In these following specified cases workers can legitimately be asked to

work through their rest breaks. Again we have condensed the provisions that most frequently apply to care workers.

2. When the WTR says you are exempt from the provisions on rest breaks and periods.

- Work takes place at different locations at a distance from each other; here a specific “work pattern” is difficult to set.

Here care workers who travel to different care giving appointments throughout the working day or night will be affected by this provision.

- Work is affected by unusual or unforeseeable circumstances (beyond anyone’s control,) or work is affected by an accident/risk of an accident.

Again care workers may well be affected by this provision due to the sheer nature of their work.

- You are a shift worker

This provision will most probably apply to care workers; particularly where round the clock care is being provided within a client’s home or residential care home setting. Shift workers are defined as workers engaged in activities involving periods of work that are split up over the working day. They often work according to a certain shift pattern and workers ‘succeed’ each other at the same workstations. The shift pattern may be continuous or discontinuous; however it will involve the need for workers to work at different times over a given period of days or weeks. Due to the pattern of work shift workers may not be able to take daily or weekly rest periods between shifts.

- There may be what is described as a **genuine need for continuity of production/ service** around the clock.

This provision will apply to some care sector workers, particularly those working within residential care homes.

- A Collective or Workforce Agreement is in place.

Both employers and employees often find these types of agreement very useful, however when making these agreements **there must have been full consultation with the worker**. There are detailed and complex rules surrounding the making of these agreements and we recommend that specialist advice should be sought before entering into any agreement.

3. The principle of unmeasured working time

Further possible exceptions exist where a worker’s working time is not measured or predetermined and the worker has control over the number of hours they work. Here the principle of Unmeasured Working Time applies. These workers are excluded from a number of provisions of the WTR; including all rest break provisions and the 48 hour maximum weekly working hours.

Currently unmeasured working time is generally taken to apply to Company Directors (specifically those with autonomous decision making powers), Managers, Family Workers and Religious Workers, here these types of worker freely choose which hours they work and have no set hours. It is questionable whether this principle can be applied to most care workers, for example they frequently do not have the autonomy to control the number of hours they work and they have a fixed number of normal working or on-call hours.

What about rest breaks for those workers covered by these exceptions?

The Government Department for Business, Innovation and Skills (formally known as BERR) has published guidance that says **a worker**, (even if they fall into one of these categories of exception,) **must have a right to a minimum of 90 hours rest per week**.

4. Compensatory Rest

If rest breaks can't be taken as a result of any of these already outlined exceptions, the **WTR** details that the worker should be offered an equivalent period of rest known as compensatory rest. If this is not possible, the Employer should give you "such protection as may be appropriate in order to safeguard the workers health and safety".

Where possible compensatory rest should be given immediately after the end of the work period, it does not necessarily need to come out of time that would otherwise have been working time.

Case law on compensatory rest

In a 2014 case regarding shift working and rest breaks; an Employment Tribunal found that a care service provider was in breach of the WTR.

Daily rest breaks and daily rest periods had not been incorporated into a support worker's shift pattern. Compensatory rest was also not offered.

The claim was, in essence, that the worker had not been permitted to take a rest break on a high number of occasions and he had also not been granted a full daily rest period for an average of 3-4 times per month in a year.

The staff handbook stated that rest breaks away from the service user were not to be taken during a shift. The Care Home argued that it was uneconomical to provide support to cover the occasions when the claimant was not granted a daily rest period, however workers who smoked were allowed to take smoking breaks during their shift. These smoking breaks were covered by a manager. The Care Home employed approximately 150 staff with 25 of those being managers. The Tribunal commented on the care service provider's policy on manager cover during smoking breaks, particularly on the failure to extend such cover to rest breaks. It also felt that shifts incorporating daily rest breaks could have been easily organised.

The Tribunal agreed that the Care home fell into the category of services that was exempt from providing rest breaks due to the services it provided. However it found in favour of the claimant as he had not been offered compensatory rest periods.

Further developments

A recent ruling by the Court of Justice in a Spanish case regarding mobile workers has further complicated matters. Here mobile security installation and maintenance technicians had no formal fixed place of work or office; they instead travelled directly to and from home and their assignments. It was held that this travelling time counted as working time. Thus although this ruling does not entitle workers to paid travelling time, it also affects whether current working patterns comply with WTR, particularly in relation to maximum weekly working hours and rest breaks and periods, there are also further implications for the calculation of working time for minimum wage purposes.

Again we await further development in this area.

Disclaimer

This guide, as the name suggests, is for guidance only and should not be taken as a substitute for formal legal advice. In the event of further information being required or where disputes are likely to arise or have already arisen, we strongly recommend consultation with ourselves and other agencies.

