

NATIONAL ASSOCIATION OF CARE & SUPPORT WORKERS

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An Outline Guide to Working Hours

1. What does the legislation say?

The Working Time Regulations (WTR) states that workers cannot work for more than 48 hours per week. This is normally measured over a 17 week 'reference period'.

The reference period', is it always 17 weeks?

The reference period can be extended up to a maximum period of 52 weeks if there is a valid collective or workforce agreement in place. However, objective and technical reasons or reasons to do with the employer's organisation are needed to justify the exception in this case.

Workers can also have a 26 week reference period, particularly if they perform work where there is a need for continuity of service or production. Here, for example this could clearly cover hospital and **care workers**.

The reference period takes into account any statutory holiday, sick leave, maternity/paternity/adoption/parental leave and any opt-outs in place. The reference period is extended by the number of days on any of these.

The weekly working limit

For employees or workers on a fixed period PAYE contract under a 17 or 26 week reference period; the reference period for calculating your working hours will be the actual length of the contract.

The 48 hour per week limit applies if you have more than one job, so the total combined hours from all jobs should not exceed 48 per week. **If it does, each Employer should ask you to sign an Opt-Out.**

Domestic servants who work in a private household and those who have unmeasured working time are exempt from the weekly working hours limits. However it is unlikely that care sector workers would fall into either of these categories.

Case Law

A recent ruling in the European Court on mobile workers and travelling time has implications for maximum working hours. Here the court held that travel to and from the first and last assignment from home in the case of mobile security system installers and maintainers who had no formal fixed place of work or office was to be treated as working time. We are awaiting further developments.

2. Opt outs

Workers can be asked by employers to sign voluntary opt out agreements. Here the worker agrees that they can work in excess of 48 hours per week. Opt outs are not a condition of employment and they must remain both optional and voluntary.

Workers who have signed an opt out have the legal right to opt back into the 48 hour limit at a later date. Workers must give employers written notice of wishing to opt back in; a minimum

legal notice period of 7 days. However workers should check their contracts as longer notice periods are often required.

Workers should not be subjected to any detriment by refusing to sign an opt out agreement. If a worker is dismissed for failing to sign an opt out agreement, this may amount to an automatic claim for unfair dismissal and a claim might be made to an **Employment Tribunal**.

An employer can average the number of hours worked over an applicable reference period, contract length, rather than measuring over one week. The first 20 days holiday you are legally entitled to cannot be used to reduce the average number of hours worked. However the maximum hours that should be worked is 78 hours, unless the worker chooses to forego rest breaks

3. Calculation of working hours

Workers should include:

- 'Normal' weekly working hours, any period during which you are working or at the Employers disposal and carrying out their activities or duties.
- Job-related training
- Job-related travelling time (including where this an integral part of the job)
- Business/working lunches
- Time spent working abroad (for a UK company)
- Paid and some unpaid overtime
- Time spent on-call at the workplace (also include time during 'sleep' time – whether you are asleep or actually working where 'sleeping' is permitted).The NMW Regulations are unclear on this issue, there is a great deal of case law on the WTR and whether on call time is considered to be working time. The current position is that on call time constitutes working time if the worker is required to be in the workplace, rather than at home and even if the worker is asleep for the entire period time.
- Time spent on-call elsewhere while actually working.

Do not include;

- Breaks when no work is done (e.g. lunch breaks)
- Normal travel to and from work
- Time spent travelling outside of normal working hours
- Time on-call spent away from the workplace, however if you are actually working this **is** included.
- Unpaid overtime where you have volunteered to continue working, for example staying later to complete a task.
- Paid or unpaid holiday.

4. Working hours and night working

The WTR provides extra protection for those workers categorised as night workers. A night worker is a worker who usually works for a period of at least 3 hours during the night time; the night time is usually the period between 11pm and 6am.

Night workers should not work more than an average of 8 hours in every 24 hour period, overtime is excluded from the calculation and the average is calculated over a reference period of 17 weeks.

Night workers should be offered a free health assessment before starting night time work, assessments should also be continued to be offered at regular periods.

Can night workers work for a longer period?

A workforce agreement can be entered into where limits on night working can be modified; it is even possible to alter the meaning of night time. These workforce agreements have been very useful when employing live in carers. Again we recommend seeking specialist advice due to the complicated nature of these agreements.

However if a worker's employment involves special hazards or heavy physical/mental strain, then the worker cannot exceed the limit of 8 hours in every 24. Therefore no overtime is possible and working hours cannot be averaged over a reference period.

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.

