

EMPLOYMENT – TIME AND PAY

WORK REGULATIONS

*Original from the Working Time Directive - Working Time Regulations 1998
*Part of the Health and Safety Legislation
*UK v EC Council C-84/97 – UK does have implement directive.

WTR 1998

*Worker: employees; anyone giving personal service otherwise than client/customer; although not genuinely self-employed.

***Working time:** working at employer's disposal and carrying out duties; can include time on call.

*Working time is any time spent working. What about being on-call – *SIMAP v Conselleria de Sanidad y Consumo de la Generalidad Valenciana*. Doctor issue is still difficult one, but security on site is classed as 'on-call'.

*Working hours – limit 48hr week, unless companies 'opt out'. Has to be consistent over time for it to be breach WTR 1998. Averaged out over a reference period of 17 wks. Different rules apply to doctors (*Johnson v Bloomsbury Area Health Authority*) – although junior doctors are still bound by 48hrs per wk. Opt-out available (must be in writing). Can opt back in (must be in writing).

***Daily and weekly rest breaks** – Adult workers: 11 uninterrupted hrs in any 24 hour period (e.g. 11pm-11pm); 24 hours rest in any 7 day period -Reg 11(1); 20 minute break where 6 hours or more is worked -Reg 12 (1)-(3). Young workers: 12 hrs uninterrupted rest, 2 whole days off, 30 min break where 4.5 hours worked. *Miller v Lambert/Commission of the EC v UK* – obligation or entitlement? Obligation on employer, not for employee to initiate.

***Night workers** – max 8hrs per night. A night worker is works at least 3 hours during night time on majority of working days; night time: a period of 7 hours inc. midnight to 5am (e.g. 11pm-6am); limited to 8 hours work in any 24 hours. Have free health and safety assessments.

***Paid annual leave** – 28 includes bank holidays. No statutory right to a bank holiday. More leave can be agreed than the statutory minimum (Work and Families Act 2006 s.13). Also available to those on maternity / sick leave. Statutory Notice requirements: twice as long as the leave to be taken (Counter notice). Payment in lieu of holidays not taken during employment is not permissible (Reg 13(9)). Does not have to be taken, but cannot roll over, unless contract says. Payment in lieu on termination of employment.

PART-TIME WORKERS AND BANK HOLIDAYS

*Problem: PTW who do not work on a Monday miss out as most UK bank holidays fall on a Monday. Solution: Allow the worker 'extra' holiday to account for shortfall in their bank holiday entitlement.

Exceptions: unmeasured working time: reg 20; special cases: reg 21.

Enforcement: if limits are breached, it will go to health and safety officer and they will give enforcement notices; rights claim can go to ET where they can get declaration and compensation.

NATIONAL MINIMUM WAGE – governed by NMWA 1998

*Gives workers the right to a specified minimum hourly rate of pay – 4 different rates

*Updated every October

*Statutory requirement - No exceptions!

*NTMWA covers for different rates: standard adult rate 21+ = £6.08; 18-20 £4.98; apprentice rate under 19 £2.60; 16-18 £3.68.

*Covers employees, agency workers, agricultural workers, some apprentices, overseas workers. NOT au pairs, non-executive directors, prisoners, self-employed

*To work out NMW need to know: payments received by worker, hours worked by worker
OVER the pay reference period – max one month.

*Pay = total gross pay + any payments and benefits. Includes: basic salary, commission, bonuses, overtime, accommodation. Do not include: social O/ gift/expenses; loans/advance of wages; allowances; tips/gratuities.

***Less any deductions** - Deductions which do not reduce NMW pay: loan repayments, accidental overpayment of wages, workers conduct; Deductions which do reduce NMW pay: purchase of tools/ cleaning of uniforms

*Hours worked by worker: Hours can vary dependent on type of work: 4 types: Time work (paid by hour); Salaried work (annual salary); Output work –productivity/ piecework; Unmeasured work. Hours -On call/ training/ travelling on business.

*Working out pay: total pay received in reference period divided by total hrs worked in reference period = hourly rate of pay.

*Record keeping - employers obliged to keep records otherwise criminal offence; presumed worker not paid NMW unless employer can prove otherwise; 3 yrs or longer and worker can inspect.

*Enforcement: Enforcement by State 19-19H NMWA - notice of underpayment – payment of a financial penalty; Enforcement by worker ET/ CC – unlawful deduction of wages/ breach of contract/ unfair dismissal.

OTHER STATUTORY RIGHTS

Statutory sick pay

*Social Security Contributions and Benefits Act 1992
*From April 2012: £85.85 per week, max 28wks.

*Conditions: contract of service (have to be an employee); no minimum length of service; must be sick for at least 4 days in a row; first 3 days waiting days – not paid; Average weekly earnings of £107

Unauthorised deductions from wages

*Applies to all workers

*Section 2 ERA 1996

*Lawful deductions: ct order for compensation; attachment of earnings order; certain strike situations; authorised by legislation; authorised by contract; over payment of wages

*Apply to ET – 3 month time limit

Itemised pay statements

*Section 8 ERA 1996: gross pay; all fixed deductions; all variable deductions; net pay

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