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FOR THE TUC

Know Your Rights

www.worksmart.org.uk



Working time, breaks and holidays

TUC 

The law relating to your working time is complicated. Some bad employers take advantage of this to deny staff their rights. Others may not understand what the law requires.

Step by step, this leaflet explains weekly hours limits and night working limits; and your rights to breaks, rest periods and paid holiday.

This publication is just a short guide, not a full statement of the law. If your rights are being ignored get advice from your trade union about taking action to enforce them. For further information on other rights at work, visit www.tuc.org.uk/know-your-rights



What is ‘working time’?

Working time refers to time you spend at your workplace carrying out duties under the direction of your employer. Working time rights apply to ‘workers’ – that is employees, agency workers and some self-employed people.

This includes:

- overtime
- training at the workplace provided by your employer
- time spent travelling to meet clients (as a normal part of your job)
- a working lunch
- travelling to work if you have no set workplace.

Working time doesn’t include:

- breaks
- travelling to work if you have a set workplace
- day-release training at a college
- time taken to travel to an occasional meeting away from your normal workplace.

‘On call’ at home and not working doesn’t usually count as working time. But time ‘on call’ when you have to be on work premises does count.



The Working Time Regulations

These regulations give most workers the following rights:

- a 48-hour limit on the maximum working week; workers may opt-out and work longer
- a 48-hour limit on the maximum working week for night workers; no opt-out is possible
- an eight-hour daily limit on night work involving hazards or physical or mental strains
- free health checks for night workers
- 5.6 weeks' paid leave a year
- one day off per week
- 11 hours' rest per day
- a 20-minute break if working more than six hours a day.

Special cases

There are some special cases. Some workers have different rights, whilst some are not covered at all:

- 16- and 17-year-olds have stronger rights (see page 14).
- Some jobs in the transport sector are covered by slightly different rights (see page 15).
- Some jobs aren't entitled to specific rest breaks (see page 16).
- A few jobs simply aren't covered by these rights at all (see page 16).

Enforcement

The limits on weekly working time and night-work are enforced by calling the pay and work rights helpline (see page 16). Holidays and rest breaks rights are enforced by employment tribunals.



The working week

The maximum anyone should work in an average week is 48 hours (apart from those exempted – see page 16)

How do I calculate my average hours?

For most workers, you should calculate your hours on the basis of the previous 17 weeks of work, excluding time spent off sick or on leave.

In some jobs, the average is worked out over 26 weeks. These jobs include:

- security guards, caretakers, and other jobs requiring a “permanent presence” to protect people or property
- occupations involving long travelling distances, such as construction workers in remote areas
- those that require “continuity of service or production”, e.g. hospitals, prisons, docks, airports, media, postal services, policing, agriculture, utilities and telecoms
- jobs where there are seasonal rushes, e.g. in tourism, postal services and agriculture
- any job covered by the 17-week rule if their job is suddenly affected by an accident, risk of an accident, or other unexpected event.

What if I regularly work more than 48 hours per week?

If you haven't opted out of the 48 hour limit and work more than an average of 48 hours per week during the averaging period, your employer must give you time off so that your average reaches 48 hours or less. If your employer does not obey the regulations, make sure you keep a record of your working time. You can complain to your union or to the pay and work rights helpline (see page 19).

Opting out of the 48-hour limit, to work longer

You can do this by signing an agreement with your employer. You can opt out for a limited period, or indefinitely.

But you must be able to reverse your opt out, and if you do that your agreement should state how long you have to wait before the 48-hour limit re-applies. The maximum notice period for opting back in must not exceed three months.

What if I'm told opting out is a condition of getting a new job?

This is clearly against the spirit of the law. But the regulations do not specifically outlaw offering jobs with this condition attached. Nevertheless, you retain your right to reverse your opt out once you are in employment.

Can I be sacked if I don't opt out?

No. Employers are breaking the law if they dismiss you or make you worse off if you refuse to opt out or want to opt back in. In this situation, you could take a case to an employment tribunal, but always take advice from your union first (see page 19 for other sources of help).

Can my boss cut my pay if I don't opt out?

No. Your employer can technically pay a higher rate of overtime for any work beyond the 48-hour limit. But if your overtime pay is cut for hours under the 48-hour ceiling because you won't opt out, this could be an illegal variation of your employment contract. If this happens, you should seek advice.

Can the 48-hour limit be varied?

The 48-hour limit can be varied by collective agreement.

- If there is a recognised trade union where you work, this will be part of the normal negotiating process.
- If you don't have a union at work, your employer must sign a written agreement with workplace reps who have been elected.



Working at night

If you are a regular night-worker:

- You can't work more than an average of eight hours in a 24-hour period.
- The maximum you can work per average week is 48 hours.
- You are entitled to a 24-hour rest day each week, leaving six days when you can legally work.

How is 'night-worker' defined?

You are a night-worker if you work at least three hours a night as part of the normal course of your job. 'Night time' is defined as 11pm-6pm.

The definition of night time can be changed through a collective agreement. But it must be a period of seven hours that includes 12am-5am. Collective agreements can also define employees as night-workers when they work fewer than three hours at night.

How do I calculate my average hours?

Your average weekly hours – calculated over the six days you are allowed to work – should not exceed 48.

The average is usually calculated over 17 weeks, but it can be up to 52 weeks by collective agreement.

Overtime is included in the average. If you take time off for holidays or sick leave during the 17-week period, you must calculate the average as if you worked normal hours.

Can I opt out of the night-work eight hour limit?

No. But as maximum hours are calculated as an average, you can technically work more than eight hours some nights and fewer than eight on others – as long as the average over six days per week is 48 or fewer.

Health checks for night-workers

Your employer must provide night-workers with a free medical check, and where possible, allow you to switch to daytime shifts following medical advice. The government recommends the checks are done before starting night-work, and annually thereafter. They can be done in person or via a questionnaire, if developed by someone who is medically qualified and evaluated by someone with medical training.

Working at night: work involving hazards or physical or mental strains

Tougher rules apply if your night-work involves special hazards or heavy physical or mental strain. You can't work more than eight hours in any 24-hour period. This is an absolute limit rather than an average.

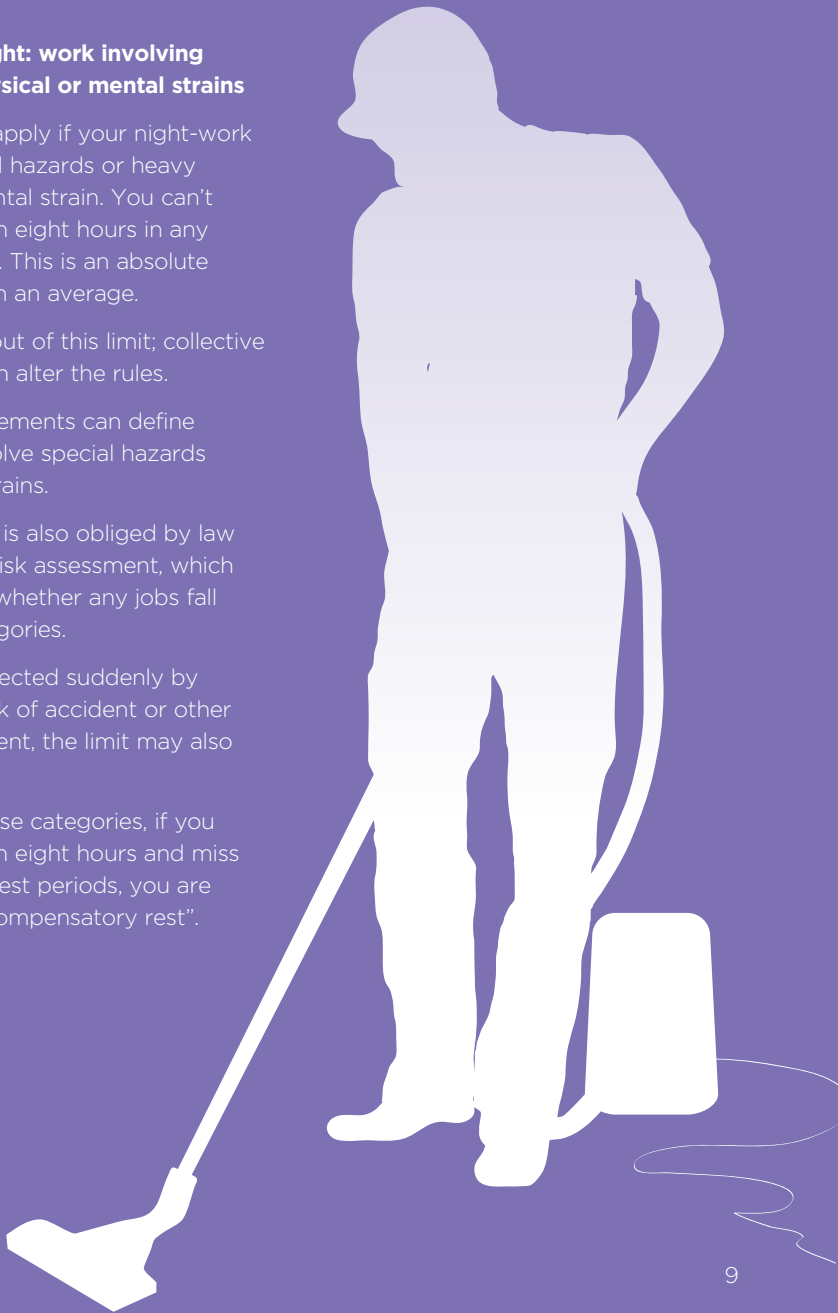
You can't opt out of this limit; collective agreements can alter the rules.

Collective agreements can define which jobs involve special hazards or particular strains.

Your employer is also obliged by law to carry out a risk assessment, which should decide whether any jobs fall into these categories.

If your job is affected suddenly by an accident, risk of accident or other unexpected event, the limit may also be set aside.

But even in these categories, if you work more than eight hours and miss any breaks or rest periods, you are entitled to a "compensatory rest".



Paid holidays

Everyone deserves holidays during the year and you are entitled to a legal amount of paid time off. The minimum is 5.6 weeks' holiday every year. So, if you work five days a week, you should get 28 days' leave a year. If you work part-time, you should get 5.6 times your weekly working time.

What about bank holidays?

If you are paid for bank holidays an employer may include them as part of your annual leave.

When can I take my holiday?

Many employers will agree to you going on holiday at a time of year that suits you. But employers can refuse a holiday request, or even decide when you can go.

When you request leave, you must give your employer enough notice. This must be double the number of days you plan to take off. But it works both ways – your employer must give you the same amount of notice if they turn down a request or tell you to when to take paid leave.

How much should I be paid when I'm on holiday?

Holiday pay should match your normal weekly pay if you work regular hours and are paid a regular weekly amount.

If your weekly hours and pay vary, you are entitled to holiday pay that matches your average weekly pay calculated over a 12-week period. This includes overtime.

I've just started a new job. How long until my holiday rights come into effect?

Holiday entitlement starts to build up from your first day in the job.

What happens if I change jobs?

When you leave a job, you are entitled to holiday pay for any leave you haven't taken. But if you've taken too much holiday, you may have to pay it back. This is calculated pro rata, so for every month you work, you earn a twelfth of your holiday entitlement.

My payslip says I'm getting paid holiday pay every week. Is this right?

Some bosses cut basic pay, make up the difference with holiday pay, and then say they don't have to pay you when you're on holiday. This could be an unlawful deduction from your wages, and you could take a case to an employment tribunal (but always take advice first).

What happens to holiday pay when I'm off work?

Holiday entitlements continue to build up during sickness absence and maternity, paternity and adoption leave.

Holiday entitlements can be carried over into the next year if they cannot be used during the current leave year due to absence.

You can request holiday during periods of sick leave.





Rest breaks and time off

Most workers get one day off a week, but employers can also meet their legal obligations though giving two days off per fortnight. Most workers are entitled to a rest break of at 11 hours between working days.

Breaks at work

You have the right to a 20-minute break if your working day is longer than six hours. If you can't take a break, you must have compensatory time off later on.

But if you fall into any of the categories on page 16, your breaks may be different.

Can I opt out of my breaks/days off?

You must get your entitlement to breaks, so you can't opt out of taking them. But when you take them can be changed through a collective agreement.

- If there is a recognised trade union where you work, this will be part of the normal negotiating process.
- If you don't have a union at work, your employer can still negotiate a written agreement with any workplace reps who have been elected.

These rights can be suspended if there is an emergency or accident, but compensatory rest must be given later on.

What if I'm not getting my breaks or time off?

If you can, you should ask your employer why not. They may simply not know about the law. But if they still refuse, you can take a case to an employment tribunal. You always take advice from your union first (see page 19 for other sources of help).

Unpaid time off

You have the right to time off for emergencies, for example if you have young children or an urgent problem at home. For more information on family rights, visit www.tuc.org.uk/know-your-rights

Workers who are exceptions to standard working time and holiday rights

There are classes and ages of workers who are not covered in the same way by the rights we have described in this booklet so far.

16- and 17-year-olds

Holidays

Your holiday rights are the same as for adults.

Breaks

The Young Workers Directive requires that:

- you get a continuous break of 12 hours every day
- you get a continuous break of 48 hours every week.

In some cases there can be some exceptions, however. Breaks can sometimes be 'split', for example if you work 'split shifts'. An employer can reduce your weekly continuous break to 36 hours.

The timing of your break can also vary. For example, you could work ten days on and four days off, with the first two days off at the beginning of the first week and two at the end of the second week.

In an emergency and where there is no adult worker available, these breaks can be suspended. But your breaks must be made up within three weeks.

Working at night

At this age you can't work between midnight at 4am. You usually can't work between 10pm and 6am, but this can be changed to 11pm-7am through your employment contract. There are exceptions if you work in:

- agriculture
- cultural, sporting, artistic or advertising activities
- a hospital
- retail, a hotel or catering
- post or newspaper delivery.

In exceptional circumstances you can work at night if there's no adult and they're needed to either handle a sudden increase in demand or "maintain the continuity of a service or production". Here, your employer must give you a compensatory rest period of the same length as the extended shift.



Some mobile transport workers

When it comes to working time rights, transport is the most complicated sector. Standard working time rights do apply in full to "non-mobile" transport workers such as fitters and office staff.

But for mobile transport workers the following groups all have a different set of rights:

- seafarers – these workers are covered by the Merchant Shipping Regulations
- aviation pilots and cabin crew – these workers are covered by the Civil Aviation Working Time Regulations
- heavy goods vehicle and coach drivers – these workers are covered by the Road Transport Working Time Regulations
- local bus service drivers and crew – these workers do not have the standard rest break rights, but must still receive "adequate rest".

HGV and coach drivers are also protected by EU-wide rules that limit driving hours, while local bus drivers are also protected by the Domestic Drivers Hours Rules.

www.gov.uk/seafarer-working-and-living-rights/maritime-labour-convention

www.legislation.gov.uk/uksi/2004/756/pdfs/uksi_20040756_en.pdf

www.gov.uk/government/collections/drivers-hours-rules-and-guidance

Other special cases

The following occupations are only protected by the 48-hour limit on average weekly working time and the entitlement to 5.6 weeks' paid annual leave. They are not entitled to the standard night-work limit or the daily, weekly or in-work rest breaks:

- security guards, caretakers, and other jobs requiring a “permanent presence” to protect people or property
- occupations involving long travelling distances
- jobs requiring “continuity of service or production”, e.g. hospitals, prisons, docks, airports, media, postal services, policing, agriculture, utilities and telecoms
- jobs where there are seasonal rushes, e.g. in tourism, postal services and agriculture.

Exemptions

Some workers aren't covered by the rules relating to working time.

These include:

- armed forces and civil protection workers (such as the police) – this doesn't include ambulance personnel, firefighters and prison staff, although everyone in this group has holiday rights
- those whose “working time is not measured or pre-determined”, such as workers employed by family members, some live-in household workers like au-pairs, ministers of religion and some senior managers (this doesn't exclude everyone with a managerial role – check your employment contract to see what working hours are specified).

If you're not sure whether these exemptions apply, seek advice from your union or from Acas (see page 19).



Join a union

The rights described in this booklet – and many others such as the minimum wage – have been won by union campaigning.

Without union help and assistance many workers don't get the full benefit of their rights.

Unions also help negotiate better pay and conditions than the legal minimum, including far better provisions for family-friendly employment.

Every day unions help thousands of people at work and every year they win hundreds of millions of pounds in compensation for their members through legal action.

To find out more about trade unions and which is the best for you visit www.tuc.org.uk/join-union

www.worksmart.org.uk This is a one-stop site for everyone at work. The site provides a range of information about working life – whether you are a union member or not.



Other help

Acas

Acas National Euston Tower
286 Euston Road
London NW1 3JJ
Helpline: 08457 474747
www.acas.org.uk
Twitter: @acasorguk

Pay and Work Rights Helpline

Tel: 0300 123 1100
gov.uk/pay-and-work-rights

Citizens Advice

115-123 Pentonville Road
London N1 9LZ
www.citizensadvice.org.uk
Tel: 08451 264 264

Unions today – Your friend at work

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