

SoR WORKING TIME REGULATIONS SUMMARY (October 2020)

Working Time is a core health and safety concern, regulated in law and enforced through the Health & Safety Executive and others. Like all H&S Regulations, there is a mutual duty on both the employer and worker to take reasonable care to minimise risk and injury.

Allied Health Care Professionals have an added personal responsibility under their Professional Standards, not to practice in ways that are knowingly unsafe, and which could put patients at risk.

Equally, as these are H&S Regulations, the standards are used in other areas of H&S law and practice – for example, these will guide Courts in assessing Personal Injury Liability claims (from members and patients).

Where members regularly work during the night there are added risks and, therefore, additional Regulations apply, which must be recognised.

In the UK, there is allowance for some aspects of the Regulations to be varied. This is known as an 'Opt-Out'. The SoR does not support or encourage 'Opting-Out', and believe that there is enough flexibility in the Regulations and NHS AfC terms and conditions, not to require an Opt-Out. However, we understand that sometimes this can be a pragmatic choice for individual members, as long as they are subject to regular review.

Opt-outs can only happen by agreement and choice – they can be included in a contract but only if this includes reference to how someone can later 'Opt-In'. There must be a written record of the 'Opt-Out Agreement'. A member can give notice to Opt-In at any time, giving between 7 days to 4 weeks' notice. Employers should periodically renew the Opt-Out Agreement, to remind workers of their rights. The SoR consider up to 6 months or no more than a year to be a reasonable period to review an Opt-Out Agreement.

As the CIPD highlight in their guidance to employers, “Employers must not penalise, victimise, discipline, dismiss, select for redundancy, or subject a worker to any other detriment for refusing to sign an opt-out agreement. If an employee was dismissed for refusing to sign an opt-out clause, this would be an automatically unfair dismissal (which doesn't need two years' service).”

Also see our the SoR's longer Representative and Member Guide to Safer Working Time

The Regulations in a Hospital Setting

All Workers:

- ✓ Cannot be forced to work more than 48 hours a week on average.
 - Work related travelling, working lunches and job-related training count as working time. So does representing members for Trade Union Representatives.
 - Working time does not include travelling to and from work, lunch-breaks, or additional training undertaken by choice and agreement outside of normal working time.
 - Training to maintain practice standards would be included as Working Time.
- ✓ Have a right to 11 hours uninterrupted rest between shifts (known as the Daily Rest Break)
- ✓ Have a right to a day off each week – i.e 1 uninterrupted period of at least 24 hours rest in every 7 days.
- ✓ Have a right to in-work rest periods if the working day is longer than 6 hours. This must be at least 20 minutes continuous break away from work responsibilities. It should not be at the start or end of a shift as this by definition is not providing a “break”.
- ✓ Have a right to a minimum of 4 weeks paid leave a year.

Night workers:

- ✓ Should not work longer than 8 hours daily on average, including overtime where this is part of their normal hours or work. A Night Worker will work at least 3 hours between 11pm and 6am.
- ✓ Have a limit of an average 8 hours in any 24 which night workers are required to work.
- ✓ Are entitled to receive a free health assessment, the outcome of which MUST be considered by all parties.

- ✓ Where a Night Worker's work involves special hazards or heavy practice or mental strain, there is an absolute limit of eight hours on the worker's working time each day – this is not an average. This is important for radiographers, who will almost always be included in this category or worker. Whilst the Regulations allow for some variation in Hospital settings (see below) meaning this creates a tension both employees and employers need to recognise that these limits will be used to guide liability for Personal Injury Claims.

What Can Be Varied

- ❖ Workers can agree to work longer than the 48 hours on average by 'Opting-Out'.
 - Even if not 'Opted-Out' members can agree to the reference period for working time limits to be extended up to 52 weeks. However, the calculation period for compensatory rest must be applied unless someone has agreed to 'Opt-Out'.
 - Agreeing to a long term 'Opt-Out' is allowed under the Regulation. However, the SoR recognise this is dangerous to staff, and patients, and believe there is enough flexibility within the 48 hours to prevent any need for an 'Opt-Out'. ***If a patient is injured in circumstances where members are working beyond the limits of the Regulations then the Trust and the member could be liable. If a member dies as a consequence of working excessive hours their estate could hold the employer liable.***
- ❖ The night working limits, rights to rest periods between shifts and rest periods during a shift can be changed in a Hospital setting operating a 24 hour service, and where an emergency or something unforeseen occurs. This ONLY ALLOWS for the weekly working time limit reference period to be extended. Compensatory rest MUST still be given.
- ❖ Workers can agree to aggregate their Weekly Rest period to a minimum of 2 days of 48 hours uninterrupted rest in any 14 day period. It is ILLEGAL to remove the Weekly Rest Break entirely.

What Can Not Be Varied

- ✓ **The Daily Rest Break** – to allow an uninterrupted 11 hour period between shifts.
- ✓ **A Weekly Rest Period** – of at least 1 uninterrupted break of 24 hours in every 7 days or 48 hours in every 14 days.
- ✓ **The right to a rest break** after 6 hours – this can be applied flexibly but they must happen during a shift and allow a genuine uninterrupted break. They cannot be put at the start or end of a shift.
- ✓ **Medical Assessments for all Night Workers**
- ✓ The need to **make a worker aware of their right to Opt-In** should they wish.
- ✓ **Other professional responsibilities and standards.**