



Workers Required to Sleep In and the Working Time Directive

BACKGROUND

Many workers are required to sleep at or near their place of work meaning that they can be at work for long periods of time. Clearly this kind of work needs to take account of the Working Time Directive, which is designed to prevent workers being forced to work excessive hours. This factsheet explains the legal rights that the directive gives to UK workers who sleep in at work and gives an update on recent legislative developments.

To find out about how National Minimum Wage regulations apply to workers sleeping in at work, please see a separate factsheet here: <http://www.unison.org.uk/file/Workers%20Required%20to%20Sleep%20In%20-%20%202007.2.doc>

LEGAL CONTEXT

What rights does the Directive give workers?

The European Working Time Directive came into force in the UK in 1998. The directive covers numerous issues relating to working time, these include giving workers the right to:-

1. a working time limit of 48 hours a week.
2. a minimum rest break of 20 minutes during any day or shift that exceeds six hours.
3. a minimum rest period of 11 hours between the end of one working day or shift and the beginning of the next (not including the day of the shift changeover).
4. a minimum weekly rest period of 24 hours, which can be averaged over two weeks.

It is important to note that the 11 hours consecutive rest can be varied, as long as compensatory rest is given. For example, a break of 6 hours between shifts can be compensated with a subsequent break of 16 hours between shifts.

Controversially, the UK has an opt-out from the 48 hour working time limit which allows individual workers to sign away this right on a voluntary basis. This must be done voluntary and in writing and can't be an agreement with the whole workforce.



Theoretically, workers shouldn't be sacked or subjected to a detriment (for example, refused promotion or overtime) for refusing to sign an opt-out. If a worker signs an opt-out, they have the right to cancel this agreement at any time by giving between one week and three months notice.

Does sleeping in time count as working time?

The short answer is "Yes, but possibly not for much longer."

The application of the Directive to people who sleep in at work is currently subject to review by European legislators. This is largely due to two decisions in the European Court of Justice in 2003 (the "SiMAP judgement" and the "Jaeger judgment"). These judgements defined working time to include time spent on-call at a place of work, even when that time was spent sleeping.

It's important to note a difference between the SiMAP and Jaeger cases. The SiMAP case did not address a situation where a worker is on-call at his place of work and is provided with facilities to sleep during that period. This was the situation in the Jaeger case. However, in both judgements it was stated that time spent by a worker at their workplace whilst on call is working time even when a worker is provided with sleeping facilities and permitted to sleep.

As a result of these judgements we can currently say that time spent sleeping in at work counts as working time for the purposes of the Working Time Directive. The word "currently" is emphasised above because there are moves already being made to tighten the regulations so that sleeping in time is no longer counted in this way.

When workers are on-call but based at home or somewhere other than their workplace, on-call time only counts as working time from the time they are called out.

What changes might be made to the directive and when?

The European Commission has proposed making a distinction between "active" and "inactive" time on duty, with inactive time on duty not counting as working time. The Governments of most EU countries agree with this stance, but the European Parliament does not. However, the parliament does say that inactive time could be calculated differently.

If the member states ever reach agreement, the law will go back to the European Parliament for a second reading. It could take a while for the EU member states and the parliament to agree on new regulations and if they cannot agree, the legislation will fail. There is now deadlock on this issue and the European Commission is reviewing the position as part of Labour Law Modernisation Green Paper. This factsheet will be updated as soon as any changes in this situation occur.

ORGANISING

UNISON recently carried out a survey on sleeping-in arrangements which generated a huge number of responses. This clearly shows that sleeping in arrangement is a very live issue at the moment. Organising a campaign to get better pay and conditions for workers sleeping in at work is an excellent way of involving members in the work of the union.

An important first step for organisers and activists to take on this issue is to calculate whether or not the shift times being worked take account of the rest breaks, gaps between shifts and weekly



rest periods stipulated in the working time directive. If they do not - and if workers have not signed an opt-out from the working time directive - you have a very strong case for agreeing new shift patterns that respect the rights laid down in the Working Time Directive.

Have you considered doing your own survey of local members to see what they think of sleeping in conditions in your workplace? By developing projects like this you can draw more members into becoming involved in the union, possibly to be stewards or branch officers. Your branch could set up a working group to develop new proposals on how to improve pay and conditions for those sleeping in at work.

Negotiations with employers on these issues can be used as a focus for recruiting and organising for branches. It's not only a matter of getting an improved agreement with the employer but of raising the profile of the union and showing members that UNISON is listening. It will encourage non-members to join and of get existing members more involved.

For more information about organising and campaigning in your workplace take a look at the Activists Zone on the UNISON website at: <http://www.unison.org.uk/activists/index.asp>

FURTHER INFORMATION

1. Proposed amendments to Working Time Directive 2003/88/EC concerning certain aspects of the organisation of working time. This includes the proposed changes to the text on "active" and "inactive" call-out time.
http://ec.europa.eu/employment_social/labour_law/docs/w_t_310505_en.pdf
2. TUC pages on Work Life Balance: <http://www.tuc.org.uk/theme/index.cfm?theme=changingtimes>
3. UNISON's Negotiators guide on Working Time Regulations:
http://www.unison.org.uk/bargaining/doc_view.asp?did=261
4. UNISON Guidance on Negotiating on Shiftwork: <http://www.unison.org.uk/acrobat/13026.pdf>

WORKING TOGETHER

By sharing information your branch can help the union to spread best practice, identify obstructive employers and monitor the implementation of employment rights.

The way to do this is to fill out the Bargaining Information System (BIS) questionnaires below and return it to Bargaining Support at the following address. This information will then be entered on to the system to help provide a more detailed picture of conditions in the workplace.

The address for the Bargaining Support Group is: 1, Mabledon Place, London, WC1H 9AJ, or e-mail bsg@unison.co.uk.



Allowances Questionnaire:

What flat rate allowance do you receive for sleeping in at work?	£ _____
Or do you receive one of the following?	
<input type="checkbox"/> None <input type="checkbox"/> Single time <input type="checkbox"/> Time and a half	<input type="checkbox"/> Double time <input type="checkbox"/> Time and a quarter <input type="checkbox"/> Other (give details below)
Please give further details below:	

Working Hours Questionnaire:

Does an Agreement exist?		Yes <input type="checkbox"/>	No <input type="checkbox"/>	Not Known <input type="checkbox"/>
Bargaining Level	<input type="checkbox"/> Local Agreement <input type="checkbox"/> Local variation on a National Agreement			
Operative Date (dd/mm/yyyy)				
Standard hours		_____ hours per week		
Contractual Overtime		_____ hours per week		
Regional Variation		_____ (hours) for either <input type="checkbox"/> London or <input type="checkbox"/> Southeast		
Comments				