



# A Negotiator's Guide to Working Time Regulations

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## I. INTRODUCTION

### WORKING TIME REGULATIONS - A NEGOTIATORS GUIDE

The Working Time Regulations give effect to the Working Time Directive which was adopted back in 1993 as a health and safety measure.

The Regulations came into force on 1 October 1998, introducing new rights and obligations relating to working time and rest periods. The Regulations were a significant step forward and have had a positive impact in the UK for a number of reasons:

- They clearly establish that working time is a health and safety issue.
- They allow for working time to be regulated through collective bargaining. Many sections of the Regulations are up for negotiation and give unions a key, pivotal role in determining work patterns and arrangements.
- Despite continuing problems, the regulations challenged the growth in excessive working hours and ensured employers became responsible for unhealthy working practices.
- The Regulations are less than clear in parts and are unnecessarily complex. Many questions will continue to arise and in the final analysis only the courts will be able to give a definitive answer.

This Negotiators Guide seeks to explain what the Working Time Regulations are and how they should be applied in the workplace.

## 2. WHAT THE REGULATIONS COVER

The regulations cover:

Maximum Working Weekly Hours  
Night Working  
Shift Working  
Patterns of Work  
Daily Rest  
Weekly Rest  
Rest Breaks  
Annual Leave

Each area is dealt with in detail elsewhere in this booklet.



### 3. WHO IS COVERED?

It is UNISON's view that all groups of UNISON members are covered by the Regulations. Any attempt to suggest otherwise should be challenged.

The exceptions as they apply are set out in Part III of the Regulations. Regulation 18-27 provide for particular regulations not to apply, either to workers engaged in certain types of work or where particular circumstances arise.

The Regulations originally did not originally apply to workers employed in the transport sector. This has now been changed. Since August 2003, workers subject to European Drivers' hours rules (Generally anyone in a vehicle that is required to have a tachograph) is entitled to 4 weeks paid annual leave and health assessments if a night worker.

Mobile workers not covered by European drivers' hours rules will be entitled to an average 48 hours per week, 4.8 weeks paid holiday, health assessments if a night worker and adequate rest.

For more information on the details of these exemptions visit: <http://www.dft.gov.uk/pgr/freight/road/workingtime/rdtransportworkingtimeguidance?page=3>

#### UNISON CHECKLIST

##### COVERAGE

Decisions will need to be made about whether particular workers fall within a sector or not. The work location will not necessarily determine exclusion and not every worker working in a specific area will be deemed to be covered by the exclusion. The activity or work undertaken will be the key determinant.

Negotiators should ensure that members working in airports, inland waterways or the transport sector are not excluded from the scope of the Regulations.

##### MEMBERS IN THE CIVIL PROTECTION SERVICES

The police and other employees in the civil protection services, which include the ambulance service and the fire service are excluded to the extent that their duties 'inevitably conflict' with the provisions of the Regulations.

#### UNISON CHECKLIST

##### COVERAGE

It is UNISON's view that the key words here are 'inevitably conflict'. The duties of UNISON members working within the police service, ambulance service and fire service do not conflict with the Regulations.



Members working in these sectors are currently covered by existing health and safety measures, members should similarly be covered by this new piece of legislation.

### MEMBERS ON “UNMEASURED TIME”

Workers in this category are excluded from all rights with the exception of the right to paid annual leave. For a worker to be placed in this category the following criteria must apply:

The duration of working time is not measured or predetermined;

The duration of working time can be determined by the worker himself.

The Regulations offer three examples of groups who may fall into this category. These are:

Managing Executives with autonomous decision-taking powers;

Family workers;

Workers officiating at religious ceremonies.

## **UNISON CHECKLIST**

### COVERAGE

The examples cited within the Regulations will continue to cause confusion. It has been suggested workers with managerial responsibility should be placed in this category. This is not the case. The key tests here are whether working time is measured or predetermined and whether the person has autonomous decision-taking powers. Many workers, particularly managers, may be able to work flexibly, their hours may not be predetermined but their working time will be measured.

Similarly, there are very few workers, even at a senior level who have autonomous decision-taking powers.

### MEMBERS CLASSED AS SPECIAL CASES

Regulation 21 sets out a lengthy list of areas of work where workers involved in certain activities will not receive the limit on hours worked at night, daily rest break of eleven consecutive hours, weekly rest period of twenty four hours, and other rest break of twenty minutes after working six hours:

Groups included are:

Where the place of work and residence are distant, or where different places of work are distant from one another;

Security and surveillance activities requiring a permanent presence;

Where continuity of service or production is required;



Where there is a foreseeable surge of activity such as tourism;  
activities which are affected by unforeseen or exceptional events or emergencies.

## UNISON CHECKLIST

### COVERAGE

This Regulation seriously weakens the impact of the new legislation. The list of special cases covers the very workers who are often in need of daily and weekly rest.

Negotiators should seek agreement on which members are covered by this category. The examples set out in the Regulations are only illustrations and the word 'may' bears this out. It is the characteristics of a worker's activity which will help to determine who is in which particular group.

The Special Cases category should not be seen as an opportunity for employers to exclude large groups of workers from the provisions of the law. UNISON will challenge any blanket exclusion introduced. Even where a member falls within this group, it should be made clear that the employer is still responsible for the worker's health and safety, the worker still benefits from the other provisions such as annual leave, night worker protections and patterns of work and equivalent compensatory rest must be granted.

Negotiators should seek justification as to why groups of workers or individual members have been excluded.

### EQUIVALENT COMPENSATORY REST

Where groups of workers fall within the special cases category, workers must be given an equivalent period of compensatory rest.

An equivalent period of rest should be considered to be a period of rest as long as the worker was entitled to but not able to take. Such time should be taken within a couple of weeks.

The Regulations unfortunately insert the words 'wherever possible'. It has been suggested that exceptional circumstances where it is not possible to take compensatory rest "will be rare". Examples given include where a worker is leaving or where a company/organisation is closing down.

### COLLECTIVE AGREEMENTS

There is provision within Regulation 23 for a collective agreement to modify or exclude the regulations applying to the Special Cases Group of Workers.



## 4. WHAT IS WORKING TIME?

The Regulations include a limited definition which states a worker must be:

Working;

At their employer's disposal; and

Carrying out their activity or duties.

The Regulations do allow for the definition to be extended through collective agreement.

### UNISON CHECKLIST

#### DEFINITION

Because of the restrictive definition of working time, negotiators should use the option of adding to the definition.

Areas that should be covered in any agreement are on-call, stand-bys, call outs, sleep-ins, travel to work time, travel between locations, civic and public duties and breaks.

It is also essential that time allowed for trade union duties and activities is defined as working time.

## 5. MAXIMUM WEEKLY WORKING HOURS

#### REGULATION 4 & 5

The average working time for each seven day period should not exceed forty eight hours.

This can be averaged out over a reference period of 17 weeks and the reference period can be extended by collective agreement.

There is a right for an individual to opt out of this regulation.

An employer must keep up-to-date records of workers who opt out of this regulation.

#### EXCEPTIONS

Unmeasured time category.



## UNISON CHECKLIST

### GENERAL

Negotiators should check existing agreements to see if they are consistent with the Regulations. Where more favourable provisions exist within an existing collective agreement, these provisions remain.

### DEFINITION

There is still considerable confusion about what exactly constitutes working time. The definition (see page 6) is restrictive and negotiators should use the provision within the Regulations which allows for working time to be defined by collective agreement.

### OVERTIME

The 48 hour calculation includes overtime. Negotiators will need to consider the amount of overtime worked by particular groups. Some workers will welcome the restrictions on unpaid overtime but there are many who rely on overtime to earn a living wage. Problems may arise when the employer tries to curtail the amount of overtime worked. Negotiators will need to handle this situation sensitively.

### OPT-OUT

Some employers may attempt to coerce workers into signing an opt-out form. Others may use the opt-out as a condition for employing them or for promotion. Negotiators will need to make sure that members do not sign forms under duress. There is a provision within the regulations for a member to suffer no detriment or victimisation.

If members choose to sign the opt out form negotiators should ensure that members are made aware of their right to terminate the opt-out by giving seven days notice.

### RECORDS

As there is a requirement on the employer to keep up-to-date records, negotiators should argue for the right to inspect those records and question their accuracy.

### MULTIPLE JOB HOLDING

UNISON members may have more than one job. As employers now have an obligation to ensure their workers do not exceed a total of 48 hours working time per week, some may enquire if their workers are working elsewhere.

Negotiators should ensure that employers do not abuse this provision and that members are advised of this possibility and support and advice is available if necessary.



## 6. NIGHT WORK

### REGULATIONS 6 & 7

A night worker's normal working hours should not exceed an average of 8 hours in each 24-hour period.

This can be averaged over a reference period of 17 weeks.

An absolute limit of eight hours in any 24 hours period applies to a worker whose work involves special hazards, heavy physical or mental strain. Special hazards and heavy physical or mental strain are to be defined by collective agreement or risk assessment.

An employer must keep accurate records of hours worked, night workers and existing hazards.

Night workers are entitled to a free confidential health assessment.

A right for night workers to be moved to day work.

A right for night workers to be transferred to day work if a worker is unfit for such work.

### EXCEPTIONS

Unmeasured time category;

Limits on night work do not apply to special cases.

## UNISON CHECKLIST

### GENERAL

Negotiators should check existing agreements to see if they are consistent with the Regulations. Where more favourable provisions exist within an existing collective agreement, these provisions remain.

### DEFINITIONS

A night worker is somebody who works at least three hours during night time or a majority of their working days or sufficiently often as a normal course. Workers on a rotating shift pattern are deemed to be night workers.

The term night time is defined as a period of not less than seven hours between the period of 12 00 midnight and 6 00 am. This can be amended by collective agreement and negotiators should press for the widest possible definition, ie from 10 00 pm to 7 00 am to ensure the inclusion of a larger group of members.



## SPECIAL HAZARDS

The Regulations allow unions and employers to draw up the list of workers who will benefit from this protection. Negotiators should ensure that the list is as comprehensive as possible and covers not only those who are exposed to special hazards but also workers whose work involves heavy physical and mental strain.

Negotiators may also wish to consider using the risk assessment facility.

## HEALTH ASSESSMENTS

Negotiators should ensure that all night workers are made aware of their right to a free regular health assessment.

The Regulations do not reflect the spirit of the Directive and refer to an initial “screening questionnaire”. Negotiators should be arguing for a full health assessment to be carried out by a qualified medical practitioner who is independent of the employer.

Members should be advised that the health assessment is confidential and can only be released to an employer with the worker’s written consent.

For health checks to be of any value to a member, negotiators should be arguing for health checks to take place on an annual basis.

## TRANSFER TO DAY WORK

An employer should not assign a worker to night work if it is clear that the worker is unfit for such work. A worker should be transferred to day work wherever “it is possible” to do so.

The Regulations are silent about what should happen if the employer claims no day work is available. Negotiators should ensure that every effort is made to facilitate or transfer at the earliest possible opportunity and that a member suffers no loss of pay. An employer has a duty of care to every worker; failure to take action may result in legal proceedings.

## EQUAL TREATMENT

The Regulations state that an employer has a duty to take all reasonable steps to ensure the health and safety of night worker. Many night workers do not have access to many of the facilities/information or training available to day workers.

Negotiators should ensure that night workers are treated no less favourably than day workers and that employers take on board the health and safety needs of night workers. This may include access to a rest room, access to training, or risk assessments.



## 7. PATTERN OF WORK

### REGULATION 8

A worker should be given adequate rest breaks if the work pattern is deemed to be monotonous or the work rate pre-determined or such as to put the health and safety of a worker at risk.

### UNISON CHECKLIST

#### GENERAL

Negotiators should check existing agreements to see if they are consistent with the Regulations. Where more favourable provisions exist within an existing collective agreement, these provisions remain.

#### ARTICLE 13

Regulation 8 supposedly transposes Article 13 of the Working Time Directive. It is UNISON's view that the Regulation does not comply and fails to embrace the important principle of 'adapting work to the worker'.

Article 13 states that Member States shall take the measures to ensure that an employer who intends to organise work according to a certain pattern takes account of the general principle of adapting work to the worker, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate, depending on the type of activity, and of safety and health requirement, especially as regards breaks during working time.

Negotiators should rely on the original Directive when discussing working patterns with employers. Article 13 sets out a clear ergonomic principle. It emphasises the general duty of care that employers owe to their workforce in all aspects of work organisation.

## 8. DAILY REST

### REGULATION 10

A worker is entitled to a rest period of eleven consecutive hours per twenty four hour period.

#### EXCEPTIONS

Unmeasured time category;  
Special cases category;  
Shift workers.



## UNISON CHECKLIST

### GENERAL

Negotiators should check existing agreements to see if they are consistent with the Regulations. Where more favourable provisions exist within an existing collective agreement, these provisions remain.

### ENTITLEMENTS

Daily rest and weekly rest are separate entitlements. This would mean a break of 11 hours plus 24 hours should be taken (see regulation 11).

### EXCEPTIONS

Negotiators should ensure that the exceptions are applied correctly and that workers are not unnecessarily denied a daily rest break. It is the characteristics of a workers activity which should determine whether or not they are an exception.

### SHIFT WORKERS

If a shift worker cannot take the required period of daily rest between the end of one shift pattern and the beginning of the next they are automatically denied this right. This will affect those on split shifts and quick turnarounds.

Negotiators should ensure that where people work through what should be a rest period, the members concerned are granted and take the “equivalent period of compensatory rest”.

### COMPENSATORY REST

Where members do fall within one of the exceptions categories, the worker has a legal right to an “equivalent period of compensatory rest”. Members should be actively encouraged to take their “compensatory rest” as quickly as possible.

Negotiators should challenge an employer who claims it is not possible for the rest to be taken due to ‘exceptional circumstances’. The DTI’s Guidance makes it clear that ‘exceptional circumstances’ will be rare and cites two examples - where the worker leaves the job or where a business closes down. Inconvenience for the employer will not be deemed to be acceptable.

Employers may need to reassess current shift or rota patterns. Negotiators should ensure that employers build in provision for workers to take their compensatory rest.



## 9. WEEKLY REST

### REGULATION 11

A worker is entitled to an uninterrupted rest period of not less than 24 hours in each seven day period.

### EXCEPTIONS

Unmeasure time category;  
Special cases category;  
Shift work.

## UNISON CHECKLIST

### GENERAL

Negotiators should check existing agreements to see if they are consistent with the Regulations. Where more favourable provisions exist within an existing collective agreement, these provisions remain.

### ENTITLEMENTS

Daily rest and weekly rest are separate entitlements. This would mean a break of 11 hours plus 24 hours should be taken (see regulation 10). Weekly rest can also be granted as one uninterrupted rest period of not less than 48 hours in each 14 day period.

### EXCEPTIONS

Negotiators should ensure that the exceptions are applied correctly and that workers are not unnecessarily denied their weekly rest period. It is the characteristics of a workers activity which should determine whether or not they are an exception.

### SHIFT WORKERS

If a shift worker cannot take the required period of weekly rest between the end of one shift pattern and the beginning of the next, they are automatically denied this right. This will affect those on particular shift patterns.

Negotiators should ensure that where people work through what should be a rest period, the members concerned are granted and take the "equivalent period of compensatory rest".

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Employers may need to reassess current shift or rota patterns. Negotiators should ensure that employers build in provision for workers to take their compensatory rest.

## **10. REST BREAKS**

### REGULATION 12

A worker is entitled to a rest break of twenty minutes where the working day is longer than six hours.

Where possible, the break should be taken away from the work station.

The length of the rest break can be amended by collective agreement.

### EXCEPTIONS

Unmeasured time category;  
Special cases category.

## **UNISON CHECKLIST**

### GENERAL

Negotiators should check existing agreements to see if they are consistent with the Regulations. Where more favourable provisions exist within an existing collective agreement, these provisions remain.

Negotiators should seek to use the collective bargaining provision to improve upon the 20 minute minimum set out in the Regulations.

Negotiators should ensure that rest breaks are paid and form part of the working day.

During negotiations on rest breaks reference should be made to Regulation 8 (Pattern of Work) and attempts made to extend this provision to a wider group as possible.

### EXCEPTIONS

Negotiators should ensure that the exceptions are applied correctly and that workers are not unnecessarily denied a daily rest break. It is the characteristics of a workers activity which should determine whether or not they are an exception.



## SHIFT WORKERS

If a shift worker cannot take the required period of weekly rest between the end of one shift pattern and the beginning of the next, they are automatically denied this right. This will affect those on particular shift patterns.

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Negotiators should challenge an employer who claims it is not possible for the rest to be taken due to 'exceptional circumstances'. It has been suggested that 'exceptional circumstances' will be rare. Two examples are cited - where the worker leaves the job or where a business closes down. Inconvenience for the employer will not be deemed to be acceptable.

Employers may need to reassess current shift or rota patterns. Negotiators should ensure that employers build in provision for workers to take their compensatory rest.

## **II. PAID ANNUAL LEAVE**

### REGULATIONS 13-16

The statutory holiday entitlement increased to 4.8 weeks (24 days if you work a five day week) from 1 October 2007. It will increase further to 5.6 weeks (28 days if you work a five day week) from 1 April 2009, pro-rata for those working part-time.

The leave year, where not covered by collective agreement, begins on 1 October. Workers should receive a week's pay for each week of leave.

## **UNISON CHECKLIST**

### GENERAL

Negotiators should check existing agreements to see if they are consistent with the Regulations. Where more favourable provisions exist within an existing collective agreement, these provisions should remain.

### PUBLIC HOLIDAYS

The Regulations remain silent on the question of public holidays. Negotiators should argue that public holidays are in addition to the entitlement.



## QUALIFICATION

A worker can only qualify for their paid annual leave entitlement after 13 weeks continuous employment. The Directive makes no mention of a qualification period. Negotiators may wish to raise this issue in discussions.

## TRANSITION PERIOD

The transition from three weeks to four will create considerable confusion and extra work for many employers. Negotiators should suggest to employers that they implement the four week provision immediately.

## NOTICE REQUIREMENTS

The notice requirements set out in the Regulations are unnecessarily complex and biased in favour of the employer. Existing collective agreements take precedent and negotiators should ensure that such matters are tightly regulated by a collective agreement.

## **12. COLLECTIVE AGREEMENTS**

The Working Time Regulations contain considerable scope for flexibility, enabling unions and employers to adapt the detail of the law to their own particular circumstances.

Reference is made to three types of agreements which are:

Collective agreements;

Workforce agreements;

Relevant agreements.

It should be noted that workforce agreements only apply where no independent trade union is recognised for collective bargaining.

A relevant agreement is any agreement which is legally enforceable between an individual worker and the employer.

## **UNISON CHECKLIST**

Negotiators should maximise the opportunities in the Regulations and seek to negotiate around the issues raised in the checkpoints in this booklet.

The Regulations give Trade Unions a key, pivotal role. Opportunities for organisation and recruitment should be taken up.



### **13. ENFORCEMENT**

The Regulations will be enforced in a number of ways.

The limits on weekly working time, night working and the right to health assessments for night workers will be enforced by the Health and Safety enforcing authorities, ie the Health and Safety Executive and Local Authority Environmental Health Officers.

The entitlements to weekly rest, daily rest, rest breaks and paid annual leave will be enforced through the Employment Tribunal system.

Workers whose entitlements are denied or who suffer detriment as a result of asserting their rights, may make a complaint to an Employment Tribunal.

Where a complaint is upheld the Tribunal can make an employer pay compensation to the worker.

#### **UNISON CHECKLIST**

Where members have a query or complaint relating to the Working Time Regulations they should in the first instance contact their steward or branch secretary. Further advice and assistance is available from regional officers, service groups, and the policy and research department.