

**Bargaining Support Group**



**Bargaining  
on working  
hours**

**UNISON**  
*the public service union*

## **BARGAINING ON WORKING HOURS**

### **Introduction**

This guide is intended to assist negotiators in bargaining over the key features of working hour arrangements. It breaks down the topic into five main areas:

- Firstly, it offers arguments to help make the case in any attempt to reduce the basic working week for staff, built around working time norms and the proven benefits of reduced hours;
- Secondly, it sets out the important factors in ensuring working hours arrangements protect the health and safety of staff, in terms of the basic minimums of the Working Time Regulations and addressing the particular dangers of shift work;
- Thirdly, it highlights steps to prevent working time arrangements having a discriminatory impact on the workforce ;
- Fourthly, it puts forward the case for establishing genuine flexible working options for staff without allowing that agenda to be utilised by employers to impose arrangements on their terms that erode terms and conditions. A model flexible working agreement is also provided to assist the case.
- Finally, where hours lie outside basic contractual terms, the guide sets out the benchmarks against which a case can be made for maximizing compensation for the workforce, covering such payments as unsocial hours, standby allowances, call-out charges

Throughout the guide, bargaining checklists are offered within each section to summarise the most important actions

To jump to a particular part of the guide, follow the contents listing overleaf.

If you have any feedback that could improve the content of the guide, contact Bargaining Support at [bsg@unison.co.uk](mailto:bsg@unison.co.uk)

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## **Making a case to reduce basic hours with no loss of pay**

### **Background**

Reducing the working week has long been a key element in the goals of the trade union movement. And with expectations of automation accelerating in the workplace, the issue has re-emerged strongly over recent years.

This has been reflected in the TUC placing the four-day week on the agenda and the Labour Party's decision to commission the Skidelsky report, which came down in favour of a 35-hour week across the public sector within 10 years.

Skidelsky phrased this conclusion as follows: "The government should set itself the task of achieving a 35-hour working week in the public sector and in all those occupations in which it is party to the employment contract over ten years without loss of pay and with improved quality of service in all those occupations in which it is party to the employment contract. This would set a norm for the whole economy."

Within UNISON, service groups have picked up on this agenda, with Higher Education pressing for a 35-hour working week across all universities and Local Government seeking a two-hour reduction in the standard working week for NJC workers, over recent pay rounds.

The case to reduce basic hours with no loss of pay is frequently first presented to an employer as part of an annual pay claim. Though an option at any time, such a strategy can prove particularly useful when an organisation's budget for pay rises is tight, as reduced hours raise the pay rate without the need for injections of extra cash.

A branch is on the strongest ground in presenting this case to the employer when it can demonstrate that the hours worked by the workforce it represents are in excess of norms for the economy as a whole, the relevant sector in which the employer operates or other roles within the employer's operations.

## Norms for the working week - national averages

Across the economy, the Office for National Statistics Annual Survey of Hours and Earnings indicates that the median basic hours worked by a full time worker in 2021 stood at 37.5 hours. The private sector average is slightly higher at 37.6 hours, while the public and not-for-profit sectors are slightly behind at 37 hours and 36.9 hours respectively.

	Whole economy	Private sector	Not for profit sector	Public sector
Average full-time basic hours	37.5 hours	37.6 hours	36.9 hours	37 hours

The difference between the average working week in the public and private sector is sometimes used to attack the public sector with claims that its workers enjoy “privileged” conditions in comparison to their private sector counterparts. These crude comparisons fail to take account of the following points:

- The private sector contains a higher proportion of manual workers than the public sector and the working week for manual workers is traditionally higher than non-manual workers;
- The private sector covers a multitude of small employers where longer hours are more commonplace than in larger employers. Around 90% of public sector employees work in large organisations (employing 500 or more staff), whereas less than half of private sector employees do so;
- Union representation itself is liable to play a part in the differential, with the much higher level of union membership in the public sector helping to hold down hours more successfully than in the private sector, where union membership is often low.

## Norms for the working week - bargaining group averages

Within the bargaining groups covering the majority of UNISON’s membership, the 37 hour working week is dominant, as reflected by the table below.

Bargaining Group	Standard Working Week
NHS (Agenda for Change)	37.5 hours
Local Government NJC	37 hours
Local Government SJC	37 hours
Police Staff (England and Wales)	37 hours
National Probation Service	37 hours
Sixth Form Colleges	37 hours
Youth & Community Workers	37 hours

Within bargaining groups such as NHS Agenda for Change, the nationally agreed working week is rigorously adhered to by trusts. Among others, such as local government, the nationally agreed guidelines are frequently amended through local negotiations. For example, some councils have a 35-hour working week and agreements for a 36-hour week are not uncommon.

Universities and further education colleges do not have a national standard working week, so the individual authorities are left to agree their own arrangements. A UNISON Freedom of Information survey conducted in 2019 found that the average working week among university support staff was 36.2 hours. Over half of employers (55%) had achieved a rate less than 37 hours, with 35 or 36 hours forming the usual benchmark in those cases.

In Scotland, further education support staff have a standard 35-hour week.

Among schools and academy chains across the UK, it is usual to abide by local government NJC / SJC standards.

Many national agreements set a separate lower rate of 36 hours for workers in London. This applies to Sixth Form Colleges, Metropolitan Police staff, National Probation Service staff, local government NJC, and youth & community workers. There is also a tendency for some authorities to set a lower working week for their lower graded staff.

In the Civil Service, most departments tended to adhere to agreements that set the standard working week at 37 hours outside London and 36 hours in London. However, since 2013, those arrangements have mostly been changed to establish 37 hours as the standard throughout the UK for any new starters, and in some cases these are the terms imposed on promotion.

Within sectors where there is variation in the working week, the opportunity arises to press for hours to be reduced to the lowest achieved in the sector. For staff employed in privatised parts of the public services, TUPE may have successfully kept hours in line with the bargaining group from which they were transferred, but where this is not the case or for workers who were not transferred the standard working week of the bargaining group is liable to form a powerful target.

If you would like more specific data on average contracted hours for employers in a sector, the Bargaining Support may be able to assist on [bsg@unison.co.uk](mailto:bsg@unison.co.uk)

## Benefits of a reduced working week

Particularly where it is difficult to use the leverage of better terms to be found elsewhere in a sector, the argument for reduced hours without a reduction in pay has to be built around the benefits that the policy can deliver for employers. That case can be summarised as follows:

### *Sharing the benefits of automation*

The advance of technology into the service industry can be seized upon by employers to bring in automation that delivers cost savings and greater cash surpluses for the organisation. In some cases, this process can come at the expense of the workforce, through either job cuts or, more commonly, the introduction of monitoring procedures that intensify the pace of work.

However, the introduction of technology can also offer an opportunity for arguing that reduced hours should accompany the process as a way of ensuring the benefits of technology are shared.

This was the basis for probably the most substantial recent UK agreement on hours reduction of recent years and the further example cited below:

- The Communication Workers Union reached an agreement with Royal Mail in 2018 to achieve a cut in the standard working week from 39 hours to 35 hours with no reduction in pay, phased in over stages to 2022. The background to the agreement was that automation of parcel sorting reduced the time workers were allocated to sorting and increased the time allocated to delivery. The union argued that this would have a damaging effect on staff health and presented evidence on the workload impact, alongside making the case that fairness demanded the benefits of automation should be shared between workers and shareholders.
- Other examples have also emerged in the private sector. In 2019, business insurance company Simply Business announced that it would move its Northampton based call centre to a four-day week with no reduction in pay. The move reduced the standard working week from 37.5 to 30 hours for 250 workers and represented a trialling of shorter hours in recognition that technological changes had served to improve productivity

### *Boosting productivity, staff wellbeing and recruitment / retention*

The following section sets out the principal pieces of research on the impact of the working week, alongside practical examples of where reductions have been applied and the outcome for the employers concerned:

- An exhaustive review of all published evidence on the impact of long hours for the then Department of Trade Industry found a clear correlation with lower productivity, poorer worker performance, health problems and lower employee motivation;<sup>1</sup>
- A 2017 study of call centre staff found that longer hours resulted in average call handling times rising, making agents less productive as the day wore on.<sup>2</sup>

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<sup>1</sup> Institute for Employment Relations, Working Long Hours: A Review of the Evidence, 2003

<sup>2</sup> IZA Institute of Labor Economics, Working Hours and Productivity, April 2017



- Over 2014 and 2015, nurses in Gothenburg retirement homes worked six hour rather than eight hour days in what was known as Sweden's Svartedalen experiment. Nurses maintained their existing wage and additional staff were employed to cover the loss in hours. Analysis of the results suggested that nurses benefited from improved health and the homes experienced reduced sick leave, improved productivity and higher quality of service.
- The City of Reykavik and the BSRD union reached an agreement to launch a trial in 2015 with over 300 local authority employees reducing their work by four or five hours a week. A report into the impact found that sickness had declined and employee satisfaction had risen, with no loss in overall productivity. As a result the trial was made permanent and extended to 2,200 workers.
- Gothenburg's Toyota factory moved mechanics to a six hour day, resulting in a cut in the working week from 40 hours to 30 hours. The company found that output rose by 14% and profits by 25%, while a spokesperson note that "staff feel better, there is lower turnover and it is easier to recruit new people."

Some employers may have some sympathy with the idea of a limited reduction in hours but remain nervous of its impact on the services delivered and sceptical of the benefits. To allay some of those fears, it may be useful to consider whether there would be any opportunity for trialling the new arrangements and / or taking a staged approach to meeting the ultimate goal.

Equally, workers may need to be wary of the workload consequences of cutting hours and consider seeking a [workload agreement](#) where there are concerns that workloads will be pushed beyond acceptable levels.

## Checklist 1

- 1) Consider appropriate timing for putting the working week on the bargaining agenda, based on priorities of the workforce, the financial position of the employer and the opportunities provided by events such as the introduction of new technology in the workplace
- 2) Where possible, make a case for reducing the working week built around fairness, through comparisons against national and sectoral norms or discrepancies for roles within the organisation
- 3) Where possible, make a case for reducing the working week built around sharing the benefits of technology
- 4) Back up the case with the available evidence of benefits in terms of productivity, staff wellbeing and recruitment / retention
- 5) Consider whether trialling and / or a staged approach would assist in persuading the employer

## Ensuring the pattern of hours protects staff health

In addition to bargaining on the basic hours worked per week, the arrangement of working hours must meet the minimum standards of the Working Time Regulations and bargaining should push for improvements on those minimums to offer the maximum protections to staff health. This section seeks to set out the material to assist branches in achieving those goals.

### Working Time Regulations

The Working Time Regulations (WTR) gave effect to the European Union Working Time Directive (WTD), 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. Regulations applicable to [Great Britain](#) were accompanied by separate legislation for [Northern Ireland](#).

The definition of what counts as 'working time' is crucial in understanding the core rights found in the WTR and WTD. Essentially, it must be shown that the worker was:

1. Working (including attending job-related training)
2. Carrying out duties; AND
3. At the employer's disposal.

A rest period is a period which is not working time, other than a rest break or annual leave. It must also be known as such from the outset.

### Core rights

The core rights that the Working Time Regulations provide in relation to hours worked are:

- 48-hour limit on the average working week<sup>3</sup>;
- Uninterrupted 11 hours continuous rest in every 24-hour period worked for the employer;
- Uninterrupted 24 hours rest in every seven day period;
- 20 minute rest break, away from the workstation, in every work period over six hours;
- 8-hour limit on average working hours in a 24-hour period for night workers;
- 5.6 weeks paid annual leave each year for each full-time worker<sup>4</sup>;
- Employers must keep and maintain suitable records to show compliance

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<sup>3</sup> Express exclusions to this include those who agree to opt out on this limit and employers can alternatively require rest to be taken as 2 x 24 hours in 14 days or 1 x 48 hours in 14 days.

<sup>4</sup> A pro rata amount applies for part-time workers. Separate UNISON bargaining guide on leave entitlement is at <https://www.unison.org.uk/bargaining-guides/>

## Coverage

The WTR only apply to those who are legally classified as a “worker,” which means that the genuinely self-employed and volunteers are outside its protections. This distinction on employment status has become less clear, particularly for those employed on ‘sham’ self-employment terms in some industries.

Some very specific categories of workers are also excluded<sup>5</sup>, but these groups are not usually found among the sections of the workforce that UNISON represents.

Further exclusions apply to specific parts of the regulations:

- A very specific set of workers whose working time is judged to be [unmeasured](#), such as managing executives and family workers, are exempt from the maximum working week, maximum duration of night work, daily rest periods, weekly rest periods and rest breaks. Unmeasured work applies where “the duration of ... working time is not measured or predetermined,” but instead “can be determined by the worker.”
- The regulations also allow workers to be excluded from the rights to limits on night working, daily rest, weekly rest and rest breaks where they are classified as [special cases](#). The most relevant groups to UNISON’s membership are workers engaged in security activities or businesses that require continuity of service, such as “reception, treatment or care provided by hospitals or similar establishments and residential institutions,” as well as “gas, water and electricity production, transmission and distribution, household refuse collection and incineration.”
- Exceptions from certain WTR rights because ‘continuity of service’ is needed only apply to the activities of the worker, not the general business of the employer. Whether a worker falls into this category will be a question of fact. For example, an employer may need to provide 24-hour care for residents of a care home, but it is only if there is a case that a particular individual must provide continuity of service that the exemption could apply. Advice should be sought through the regional office where employers attempt to apply such an exemption.
- [Shift workers](#) can be excluded from the rights to daily and weekly rest where there is an insufficient gap between the end and start of shifts. This principally applies where a worker changes shift pattern or works split shift over a day.

Exemptions to daily and weekly rest are subject to a compensatory rest provision, which is set out below.

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<sup>5</sup> Such as school aged children, domestic servants, merchant seafarers, workers on board sea-going fishing vessels, mobile workers in certain transport sectors and certain activities of the armed forces, police or other civil protection services.

## Calculation

In assessing whether staff working patterns are violating the Working Time Regulations it is necessary to calculate the working time hours worked. This can sometimes be complicated. It is important to remember the three points that must be proven to show whether a period is “working time” (see above), so for example:

- Paid overtime is normally included in the calculation but voluntary overtime normally is not. The difference will often be whether the individual is at the employer’s disposal or not;
- Job related training and working lunches are normally included;
- Work taken home at the request of the employer is normally included, but working from home voluntarily is not;
- Responding to telephone calls while on call is normally included, but responding to telephone calls out of hours voluntarily is not;
- Some trade union duties (eg attending health and safety meetings) have been found to be working time<sup>6</sup>, but this will not always be the case;
- Time spent on standby or on-call at the workplace is normally included, but when away from the workplace, only time actually spent working is generally included.

The position regarding travelling time is complicated, as there is a difference which largely depends on whether or not the worker has a fixed or habitual place of work.

It is very important to remember that the WTR specifically permits additional periods of working time to be agreed in a “relevant agreement”<sup>7</sup>.

This presents a significant bargaining opportunity, as potentially there could be a collective agreement that confirms agreement of “working time” in certain circumstances when the WTR would not normally permit its inclusion. There are other ways in which collective agreements can be used to modify what the WTR provides, which are detailed below.

## Treatment of stand-by and on-call

This topic has been an area of significant debate and litigation over the years, with interpretation of rights under the WTD in European law heavily influencing how UK courts have determined the position domestically under the WTR.

Two judgments<sup>8</sup> of the European Court of Justice (‘ECJ’) confirmed that all ‘on-call’ time constitutes working time if the worker is required to be in the workplace rather than at home, even if the worker is asleep for some or all of that time. More recently, the ECJ held that where a worker’s freedom to engage in non-work activities during on-call time spent at home is ‘severely impacted’<sup>9</sup>, then that time must be working time.

On-call time spent at a place determined by the employer is likely to be working time, even if there is a low chance of being called upon to perform duties, but the position is not yet clear for when the worker is on-call or stand-by at home.

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<sup>6</sup> Edwards v. Encirc Limited, UKEAT/0367/14

<sup>7</sup> Reg. 2 WTR permits modification of some rights. Aside from collective agreements, it can also include workforce agreements (for parts of a workforce not represented by a trade union) and individual agreements, such as in the contract of employment.

<sup>8</sup> SIMAP v. Conselleria de Sanidad y Consume de la Generalidad de Valenciana (2000) and Landeshauptstadt Kiel v. Jaeger (2003). Both cases involved doctors whose work involved periods of being on-call

<sup>9</sup> Ville de Nivelles v. Matzak (2018), a case which involved a firefighter who must respond within eight minutes from home to the workplace when on-call.

Much will depend on facts that show the extent to which the worker's rest has been severely impacted by being ready to work at short notice.

The issue of "sleep-ins" at work is a related topic that UNISON has campaigned on. Although there are some similarities between rights under the WTR and the National Minimum Wage ('NMW') legislation, there are some significant differences in calculating the hours worked. In particular, the NMW legislation is purely domestic and does not have any European legislation that underpins it. UNISON has a separate bargaining guide in relation to the NMW available at <https://www.unison.org.uk/bargaining-guides/>.

### **Treatment of travelling time**

Neither the WTD nor the WTR define whether travel to and from a place of work, or between places of work, should be considered as working time.

The ECJ<sup>10</sup> has found that for peripatetic workers (who are not assigned to a fixed or habitual place of work), working time may include periods spent travelling from home to the first client of the day and from the last client to home. The workers were at the employer's disposal, as the employer could change the order and volume of customer visits on their journeys to and from work each day. Separately, a decision of the Court to the European Free Trade Agreement<sup>11</sup> found that a worker with a single workplace who had to travel from home to an assignment elsewhere was able to count this as working time.

Travelling time will normally be working time if travelling is an intrinsic or necessary part of the worker's activities. Travelling from home to work will not usually be working time, but there are some important exceptions.

Some employers may respond by creating notional workplaces for staff. Branches should be vigilant of such practices and if there is reason to believe a workplace is a sham collect evidence to enable the union to challenge any attempt to get around the ruling and deny entitlements under the Working Time Regulations.

Peripatetic workers should keep copies of their rotas and payslips to assist any challenge to an employer over violations of the regulations through failure to include travel time in the calculation of working time.

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<sup>10</sup> Federacion de Servicios Privado del sindicato Comisiones Obreras (CCOO) v. Tyco Integrated Security SL & other (2015)

<sup>11</sup> Thorbjorn Selstad Thue v. Norwegian Government (2016). Note that decisions of the EFTA apply to Iceland, Lichtenstein, Norway and Switzerland rather than members of the EU.

## Maximum weekly working hours

The average working time for each seven-day period must not exceed 48 hours. The worker's entitlement to a weekly rest period is at the discretion of the employer (so is normally set out in the contract of employment), but it must include one of the following:

- Not less than 24 hours' uninterrupted rest in each seven-day period during which the worker works for their employer; or
- Two uninterrupted rest periods of not less than 24 hours in each 14-day period; or
- One uninterrupted rest period of not less than 48 hours in each 14-day period.

In any given week, working time may vary from the 48-hour limit, but averaged out over a reference period of 17 weeks it must not exceed 48 hours. The reference period can be extended by a relevant agreement and individual workers have the right to opt out of the 48 hour limit.

This is the **only** part of the regulations where an opt-out can apply, but employers must still ensure that this does not risk their health and safety (for example, through "compensatory rest"<sup>12</sup> or TOIL).

Workers under the age of 18 may not be employed for more than 40 hours a week.

Unless there is something alternative set out in a relevant agreement, the 7-day or 14-day periods begin at midnight between Sunday and Monday.

There is no explicit requirement in the WTR to keep records to show compliance with the rules on rest periods and rest breaks, but following a recent decision of the ECJ<sup>13</sup>, there is serious doubt on whether the current UK legislation complies with the WTD.

Currently, the record-keeping requirement means an employer must show the average weekly working time limit, the night work limits, and the provisions on health and safety assessments for night workers, are being complied with for each worker.

### *Bargaining points*

- Some employers may attempt to coerce workers into signing an opt-out form, while others may try to use the opt-out as a condition of employment or promotion. Branches will need to be vigilant for cases of members signing an opt-out under duress or employers imposing any kind of detriment on workers who refuse to sign. Such violations of the regulations can be pursued through an employment tribunal<sup>14</sup>, as set out in the enforcement section later in this guide.
- 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. The TUC model letter for opting back in is available [here](#).
- The requirement to retain records provides a useful tool for checking compliance.

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<sup>12</sup> It only applies to "special case" workers, "shift" workers, or where a collective or workforce agreement stipulates this.

<sup>13</sup> *Federacion de Servicios de Comision Obreras (CCOO) v. Deutsche Bank SAE* (2019), which held that employers must have a system to measure daily working time hours of all workers

<sup>14</sup> S.45A Employment Rights Act 1996 or A68A of the Employment Rights (NI) Order 1996 in Northern Ireland.

## **Daily and weekly rest**

A worker is entitled to a rest period of 11 consecutive hours in each 24-hour period during which they work for the employer.

Workers under the age of 18 may not be employed for more than eight hours on any day.

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

However, this can be replaced by two uninterrupted rest periods of not less than 24 hours in each 14-day period, or one uninterrupted rest period of not less than 48 hours in each 14-day period.

### *Bargaining points*

- Considering a relevant agreement that provides an equivalent period of compensatory rest for any period of the legislatively required rest missed. Members should be actively encouraged to take their “compensatory rest” as quickly as possible.
- Consideration should be given to challenging an employer who claims it is not possible for the rest to be taken due to “exceptional circumstances” and putting in place planning to avoid sharp changes in shift requirements.
- Negotiators may need to push for shift or rota patterns to be changed to allow appropriate rest periods or to build in provision for workers to take their compensatory rest.

## **Rest breaks**

A worker is entitled to a rest break of 20 minutes (away from their workstation, if they have one) where the working time is longer than six hours, but the length of the rest break can be amended by collective agreement.

Workers under the age of 18 (but over compulsory school age) have the right to a minimum rest break of 30 minutes in every working day lasting more than four and a half hours.

The regulations contain a further “pattern of work” provision that a worker must be given adequate rest breaks if the work pattern is deemed to be monotonous, the work rate is pre-determined or arrangements put the health and safety of a worker at risk.

### *Bargaining points*

- The WTR provide a minimum provision for rest breaks and should always be viewed within the employer’s duties to protect health and safety of its workers.
- The collective bargaining provision offers an opportunity to improve upon the 20 minute minimum set out in the regulations and the “pattern of work” provision can offer arguments to support additional entitlement.
- Negotiators should seek to ensure that the rest breaks are treated as part of the working day and are therefore paid breaks.
- Enforcement of rest breaks should be in line with regulation specifications that they take place away from the “workstation”



## Night working

The WTR contain specific provisions for night workers<sup>15</sup> which are in addition to the limits on average weekly working time.

A night worker's normal working hours must not exceed an average of eight hours in each 24-hour period. There is an actual limit of eight hours for night work involving special hazards, heavy physical or mental strain.

Again, this can be averaged over a reference period of 17 weeks. However, 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.

In general, workers aged under 18 cannot work any time between 10pm and 6am, though this can be varied to the period 11pm to 7am.

Night workers are entitled to free health assessments at regular intervals and, if health issues associated with night work are identified, they have the right to transfer to day work where a suitable role can be identified.

Employers are obliged to take all reasonable steps to ensure the eight-hour average limit on work is complied with. Employers are also required to keep records to show compliance with the limits on night working for each worker and must retain records for at least two years.

### *Bargaining points*

- The night period can be amended by collective agreement as long as it lasts for seven hours and includes midnight to 5am. Therefore, this flexibility allows bargaining to achieve the most advantageous definition for classifying workers as night workers.
- All night workers need to be made aware of their right to a free regular health assessment, which is confidential and can only be released to an employer with the worker's written consent.
- Agreements with employers should target full health assessments on an annual basis conducted by a qualified medical practitioner who is independent of the employer.
- It's important to monitor that night workers are treated no less favourably than day workers and ensure 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.

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<sup>15</sup> This includes workers who normally work for at least three hours during "night time" (11pm-6am, unless otherwise defined in a relevant agreement), or do so on the majority of shifts.

## Enforcement

If negotiations with the employer fail to address violations of the Working Time Regulations, options are worth exploring with your regional officer for initially pursuing a complaint through the ACAS Pay and Work Rights Helpline (telephone: 0300 123 1100, website: [Acas Helpline Online](#)) (in Northern Ireland, advice can be obtained through the Labour Relations Agency Workplace Information Service on 03300 555 300)

Many members are likely to be worried about making a complaint and so union reps can contact the helpline on their behalf, presenting the case in a way that preserves the anonymity of the worker(s) affected throughout the process.

If this route fails to reach a resolution, speak to your regional officer about the possibility of submitting a collective grievance and beyond that taking an employment tribunal case. The Working Time Regulations have traditionally formed the most common type of case going before employment tribunals.

Generally speaking, claims to an employment / industrial tribunal must be brought within three months less one day of the breach of the WTR complained about. This can sometimes be complicated to calculate, as it will often involve identifying when the employer refused to permit the worker to exercise the relevant right<sup>16</sup>, so it is important to get advice as soon as possible.

Limits on weekly working time, night working and the right to health assessments for night workers are enforced by the health and safety enforcing authorities - the Health and Safety Executive and Local Authority Environmental Health Officers. Conviction for offences on these issues in a magistrates' court in England and Wales or the sheriff court or high court in Scotland can result in the employer receiving an unlimited fine or imprisonment for a maximum of three months.

Where a complaint is upheld by an employment tribunal, the tribunal can make an employer pay compensation to the worker. Tribunals can make an award based on what is "just and equitable in all the circumstances" and in cases involving detriment that has been suffered, compensation for injury to feelings may also be available.

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<sup>16</sup> See the separate guide on leave and holiday pay at <https://www.unison.org.uk/bargaining-guides/> to understand how the WTR rights overlap with claims of unlawful deductions from wages.

## Particular dangers of shift work

Working unsocial hours that extend into the night is known to have a negative impact on health. Extensive research has shown that such shift work disrupts the body's daily cycle and affects the quality / quantity of sleep.

People working outside normal waking hours are more likely to suffer from ill health, more likely to have accidents, and more likely to make mistakes. This may not only be bad for the health and safety of the worker, but also their colleagues and the public.

Although there is no conclusive evidence that shift working is especially bad for older workers, there is evidence that, the more years spent shift working, the greater the impact on health. Similarly, among women, studies have suggested that long-term night-shift working doubles the chance of developing breast cancer<sup>17</sup>.

A review of research on shift work for the Health and Safety Executive found that:

- Shift workers tend to die younger than day workers, with prolonged lack of sleep seen as the most likely cause;
- Sleep deprivation causes a range of problems and most shift workers find it difficult to catch up on sleep, particularly if they have family responsibilities;
- Tiredness is worse on night and early morning shifts, accidents are more likely to occur during night shifts and people are least alert in the early hours of the morning;
- Shift workers suffer more digestive disorders and ulcers due to a variety of causes that include stress and irregular meal times;
- Nervous disorders, including anxiety and depression, are also more common among shift workers;
- Shift workers are 40% more likely to suffer heart disease than day workers;

These risks need to be highlighted to employers and action can be taken to protect staff, not only on the basis of the Working Time Regulations, but also the following core elements of health and safety legislation:

- All employers have a general duty under Health and Safety at Work 1974 legislation (in Northern Ireland, the Health and Safety at Work (Northern Ireland) Order 1978) to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees. This can offer protection if evidence is established that arrangements are leading to ill health or accidents caused by fatigue.
- Under the Management of Health and Safety at Work 1999 Regulations (in Northern Ireland, the Management of Health and Safety at Work Regulations (Northern Ireland) 2000) employers must carry out a suitable and sufficient risk assessment in the workplace to identify potential hazards and take measures to eliminate or control them. This would include any risks associated with shift work.

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<sup>17</sup> Grundy A, Richardson H, Burstyn I, et al, [Increased risk of breast cancer associated with long-term shift work in Canada](#), Occupational and Environmental Medicine.

Regulation 6 requires employers to carry out health surveillance of employees if the risk assessment has shown this to be necessary. Regulation 16 says that where there are women of childbearing age in the workforce any risk assessment must take account of how hazards may affect the health and safety of new or expectant mothers.

Risks may be removed by putting in place measures of prevention or control, including changing working conditions / hours or suspension on full pay if reasonable. The mother has a right to be offered suitable alternative work if available before suspension.

A suitable alternative means suitable to her particular skills and circumstances. In addition, the terms and conditions of any new work cannot be substantially worse than her former terms of employment. [These protections come from section 67 and 68 of the Employment Rights Act 1996 in Britain and article 99 and 100 of the Employment Rights (Northern Ireland) Order 1999 in Northern Ireland].

If she works at night and has a medical certificate that says she should not, again the same provision applies as to suitable alternative work if available, with similar terms and conditions, or if not available, suspension so long as is necessary on full pay.

The employer may require the production of a certificate confirming the pregnancy. This should then be supplied within a reasonable time, otherwise the employer need not continue providing the alternative work, hours or paid suspension.

Union reps should also be mindful of the health and safety implications of travelling to and from work at unusual hours, particularly for female staff, and press consideration of these issues on the employer.

The risk assessment required under the *Management Regulations* includes the risks of work-related stress. Health and Safety Executive guidance on *stress at work* states that work schedules that are inflexible and over-demanding can trigger or worsen work-related stress. The guidance states that flexible work schedules and planned / agreed work hours help to reduce stress. This means that employees should not be expected to stay late, get in early, do overtime or change shifts at short notice or without their agreement.

[Health and safety legislation is covered more fully in UNISON's [The Health and Safety Six Pack](#) ]

When negotiating shift work agreements, the following health and safety issues should be born in mind:

- Avoid shift arrangements that demand rapid “rotation” from one shift time slot to another and “backward” rotating shifts that demand jumping direct from morning to night shifts;
- Working regular nights can be less disruptive to family / personal life than regularly changing to and from night shifts. However, workers should be made aware of the possible negative consequences of prolonged night work;
- Overlaps between shifts are important to ensure that the incoming shift is fully briefed. The shorter the changeover period, the greater the risk that vital information is not passed on;
- Split shifts that demand an extended break, leaving a worker in limbo while they wait for their working hours to resume, should be avoided;
- Ensure that members are consulted before new shift patterns are agreed. New patterns should be subject to a trial period with a review at the end where members are consulted again;
- Shift patterns should be predictable and staff should know which shift they will be working well in advance. This is particularly important for those with caring responsibilities. Management should not expect staff to change shifts or work extra shifts at short notice;
- Night workers should have access to the same facilities as day workers. This includes facilities for hot meals and drinks, rest areas, first aid and accident reporting arrangements;
- Safe travel arrangements should be in place for workers travelling to and from work late at night or early in the morning;
- Night workers should have the same access to training as other workers;
- Seek regular health checks for shift workers, in line with Health and Safety recommendations.
- Night workers generally need more and longer breaks than other workers. This is particularly important for workers who drive, or operate machinery, as part of their work. Managers should also check that workers who have worked long and tiring shifts are fit to drive home. Some employers even go as far as arranging transport home, by for example paying for taxis, when they worked particularly long shifts;
- Best practice research from the HSE and others supports the benefits of a short period of sleep or “power nap” of around 20 minutes during an authorised break as a way of coping with fatigue during a night shift. Some staff may benefit from such arrangements being clearly permitted in an agreement to avoid any potential conflict with line managers.

## Ensuring the pattern of hours avoids discrimination

Equality legislation can offer a means to challenge arrangements for working outside of standard hours where there is reason to believe groups with [protected characteristics](#) may be disadvantaged. The Public Sector Equality Duty requires public authorities in England, Wales and Scotland to promote equality of opportunity and eliminate discrimination for service users and staff (in Northern Ireland similar requirements are placed on public authorities under Section 75 of the Northern Ireland Act 1998).

The general equality duties do not impose a legal requirement to conduct equality impact assessments. However, equality impact assessments remain the most reliable way of demonstrating that equality issues have been given due regard prior to changes such as new unsocial hours policies. In addition, the specific duties that apply to [listed bodies](#) are more prescriptive in requiring published analysis of the impact of a policy on equality. Furthermore, even if a listed body has privatised a service to a contractor, they remain liable for enforcement of equality duties. UNISON's full range of equality materials, setting out the implications of the Equality Act and other legislation in detail can be found on the UNISON website at [Equality Duties](#)

However, the most significant equality issues that are specific to shift workers often revolve around whether working patterns are indirectly discriminatory to women with caring responsibilities. Rotating shifts that vary from day to day or week to week, a requirement to work overtime or vary a shift at short notice, as well as shifts with late finishing hours (and possibly dangerous travel home), may be open to challenge on this basis.

This type of situation was illustrated by the case of the *Chief Constable of Avon & Somerset Constabulary v Chew*. In that case, the Employment Appeal Tribunal upheld the tribunal's ruling that the requirement for a female police officer to adhere to the shift patterns required by the constabulary's part-time working policy was indirectly discriminatory, as fewer women than men could comply with the requirement.

UNISON has separate bargaining guides on discrimination and equality issues at <https://www.unison.org.uk/bargaining-guides/>. If you believe that shift patterns may be discriminatory, please contact your regional office for further advice as soon as possible. Generally speaking, the relevant employment time limit will be three months less one day from the date of the alleged discriminatory act or omission complained about.

## Checklist 2

- 1) Press for break rights to be publicised among staff and instructions to be issued to managers making clear their responsibility to ensure breaks are taken.
- 2) Seek audit of official working hours to check compliance with Working Time Regulations.
- 3) Conduct accompanying check among staff for any pattern of regular rest period violations.
- 4) Ensure data on the accident rate and patterns of sickness absence are jointly assessed by the employer and unions to identify any possible contribution of working time arrangements.
- 5) Press for regular risk assessments for any particularly vulnerable group of workers.
- 6) Demand an equality impact assessment whenever a significant change is made to working time arrangements.
- 7) Consider the most advantageous amendments to the basic regulations that can be established through collective agreement for the workforce.

## Building flexibility into working patterns for employees

### Introduction

Offering genuine flexibility to staff in working hours that enable them to strike the right balance for them between their work and personal lives can form an important part of any bargaining agenda on working hours.

For the workforce, an array of flexible working options can form a vital component in controlling working hours to achieve a healthy workplace, while also assisting particular groups, such as those with caring responsibilities or disabled workers, to remain and advance within an organisation.

Therefore, this section of the guide sets out the arguments that can be deployed to persuade the employer to adopt or widen its flexible working policies, the important points for ensuring a fair and consistent scheme, and the pitfalls to be avoided.

### Making the case

In making the case to an employer for flexible working options, the following benefits can be emphasised:

- *Valued and talented workers are retained, reducing recruitment costs*

At Calderdale and Huddersfield NHS Foundation Trust, turnover fell from 14% to 8% within two years of introducing a flexible working scheme<sup>18</sup>. Given that average recruitment costs currently stand at £2,000 per job, when in-house resourcing time, advertising, agency and search fees or all taken into account<sup>19</sup>, such gains can have a major impact on organisational finances.

Employers are competing for staff in a labour market where flexible working options are commonplace – 63% of public sector workplaces, and 52% of private sector and voluntary sector workplaces, have a flexible working collective agreement<sup>20</sup>.

- *Staff productivity and commitment improves*

Studies by Kingston University found that workers on flexible contracts tend to be more emotionally engaged, more satisfied with their work, more likely to speak positively about their organisation and less likely to quit<sup>21</sup>.

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<sup>18</sup> CIPD, Enabling Flexible Working, 2019

<sup>19</sup> CIPD, Resourcing and Talent Planning Survey, 2017

<sup>20</sup> TUC, Union Reps' Experiences of Flexible Working and Parental Leave, July 2021

<sup>21</sup> Kent University, Working Life: Employee Attitudes and Engagement, 2006



- *Sickness absence declines*

Some of the most compelling evidence on the benefits of flexible working are in relation to staff health. A study by Durham University reported that flexible working interventions that increase worker control and choice are likely to have a positive effect on health outcomes<sup>22</sup>. Other academics found that flexibility was associated with lowered stress and burnout,<sup>23</sup> while the exhaustive Chartered Institute for Personnel and Development (CIPD) flexible working survey uncovered that 35% of workers experience a positive effect on their mental wellbeing from flexible working<sup>24</sup>.

- *Applications are drawn from a wider talent pool*

Alongside the role of flexible working in retaining staff, an array of flexible working options can also assist recruitment in drawing applications from talented individuals who would be unable to apply for roles built on rigid working hours because their circumstances would preclude them.

- *A workforce of greater diversity develops*

Disabled employees, workers with caring responsibilities, young employees looking to balance work with education and older workers looking to step down their commitments, are frequently those most likely to reject inflexible working hours. Therefore flexibility can draw in the different skills and approaches that such diverse groups can bring to an organisation. In addition, flexible working can form a concrete step toward reducing any disparity revealed by the legal requirement to report the gender pay gap.

Pulling all these strands together, a study by the CIPD found that 56% of employers that made flexible working practices available reported positive benefits while just 9% saw negative consequences<sup>25</sup>. Interestingly, these studies also frequently suggested that the signal that the availability of a flexible working scheme sends to the workforce about the value their employer places on them is as much responsible for generating benefits as the actual take-up.

In addition to the summary of benefits shown above, negotiators may find it useful to utilise the CIPD Flexible Working Business Case on the link below in making the case to an employer

[https://www.cipd.co.uk/Images/flexible-working-business-case\\_tcm18-52768.pdf](https://www.cipd.co.uk/Images/flexible-working-business-case_tcm18-52768.pdf)

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<sup>22</sup> Durham University, Flexible working conditions and their effects on employee health and wellbeing, 2010

<sup>23</sup> Grzywacz, Carlson and Shulkin, Schedule flexibility and stress: Linking formal flexible arrangements and perceived flexibility to employee health, 2008

<sup>24</sup> CIPD, Megatrends Flexible Working, 2019

<sup>25</sup> CIPD, Megatrends Flexible Working, 2019

## Establishing the options

Figures published by the Office for National Statistics in 2017 suggest that around one in four of the workforce is on some form of flexible working, though when adjusting to bring the classification of flexible working closer to UNISON's conception of what is genuinely flexible for the employee that figure drops closer to one in five.

The range of flexible working options to push for as part of a scheme are as follows:

- *Part-time working*

The definition of part-time working is normally taken to mean any contract based on less than 30 hours a week

- *Flexitime*

Schemes that usually set core working hours, such as 10.00 to 12.00 and 14.00 to 15.00, but allow staff flexibility outside of those times over start and finish times as long as contracted hours are fulfilled over a defined period, such as a month. The schemes sometimes allow a restricted number of flexi days leave to be taken where sufficient time has been built up and a limited number of hours or days to be carried over into the next period.

- *Job sharing*

Usually, two part-time employees sharing the working hours and pay of a single full-time job.

- *Compressed hours*

Schemes that allow contracted hours for a defined period to be worked over a shorter number of days than is standard, such as regularly working slightly longer days for nine days so that the 10<sup>th</sup> can be taken off.

- *Home working*

Schemes that allow working from home to be permitted on a regular and / or ad-hoc basis.

- *Term-time working*

Term time working in educational authorities is plainly a part of the job for many roles (though the terms and conditions for doing so can vary). However, outside of the education sector, some employers can also offer term-time working as a genuine flexible working option in recognition of the commitments facing those with dependants in education.

- *V-time*

Voluntary reduced working time allows employees to drop their hours for a temporary period while setting a clear date for returning to a standard working week.

Studies suggest that part-time working, flexitime and homeworking are the most popular forms of flexible working. However, gathering the views of members can help inform the priorities for flexible working options.

Annualised hours schemes are also sometimes included among flexible working options. Annualised hours can specify the number of hours to be worked over the year and then allow complete flexibility over when those hours are worked, though it is more common to have rostered hours and reserve hours. Rostered hours are set in advance while the reserve hours allow the employer to call on the employee at shorter notice.

However, this arrangement can easily veer toward a form of flexibility that is much more favourable to the employer than the employee. Though not as extreme as zero hours contracts, they can share some features, putting staff at the beck and call of employers, potentially leaving staff without hours for sustained periods then cramming extensive hours into other periods of the year. Those fluctuations may be entirely at odds with the demands made on staff outside of work and throw work-life balance into disarray rather than ease it.

Annualised hours also point toward a note of caution that can also be applied to flexible working more generally. Negotiators need to balance the benefits for individuals of flexible working with the potential that some forms have for undermining traditional forms of payment for working outside standard hours - overtime, unsocial hours, standby and on-call payments - which are dealt with in the next chapter.

Allowing employers to extend flexible working into arrangements that are of dubious benefit to staff can also accentuate one negative research finding of flexible working that it can “impact on team cohesion, which reduces team effectiveness, especially for teams with highly interdependent tasks.”<sup>26</sup> It is easy to see that this may extend into trade union organisation, with fragmentation of hours arrangements into a multitude of different terms reducing the solidarity needed to achieve a common set of improved terms.

The balance of flexible working with these other factors has to be a judgement based in each case on the relative benefits and priorities of members.

## **Establishing the terms**

This guide sets out in the appendix a model flexible working agreement that can be used as a starting point for discussions on introducing or revising a policy.

However, the key points for putting in place a policy are set out below:

- The flexible working options available to staff should be publicised widely across the organisation, utilising the full range of communication channels, from email to intranet, newsletters to meetings.
- If the scheme is to be applied fairly and consistently, management training must stress the value of flexible working and the objective criteria used to judge applications.
- Managers’ resistance to flexible working can be based on perceived problems in ensuring adequate cover and flexible working can fuel staff resentments where it is mishandled. Many of these problems can be addressed by emphasising the importance of advanced planning of work schedules for flexible working to function smoothly.
- Trade union involvement should run throughout the planning, implementation, monitoring and revision of flexible working schemes.

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<sup>26</sup> ACAS, Flexibility in the Workplace, 2017

- Consideration should be given to the running of pilots where an entirely new scheme or new features of an existing scheme are introduced to iron out teething problems before full adoption.
- There should be a presumption that flexible working will apply to all occupations and grades of work, including management. Without wide-ranging application, senior posts can often be closed off from groups within the workforce that are most reliant on flexible working.
- As a useful safeguard against an employer abusing flexible working a “right to disconnect” should be established that allows staff to turn off mobile phones, laptops or any other form of IT communications equipment outside of the specified hours and so accepts that there is no responsibility on staff to respond to communications outside of those hours.
- Flexible working schemes should be subject to monitoring and scheduled review. The scale of take-up and the composition of take-up can usefully run alongside the collection of feedback from staff on its functioning. Reviews can assess the changing opportunities for flexible working that often arise from the introduction of new technologies into an organisation’s operations.
- Though the right to request flexible working is enshrined in law for any employee with at least 26 weeks service (under [British legislation](#) and [Northern Ireland legislation](#)), the union should press for that right to be made available to all staff on appointment. The law aims for the process to be completed within three months of the request being received (including appeals). In practice, a survey conducted by the TUC found that at least half of workplace agreements gave an absolute right to flexible working for at least some staff, rather than simply the right to request<sup>27</sup>.
- The organisation’s procedure for staff to apply, consider and respond to requests should be clearly set out, using [ACAS](#) (or [LRA](#) in Northern Ireland) guidelines as a baseline:
  - The application should be in writing stating the date of the request, whether any previous application has been made and the date of that application (as only consideration of only one request is permitted by law in any 12 month period, though it should be acknowledged that this should not be applied rigidly if circumstances change during that period);
  - The application should state what change to working conditions is being sought;
  - If the request is being made on the basis of fulfilling the requirements of the Equality Act 2010 (for Northern Ireland legislation see this [UNISON summary](#)) - for example, as a reasonable adjustment for a disabled worker.
  - A meeting should take place within 28 days to discuss the request.
  - A response should be provided within 14 days, either approving the request or setting a meeting for discussion, where clarifications can be made or compromises and alternatives can be explored.
  - If the employer refuses the request they should confirm that in writing giving clear reasons for the refusal within the 14 days.

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<sup>27</sup> TUC, Union Reps’ Experiences of Flexible Working and Parental Leave, July 2021

- An appeal should be available that goes to a different senior position than the individual's usual line manager. The appeal should be made within 14 days, with the employer having to arrange a meeting within a further 14 days and provide a response within a further 14 days.
- Accompaniment by a trade union representative should be permitted throughout the process.
- Workers should be made aware that any request that is accepted will make a permanent change to the employment contract, so consideration should be given to trialling an arrangement if the employee is uncertain.
- The NHS offers a useful precedent for obtaining favourable terms on flexible working schemes, since changes were introduced for [England in 2021](#) which stated that its scheme would guarantee:
  - A contractual right to request flexible working from day one of employment;
  - No limit on the number of requests and the right to make them regardless of the reason;
  - New requirements for centralised oversight of processes to ensure greater consistency of access to flexible working including an escalation stage for circumstances where a line manager is not initially able to agree a request;
  - Expectation that employers will promote flexibility options at the point of recruitment and through regular staff engagement through one-to-ones, health and well-being conversations, appraisals and team discussions.

The full flexible working terms for NHS Agenda for Change staff across all four nations of the UK are set out in [section 33](#) of the Agenda for Change Handbook.

More in depth guidance on flexible working, particularly the details of assisting staff make an application, can be found in UNISON's [Flexible Working: Making it Work](#) guide, while more detail on legal requirements, particularly in relation to discrimination, can be found in UNISON's [Flexible Working and Gaps in the Law](#) guide.

Additional guidance on specific forms of flexible working can be found on these links

[Home and hybrid working guidance](#)

[Term-term working guidance](#)

If you are seeking examples of flexible working agreements made in specific sectors, contact Bargaining Support on [bsg@unison.co.uk](mailto:bsg@unison.co.uk)

### **Checklist 3**

- 1) Set out the case for flexible working to the employer, emphasising the proven benefits to organisational effectiveness
- 2) Put forward a strong range of flexible working options that are built around genuine flexibility for the employee and achieving improved work-life balance
- 3) Consider the balance of flexible working with its possible impact on existing arrangements for premium payments
- 4) Utilise UNISON's model flexible working agreement as a basis for negotiating the operation of the scheme

## **Winning compensation for working beyond basic hours**

Employers use a range of methods that are all intended to compensate staff for the inconvenience of working outside of what are commonly regarded as standard working hours.

Unsocial hours payments are typically paid for regular contracted hours that involve working during evenings, nights, weekends or bank holidays.

These payments are treated separately to overtime, which covers work beyond standard hours on an occasional basis, usually in response to a particular spike in the demand for services.

Some employers refer to unsocial hours as enhanced shift payments, particularly in sectors that lean toward providing services on a 24-hour, seven-day-a-week basis.

Employers also commonly utilise standby payments to compensate staff for having to be ready to work outside normal hours if required and call-out payments if a member of staff is actually called upon to work during those hours.

All of these methods offer a much more preferable way of achieving flexibility in providing services than the use of insecure contracts, such as zero hours arrangements, which can be used by employers to undermine these type of payments while eroding employment rights.

UNISON's guide on resisting the use of insecure contracts can be found on this link <https://www.unison.org.uk/bargaining-guides/>

## Unsocial hours and overtime payments

### *Benchmarks for bargaining over the “window” for night work*

While there is little controversy over the applicability of unsocial hours payments to regular contracted hours at weekends or bank holidays, the times classified as qualifying for payments during week day nights can vary significantly.

Within the largest UNISON bargaining groups, the night “window” is most commonly set at 8pm to 6am. However, probation services has a nationally agreed “window” at 7pm to 8am, local government administrative workers in Scotland have a window from 8pm to 8am and a wide variety of local terms can be seen later in this guide.

Set against these UNISON terms, the table shows average terms in call centres and care homes, as well as comparators for reference in the NHS, central government and retail.

Sector	7pm	8pm	9pm	10pm	11pm	12am	1am	2am	3am	4am	5am	6am	7am	8am
Local Government (NJC)														
Local Government (SJC)*														
NHS Agenda for Change														
Police														
Probation														
Call Centres														
Care Homes														
Central Government														
Retail														

Sources: OME NHS Pay Review Body Report 2015 / IDS report on seven day working practices 2015 / UNISON Bargaining Agreements Database

\*Former APT&C staff



### Benchmarks for bargaining on the hourly rate

The table below sets out nationally agreed rates for night, weekend and bank holiday working, along with overtime rates among UNISON bargaining groups where national agreements are in place.

- For night work, time and a third is the typical rate, though higher rates been achieved for NHS Agenda for Change staff on the lowest band.
- For weekend working, time and a half is the typical rate, though rates near or at double time have been achieved for the lowest graded staff on NHS Agenda for Change and local government NJC terms and conditions.
- For bank holidays, double time is the most frequent rate, usually with time off in lieu (TOIL) in addition.
- Overtime rates are most commonly time and a half for Monday to Saturday and double time for Sundays and bank holidays.
- Some employers make reduced additional payments for “irregular hours” which do not fall within the night window but still impose a level of inconvenience. For instance, both the Scottish SJC and Police Staff Council for England and Wales pay between 7.5% and 10% on top of normal salary for one to one a half hour slots before and after the normal working day.

Staff group	Night window	Night rate	Saturday rate	Sunday rate	Bank Holiday rate	Overtime rate
<b>Local government national terms (for England, Northern Ireland and Wales)</b>						
NJC staff	8pm – 6am	T+33%	T+50%	T+50% or T+100%*	T+100% plus TOIL	T+50% (Mon - Sat) T+100% (Sun & BH)
<b>Local government national terms (for Scotland)</b>						
SJC staff**	8pm – 8am	T+33%	T+50%	T 50%	T+100% plus TOIL	T+50% (Mon - Sat) T+100% (Sun & BH)
<b>Health Agenda for Change national terms***</b>						
AfC Band 1	8pm – 6am	T+47%	T+47%	T+94%	T+94%	Bands 1-7
AfC Band 2	8pm – 6am	T+41%	T+41%	T+83%	T+83%	T+50% (Mon - Sun)
AfC Band 3	8pm – 6am	T+35%	T+35%	T+69%	T+69%	T+100% (BH)
AfC Band 4-9	8pm – 6am	T+30%	T+30%	T+60%	T+60%	
<b>Police staff national terms (for England and Wales )</b>						
	8pm – 6am	T+33%	T+50%	T+50%	T+100% plus TOIL	T+50% (Mon – Sun) T+100% (BH)
<b>Probation Service national terms</b>						
	7pm – 8am	T+30%	T+50%	T+50%	T+50% plus TOIL	T+50% (Mon - Sat) T+100% (Sun & BH) or TOIL depending on grade

\*T+50% applies to pay point 12 or above, T+100% to pay point 11 or below \*\* Rates listed are for former APT&C staff \*\*\* Separate arrangements for ambulance staff are set out [here](#)

## Summary of bargaining points for agreements

- The material above shows the norms for hours and rates that can be used to argue that these should at least form the minimum terms necessary for fair reward of staff and for the employer to avoid damage to their ability to recruit and retain quality staff. The material also illustrates the best terms achieved for hours and rates that can form the basis for driving terms up.
- The deals shown demonstrate that it is commonplace for unsocial hours agreements and overtime rates to specify better terms for lower paid staff, reflecting the greater expectations on higher paid staff to work outside of their normal hours.
- There is also frequently scope for increasing the bank holiday rates applicable for Christmas and New Year's Day, with the best deals allowing for triple time on those days.
- Overtime arrangements normally specify half an hour as the minimum extra time worked to qualify for the overtime rate, but agreements should be careful not to allow extension beyond this point.
- Part-time workers do not qualify for overtime payment until they have met the hours threshold applicable to full time workers. However, agreements should seek clarity that unsocial hours / overtime arrangements apply to staff on all forms of contract to prevent undermining of agreements.
- Where TOIL is specified as compensation for working unsocial hours, three months is the most frequently defined timeframe for taking of the leave.

### Resisting spurious comparisons with the retail sector

The retail sector has a culture of not paying unsocial hours premia for working outside normal hours. This is particularly commonplace at weekends / bank holidays and even where staff are paid for night work the "window" is much smaller than most sectors. For this reason, some employers seek to use retail arrangements as a comparator for driving down rates.

However, the conditions in the retail sector that have enabled employers to impose these arrangements are quite specific. Highly extended opening hours have long been established as a norm across the sector and employers have been able to draw on a significant pool of students workers, whose personal / family circumstances often mean that they are less disadvantaged by unsocial hours..

When NHS employers sought to make a comparison with retail, the NHS Pay Review Body responded that the comparison was 'inappropriate' for the following reasons:

- Staff who work in retail tend to work in this sector on a short-term basis, whereas staff that work in the police service or NHS tend to join for a career and stay long-term.
- Where an employer needs well-trained and qualified staff to work unsocial hours, unsocial hours premia act to incentivise staff to work these hours, whereas retail staff can be trained more quickly and therefore there is lesser need to incentivise working these hours given that the pool of staff in the labour market for retail jobs is greater.

## Standby and call-out payments

### *Benchmarks for bargaining on rates*

The payments made to staff for remaining on standby, ready to be called into work if necessary, are shown below for a variety of sectors where UNISON represents members, while the payments made for call-out are shown on the second table.

Standby payments		
Employer	Period	Amount
Local Authorities (England, Wales & Northern Ireland) NJC	Any day	Social Workers Allowance of £29.83 per occasion
Local Authorities SJC	Any day	Social Workers Allowance of £31.28 per occasion
	Weekday	£9.32 per day
	Saturday	£19.86 per day
	Sunday / BH	£27.07 per day
	Week	£93.68 per week
NHS Agenda for Change	Weekday / weekend	£19.95 per occasion
	Bank holiday	£39.90 per occasion
Police Staff Council (England and Wales)	Any day	£31.57 per occasion
Police Staff Council (Scotland)	Any day	£24.56 per day
Further Education Support Staff	Week	£100 per week
Environment Agency	Weekday	£16.14 per day
	Weekend / Bank holiday	£26.91 per day
	Week	£134.53 per week
	Xmas Day	£53.78
Scottish Power Energy Networks	Any day	£69.95 - £135.53 per day depending on seniority
	Bank holiday	£41.36 per day
	Xmas, Boxing, NY Day	Between £57.88 and £98.91
	Week	£216.04 per week
Scottish Power Energy Retail	Monday - Saturday	£25.57 per day
	Sunday / BH	£36.51 per day
	Week	£188.94 per week
	Xmas, Boxing, NY Day	£45.61 per day
Western Power Distribution	Weekday	£44.55 per occasion
	Friday / Weekend / BH	£89.10 per occasion
	Week	£445 per week
Thames Water (non OOHC staff)	Weekday	£14.78 per day
	Saturday	£22.17 per day
	Sunday / BH	£29.57 per day
	Xmas, Boxing, NY Day	Between £57.88 and £98.91
	Week	£125.65 per week

Source: Labour Research Department, UNISON Bargaining Agreements Database

Call-out payments				
Employer	Period	Call out fee	Rate for hours worked	Minimum hours paid
Local Authorities SJC	Any day	£14.96 (on standby) £20.58 (not on standby)		0
Further Education Scotland	Any day	T+50% (on standby) T+100% (not on standby)		2
Police Staff Council (England and Wales)	Mon-Sun	0	T+50%	0
	BH	0	T+100%	0
Police Staff (Scotland)	Any day	£24.56		
Probation Service	Mon-Sat	0	T+50%	0
	Sun/BH	0	T+100%	0
British Gas (Field Staff)	Any day	150% of normal rate		0
Environment Agency	Christmas Day	£50.43 (not stand-by)		
		£100.87 (not stand-by)		
Scottish Power Energy Retail	Normal day off	£82.87		0
	Bank holiday	£155.92		0
	Normal working day	£46.40		0
Scottish Power Energy Networks	Any day	£71.75		0

Source: Labour Research Department, UNISON Bargaining Agreements Database

## Summary of bargaining points for agreements

- The tables reflect that standby payments can be made on a daily or weekly basis, with rates tending to increase from weekday to weekend and then bank holiday (accompanied by extra payment for Christmas and New Year's Day).
- Call-out fees can be made through a flat payment, an increased rate for the hours worked or a combination of the two. Rates are often higher where a worker is not on standby and many agreements establish a minimum payment for two hours, even if fewer hours are actually worked.
- Where enhanced rates are paid for call-out, time and a half for Monday to Sunday, along with double time for Sundays and bank holidays, are the almost universal rates.
- The best call-out agreements establish that payment begins as soon as the worker receives the call and ends at the point the worker returns home (or completes the job if working from home). As a minimum, call-out agreements should meet the commonplace arrangement for workers to be paid for travel time.
- Standby and call-out agreements should also provide clarity about expectations of how quickly a worker should respond to a call, avoiding any excessively restrictive demands on workers during standby.

## Shift arrangements

As noted earlier, among some employers, unsocial hours are treated in terms of shift payments, particularly in areas that have established patterns of extended hours that lean toward 24-hour, seven-day-a-week working.

The most common types of shift patterns include permanent morning or night work, rotating shifts, alternating shifts and split shifts.

Rotating shifts involve working one set of hours for a period and then rotating to a different set of hours. It is not unusual for rotating shifts to divide the work day into three eight-hour periods and schedule workers to move between them on a regular pattern

Alternating shifts often apply to lesser time periods, such as two shifts of eight hours, while split shifts break the working day into two, with an extended break between the shifts.

The table below provides a small sample of the additions to basic pay that are paid for shift types in sectors where UNISON represents members.

	Rotating	Alternating	Static night	Split
<b>North Ayrshire Council</b>	17%		33.3%	
<b>Surrey County Council</b>		£1,241 annually		
<b>Wolverhampton City Council</b>	10%	5%		5%
<b>Sheffield University</b>	18%	11%		
<b>Police staff (England and Wales)</b>	12.5% to 20% dependent on number of hours			
<b>National Grid (non industrial staff)</b>		13.5% - 5 day week 20.8% - 7 day week	20.3% - 5 day week 31.2% - 7 day week	

\*Former APT&C staff

Source: UNISON Bargaining Agreements Database, Labour Research Department

Shifts will normally be set a defined period in advance, with subsequent changes attracting further compensation.

For instance, start and finish times for work schedules are set at least three months in advance for police staff in England and Wales. If changes are made to agreed hours at less than five days notice, staff are entitled to double time on hours worked up to a maximum of 7.4 hours. Someone who works on a day that is not scheduled they receive double time and TOIL, with that TOIL normally taken within two weeks.

The NHS specifies that changes made within 24 hours of scheduled shifts require a compensatory payment of £15.

The Living Wage Foundation's [Living Hours campaign](#) is now seeking to set minimum standards on shift notification, calling for a notice of period of at least four weeks, with guaranteed payment if shifts are cancelled within the notice period.

However, as demonstrated by the police example, the terms achievable will vary greatly by sector and within the public sector terms will often be far superior to the foundation's minimum.

## Organising among staff working non-standard hours

### *Gathering information*

A key first step in organising staff working non-standard hours can be to establish such basic points as the number of workers on shifts, their location in the organisation and the roles they fulfil. Where UNISON is recognised for collective bargaining by the employer, the general duty to disclose such information in line with the ACAS code on [disclosure of information to trade unions for collective bargaining purposes](#) (or in Northern Ireland, the [LRA code](#)) should be sufficient.

In the event of an employer refusing to provide such information, it is possible to challenge the refusal through the [Central Arbitration Committee](#) (in Northern Ireland, through the [Labour Relations Agency](#)). Freedom of Information (Fol) requests also offer an alternative in the public sector where an employer is obstructive and have the advantage of requiring a response from the employer within 20 working days. For advice on lodging Fol requests, including a model letter to send to the employer, go to the Fol guide on this link <https://www.unison.org.uk/bargaining-guides/>

### *Specific considerations*

To adapt organising methods to circumstances where employees are not at work on the standard “nine to five” cycle, consider the following key points:

- Workplace visits at different times - Night shift workers and those who work early mornings often really appreciate seeing people from the union office late at night or early in the morning. Simply showing up and talking to them if they work in an accessible place can put them in a receptive and welcoming mood. But be aware, people who start work this early often arrive with only a few minutes to spare, so you might only have a few moments in which to grab their attention and give them something to think about.
- Environments such as care homes and hospitals will sometimes be quieter at night and therefore afford greater time for activists to discuss issues informally with staff over a cup of tea and a chat. It is also less likely that there will be senior managers around, so people might feel more comfortable in raising issues;
- Because of the difficulty for some shift workers in communicating with the union office, it is even more important than usual that we encourage people to become workplace contacts or stewards so that we can keep in touch with them and their colleagues;
- In the health service, many clinical staff will work a 12-hour shift pattern, which will often mean that they are not going to want to talk to a union rep at the beginning or end of their shift as they may resent each additional minute they have to spend at work. However, they should have small breaks during the day, so it's worth targeting those times. A further tactic is to build a relationship with their manager or training / education department and find out when they have team meetings or training sessions to see if a union session can be added to the agenda.
- Keeping in touch with shift workers and helping them communicate with each other can be harder than with other members because of their hours, so it is useful to think of other ways for helping them keep in touch. Techniques could include social media, email, texting or Skype .

If you have any questions relating to organising in this or any other area of work – drop an email to UNISON's Strategic Organising Unit at [strategicorganising@unison.co.uk](mailto:strategicorganising@unison.co.uk)

## Checklist 4

- 1) Utilise the benchmark data in this guide to maximise payments for unsocial hours, overtime, standby, call-out and shift payments
- 2) Seek union involvement in determining working patterns for non-standard hours and a fair system for allocating those hours based on volunteers and regular rota.
- 3) Ensure that late changes to scheduled start and finish times entail compensation that increases if full days are changed and TOIL may also then become appropriate.
- 4) Seek inclusion of payments for pension, occupational sick pay and maternity pay purposes. For instance, NHS unsocial payments in Scotland and Northern Ireland qualify toward pensions, occupational sick pay and contractual maternity pay, while England and Wales have the same arrangement except for excluding higher paid staff over sick pay. [Standby allowance are pensionable when part of a formal employment contract, but call-out payments are not]
- 5) Check to ensure holiday pay meets legal requirements for inclusion of regularly required overtime, as per UNISON's guidance, and rules on minimum wage payments during standby, which can be checked through the relevant guides on <https://www.unison.org.uk/bargaining-guides/>
- 6) The law requires that employers provide staff classified as employees with payslips stating their gross earnings and any deductions. However, building on these [legal minimums](#) with an employer commitment to provide breakdowns of unsocial hours and overtime payments will enable staff to check they have been paid correctly.
- 7) All forms of payment for working non-standard hours should be subject to annual review as part of the annual pay bargaining cycle.

UNISON has access to the Labour Research Department Payline database, which contains details of working hours agreements for employers across the economy. For details of how to access Payline contact the Bargaining Support Group on [bsg@unison.co.uk](mailto:bsg@unison.co.uk)



The UNISON [agreements library](#) contains a wide variety of working hours related agreements with employers across the public service. UNISON staff have access to this database and if branches wish to check for the availability of a particular agreement, please contact the Bargaining Support Group on [bsg@unison.co.uk](mailto:bsg@unison.co.uk)



## Appendix – Model Flexible Working Policy

# FLEXIBLE WORKING AGREEMENT BETWEEN [NAME OF EMPLOYER] AND [UNISON BRANCH]

## 1 General principles

- 1.1 [Name of employer] and [UNISON Branch] recognise that flexible working can play a critical role in helping staff achieve the right balance between their personal and work lives, promoting equality among the workforce, protecting staff health and delivering benefits to [employer name], most notably through:
- Retention of valued and talented workers, thereby reducing recruitment costs;
  - Improvement to staff productivity and commitment;
  - Reduction in sickness absence;
  - Recruitment from a wider talent pool of diverse skills.
- 1.2 Flexible working options available to staff will be publicised widely across [employer name], utilising the full range of communication channels [list appropriate channels, such as email, intranet, newsletters, meetings]
- 1.3 To ensure that the scheme is applied fairly and consistently, management training will stress:
- The value of flexible working to the organisation;
  - The objective criteria used to judge applications;
  - The advanced planning methods needed to ensure that work schedules allow the scheme to function smoothly.
- 1.4 The scheme will be based on a presumption that flexible working options should apply to all roles, regardless of occupation or grade, unless a compelling case can be made to justify exclusion.
- 1.5 All staff will be able to request flexible working from the first day of their appointment.

- 1.6 Outside of the working hours applied in flexible working schemes, [employer name] recognises that staff have a “right to disconnect” from mobile phones, laptops etc. Therefore, during that time they have no responsibility to respond to communications unless it has been agreed that a temporary emergency situation applies.
- 1.7 The scheme will be subject to monitoring and scheduled review on at least an annual basis. Review will take account of the scale and composition of take-up as well as consideration of systematic gathering of feedback from staff. Review will take account of the changing opportunities for flexible working that can often arise from the introduction of new technologies into [employer name]’s operations.
- 1.8 When the scheme is revised, consideration will be given to piloting the new features for ironing out teething problems before full adoption.
- 1.9 As a spokesperson for the workforce, [UNISON branch] will be involved in decision making throughout the planning, implementation, monitoring and revision of the scheme.

## 2 The range of flexible working options

The range of flexible working options that will be made available to staff will be as follows:

### 2.1 *Part-time working*

Consideration of fulfilling a role on a part-time basis, where part-time working is taken to mean a contract based on less than 30 hours a week

### 2.2 *Flexitime*

A scheme that allows flexibility to staff over their start and finish times.

Core working hours when all staff are required to be present on a working day will run from 10.00 to 12.00 and 14.00 to 15.00.

However, outside those hours staff will be allowed to choose their start and finish times subject to fulfilling their contracted 148 hours across each specified four week period.

Staff will be permitted to build up two days flexileave that can be taken within the specified period

At the end of the specified period, staff will be allowed to carry over up to one day of credit hours and must not have half a day of debit hours.

All forms of leave and sickness absence will be recorded as standard day of attendance for the purpose of the scheme.

### 2.3 *Job sharing*

Consideration will be given to allowing two staff to fulfil a single full-time role by sharing the hours between them.

### 2.4 *Compressed hours*

Consideration will be given to allowing staff to follow a regular working pattern of extended hours in order to meet their contracted hours over a shorter time period and allow additional regular non-working days.

The most typical arrangement will be working the contracted hours for 10 days over nine and so allowing the 10<sup>th</sup> day to be taken as leave.

### 2.5 *Home working*

Consideration will be given to allowing staff to work from home on both a regular cycle and an ad-hoc basis as work / personal demands permit.

### 2.6 *Term-time working*

Consideration will be given to allowing staff to work solely during the term times of their dependants.

### 2.7 *V-time*

Consideration will be given to allowing staff to drop their hours for a temporary period while setting a clear date for returning to a standard working week.

### **3 Procedure for handling flexible working requests**

- 3.1 Staff requesting a flexible working arrangement shall set out their application in writing to the line manager, with a duplicate going to the HR Department.
- 3.2 The application shall state the date of the request, whether any previous application has been made (with the date of that application) and what change to working conditions is being sought.
- 3.3 The request shall state if it is being made on the basis of fulfilling the requirements of the Equality Act 2010 (Disability Discrimination Act in Northern Ireland) as a reasonable adjustment.
- 3.4 A meeting shall be held with the worker to discuss the request within 28 days.
- 3.5 The purpose of the meeting will be to clarify how the arrangement may work and consider compromises / alternatives if the request is problematic.
- 3.6 If the employer refuses the request they should confirm that in writing giving clear reasons for the refusal, based on one of these factors:
  - Additional cost;
  - Inability to reorganise work among existing staff;
  - Inability to recruit additional staff;
  - Detrimental impact on quality;
  - Detrimental impact on performance;
  - Insufficient work for the proposed periods of work.
  - (In Northern Ireland only) Detrimental effect on ability to meet customer demand;
  - (In Northern Ireland only) Planned structural changes.
- 3.7 A decision will be communicated to the worker within 14 days of the meeting at the latest.
- 3.8 The worker will be able to appeal a decision by setting out their reason for appeal in writing HR, which will then appoint a different senior manager to the line manager to consider the appeal.
- 3.9 An appeal meeting will be held within 14 days of receipt of the application and the final decision will be communicated to the worker within 14 days.
- 3.10 Accompaniment by a trade union representative should be permitted at all meetings throughout the process.
- 3.11 Workers should be made aware that any request that is accepted will make a permanent change to the employment contract, so consideration will be given to trialling an arrangement if the employee is uncertain, with a review to be held at the end of the trial period.

## Signatories

This agreement comes into force on:

Date:.....

This agreement will be reviewed on:

Date:.....

SIGNED ..... for [employer name]

DATE .....

SIGNED ..... for [UNISON Branch]

DATE .....