



THOMPSONS
SOLICITORS

STANDING UP FOR YOU

Summary of the law
on working time

Our pledge to you

Thompsons Solicitors has been standing up for the injured and mistreated since Harry Thompson founded the firm in 1921. We have fought for millions of people, won countless landmark cases and secured key legal reforms.

We have more experience of winning personal injury and employment claims than any other firm – and we use that experience solely for the injured and mistreated.

Thompsons will stand up for you by:

Staying true to our principles – regardless of how difficult our job is made by government, employers or the insurance industry

Remaining committed to the trade union movement, working closely with them and with professional associations for the benefit of working people everywhere

Thompsons pledge that we will:

Work solely for the injured or mistreated

Refuse to represent insurance companies and employers

Invest our specialist expertise in each and every case

Fight for the maximum compensation in the shortest possible time

standing up for you

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The Spirit of Brotherhood
by Bernard Meadows

About this booklet

This booklet explains the basic rights to which workers are entitled under the **Working Time Regulations 1998**.

- Overview of basic rights
- What is working time?
- Annual leave entitlement
- Night workers' rights
- Rest periods
- Tribunal claims, time limits & remedies

Overview of basic rights

- 28 days paid annual leave per year.
- An average 48 hours a week working limit.
- A limit of eight hours (average) work in a 24 hour period for night workers.
- Free health assessments for night workers.
- 11 hours rest in a 24 hour period.
- 24 hours rest per week.
- Rest breaks for those who work more than six hours.

Who is covered?

The Regulations apply to just about all workers as well as employees, apart from the self employed (people who run their own business and are free to work for different clients).

They define a worker as someone who has a contract of employment or someone who has a contract for services. That means that most casual workers, freelancers and agency workers are included in this definition.

They also cover:

- All non-mobile workers in road, sea, inland waterways and lake transport.
- All workers in the railway and offshore sectors.
- All workers in aviation who are not covered by the aviation directive.
- All junior doctors.

Mobile workers in road transport are protected by different regulations. Those subject to rules for European drivers' hours are entitled to 24 days' paid annual leave and health assessments, if they work nights.

Special cases

Rights for night workers in relation to rest and breaks do not apply:

- In security and surveillance work.
- Where continuity of service or production is required such as docks, airports or industries in which work cannot be interrupted on technical grounds.
- Where the work involves busy peak periods such as agriculture and tourism.
- Where the work could involve unforeseen circumstances, such as emergency situations.
- Where there is a distance between workplaces or a residence and a workplace.

What is working time?

The Regulations state that “working time” is when someone is:

- Working.
- At their employer’s disposal.
- Carrying out activities or duties.

Note that time spent on standby or on-call at the workplace is included in the definition of working time. Time spent in accommodation supplied by the employer or at home whilst on-call may be working time, but only if the person is available for work.

With the agreement of unions, in some circumstances working time arrangements can be modified to allow for greater flexibility.

What is the annual leave entitlement?

Workers are entitled to 5.6 weeks of paid annual leave every year. This includes Bank Holidays. Under the arrangements, most employers allow full-time workers four weeks of annual leave and eight days as Bank Holidays. Part-time workers have the same rights on a pro-rata basis.

The payment for annual leave is calculated by reference to the worker’s normal week’s pay (based on the normal working hours fixed by the contract of employment). Overtime is not included unless the employer is contractually obliged to provide the worker with overtime.

Workers on long-term sick leave are entitled to paid holiday under the Regulations, but cannot accumulate it indefinitely.

What is a normal week's pay?

This is:

- What a worker would earn in a normal working week if they work regular hours.
- The average hourly rate multiplied by the average normal weekly hours over the previous 12 weeks, if their normal weekly working hours vary.
- The average pay over the previous 12 weeks if they do not work their normal working hours.

What are the rules on paying holiday leave?

Employers cannot avoid paying someone their annual leave entitlement, nor can they “buy” it as a payment in lieu except on termination of employment.

“Rolled up” holiday pay, where the rate of pay is enhanced to include an element referable to holiday pay is unlawful unless it is clear that the payment is on top of the basic rate and the calculation of the holiday pay element is transparent. Workers must also be allowed to take their holiday.

What notice do workers need to give?

To take leave workers must give at least twice as much notice as the amount of holiday required.

Employers must give the same amount of notice if they require a worker to take leave. Employers can also give notice that workers cannot take leave on a particular day or days, in which case, they only need to give the same number of days notice as the leave requested. Notice can be modified by agreement with a union.

What is the 48 hour week?

The Regulations stipulate that the working week should not exceed an average of 48 hours for each period of seven days (although this does not apply to people with control over their working time such as senior executives). This is averaged over the previous 17 weeks.

Workers can agree to opt out of this limit, but must do so in writing and not by collective agreement. The worker has the right to bring the opt out to an end by giving notice of seven days or longer (up to three months) if agreed.



Who is a night worker?

Night time is between 11pm and 6am and a night worker must work at least three hours within that period “as a normal course” to come within the definition. One week of nights out of every three has been held by the courts to qualify “as a normal course”.

What rights do night workers have?

Night workers should not work more than an average of eight hours in every 24-hour period. Those doing heavy work or work with special hazards should not work more than eight hours in any actual 24-hour period, although this can be modified by collective agreement.

Night workers are also restricted to working no more than an average of 48 hours per week, unless they have signed an opt-out agreement.

Employers must offer night workers a free health assessment before they start working nights and on a regular basis while they are working nights. Workers do not have to have the health assessment (but it must be offered by the employer).

What is the daily rest period?

An adult worker is entitled to a rest period of no less than 11 consecutive hours in every 24 hours (although not necessarily on the same day).

An employer can modify this in special cases or if there is a collective agreement by providing “an equivalent period of compensatory rest”. Government guidelines suggest that this should be provided within a couple of weeks of the time worked.





What is the weekly rest period?

An adult worker is entitled to an uninterrupted rest period of no less than 24 hours in each seven day period. This is in addition to the daily rest period, but the two can overlap.

An employer can decide that this consists of two 24 hour rest periods in a 14 day period, or one 48 hour rest period in a 14 day period.

Again, an employer can modify this in special cases or if there is a collective agreement as long as they provide compensatory rest, if possible, within two months.

Days off are taken in addition to paid annual leave. Employers must make sure that workers can take their rest periods.

What are rest breaks?

If an adult works more than six hours in a day, they are entitled to a rest break of no less than 20 minutes, to be taken during working time, not at the beginning or end of a shift. Rest breaks can also be modified by collective agreements.

Can the Regulations be modified?

Collective or workplace agreements can modify provisions on daily and weekly rest breaks, maximum weekly working hours and night work in:

- Determining additional working time.
- Determining night work.
- Setting dates for calculating reference periods.
- Identifying hazards.
- Deciding details of rest breaks.
- Setting the start date of the leave year.
- Deciding the payment due for leave not taken on termination.
- Establishing repayment for excess leave taken.
- Varying annual leave notice requirements.

How are the Regulations enforced?

The Regulations are divided into “entitlements” and “limits”.

Entitlements can be enforced by individual workers in Employment Tribunals. These are:

- Breaks.
- Daily rest.
- Weekly rest.
- Annual leave.
- Compensatory rest.

Limits are enforced by the Health & Safety Executive or by a worker bringing a civil claim if they suffer loss, injury or damage as a result of a breach. These are:

- Maximum weekly working time.
- Length of night work.
- Health assessments for night workers.
- Transfers to day work.

Tribunal claims

In the event of a breach, the worker should let their employer know, via their union representative, and ask for it to be rectified immediately.

If the employer refuses then the worker can bring a claim under the Working Time Regulations to an Employment Tribunal.

Employees may also bring a claim for unfair dismissal when a dismissal is because they have complained about a breach of the Regulations by the employer.

Remedies

Claimants can ask the Tribunal to make a “declaration” that their employer refused to allow them to exercise a certain right under the Regulations. Tribunals can also make an award, based on what is “just and equitable in all the circumstances”.

Claimants can also seek compensation for any losses as a result of a breach of their entitlement.

In addition, a worker can bring a victimisation claim as a result of being subjected to a detriment (or disadvantage) as a result of something their employer did, or failed to do. This could include being unfairly dismissed.

Tribunals can award whatever they think is appropriate, including an injury to feelings award and aggravated damages.

If the remedies available under the Working Time Regulations are inadequate for any particular situation, it is sometimes possible to bring a claim for unlawful deductions from wages. This might be particularly relevant where a person on long term sick leave is claiming holiday pay over a period of time.

Time limits

Claims must be brought within three months of the relevant breach of the Regulations. No extensions to this time limit are available unless where it was not reasonably practicable to do so. The time limits are very strict and late claims will only be allowed in very limited circumstances.

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