



THOMPSONS  
S O L I C I T O R S

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STANDING UP FOR YOU

Working Time Regulations

# Who are we?

- The most experienced personal injury practice in the UK with over 1000 staff in a network of offices nationwide.
- Our vision is to always to be the leading legal advisers to the Trade Union & Labour Movement and to the victims of injury.
- We are committed to using our specialist skills to secure the future of the union movement.
- Thompsons will not, on principle, act for insurance companies or for employers that are not trade unions.
- We only act for injured people, employees and trade unions.
- We work with major unions including **UNITE** to provide legal services to their many thousands of members.

# Who the rights apply to?

- The rights under the Working Time Regulations apply to:
- Employees;
- Workers;

# Who is an employee?

An employee is an individual who has entered into or works under a contract of employment.

A contract of employment is defined as a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

# Who is an employee?

- There must be four minimum elements for an employment contract to exist:
- A verbal or written contract (between the working person and the employer);
- An obligation on the person to provide work personally;
- Mutuality of obligation; and
- Control

# Who is an employee?

- Other factors are then to be accounted for such as:
- How the remuneration was paid;
- Who was at risk of loss and who would profit;
- Who provided tools and equipment;
- How did the parties view the nature of the working relationship; and
- How was tax and national insurance is to be paid.

# Who is a worker?

- An individual who has entered into or works under a contract of employment or any other contract, whether express or implied, and if it is express whether oral or in writing,
- whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

# Who is not covered?

- People who provide their services to clients via their own company or an LLP

- The name given to a tax legislation that is aimed at identifying individuals who are avoiding paying the tax that they should be;
- Challenges those people who supply their services to clients via their own company, or a limited liability partnership;
- This basically means that the HMRC do not recognise the contractor in question as 'self-employed' from a taxation perspective and therefore they should be taxed the same way that a general employee should be

# An example

- Commissioner A contracts directly with the Pilot.
- The contract refers to the Pilot as an employee.
- Commissioner A pays the Pilot and outline the hours of work.
- The Pilot would appear to be an employee.

# Another example

- Company A contracts with Company B for pilotage services.
- Company B invoice Company A for the work carried out.
- Company B have a contract with the Pilot as an Independent Contractor for services.
- The Pilot in this situation would appear to be a worker and entitled to the rights under the Working Time Regulations 1998.

# A final example

- Company C contract for the provision of Pilotage Services with LLP1
- LLP 1 has a list of partners of the LLP who provide Pilotage to Company C as a client/customer.
- As the contract is with “*that of a client or customer of any profession or business undertaking carried on by the individual*” those that are partners of LLP 1 are not covered by the Working Time Regulations

# Definition of Working Time

- Any period:
  - During which a worker is working, at his employer's disposal and carrying out his activities or duties;
  - Receiving relevant training; and
  - Any additional period specified in a relevant agreement;
  - A 'rest period' means any period which is not working time

# What counts as work

- A working week includes:
  - job-related training
  - time spent travelling if you travel as part of your job, eg sales rep
  - working lunches, eg business lunches
  - time spent working abroad
  - paid overtime

# What counts as work

- unpaid overtime you're asked to do
- time spent on call at the workplace
- any time that is treated as 'working time' under a contract
- travel between home and work at the start and end of the working day (if you don't have a fixed place of work)

# What doesn't count as work

- A working week doesn't include:
  - time you spend on call away from the workplace
  - breaks when no work is done, eg lunch breaks
  - unpaid overtime you've volunteered for, eg staying late to finish something off
  - paid or unpaid holiday
  - travel to and from work (if you have a fixed place of work)

# Weekly limits on working

- Working time, including overtime, shall not exceed an average of 48 hours for each seven days. R.4(1)
- Calculated over any 17 weeks (i.e. a rolling reference period) unless a relevant agreement (workforce, collective or individual contract) states otherwise

# Opting out of the 48 hour week

If a worker agrees in writing he can opt out of the average 48 hour week provided-

- Terminable by written notice as specified in the opt out agreement (with a maximum of three months) or if no period is specified seven days.
- Employer must keep records of who has signed an opt out available for Health and Safety Inspectorate.

- **“night time”** – a period of not less than seven hours which includes midnight to 5.00 am, as defined by a relevant agreement or if there is no relevant agreement 11.00 pm – 6.00 am.
- **“night worker”** – works at least three hours of his daily working time during night time.

A **night worker’s normal hours** of work shall not exceed an average of 8 hours for each 24 hours.

- ‘normal hours of work’ exclude hours which attract overtime pay unless overtime is contractual.

- Three kinds:
  - daily rest;
  - weekly rest; and
  - breaks during working day.

# Daily Rest

- Adult – 11 consecutive hours in each 24 hour period.
- Young – 12 consecutive hours in each 24 hour period.

## Adult:

- uninterrupted period of 24 hours in each 7 days.
- or 2 uninterrupted periods of 24 hours in each 14 days.
- or 1 uninterrupted period of 48 hours in each 14 days.

## Young:

- uninterrupted period of 48 hours in each 7 days.

# Rest breaks during the working day

- Adult:
  - If daily work exceeds 6 hours entitled to a rest break.
  - If there is no agreement – an uninterrupted break away from the work station of not less than 20 minutes.
  
- Young:
  - If daily work exceeds 4½ hours entitled to a minimum rest break of 30 minutes.

- A collective/Workforce agreement can modify or exclude the application of the Regulations for:
  - The length of night work;
  - Daily rest;
  - Weekly rest;
  - Rest breaks; and
  - Modify the 17 week reference period to a period not exceeding 17 weeks

- Means an agreement between an employer and workers employed or their representatives provided the following conditions are met:
  - The agreement is in writing;
  - It does not exceed 5 years;
  - It applies to all of the relevant members of the workforce or the relevant members of a particular group;
  - It is signed by the representatives of the workforce or particular group or by the majority of the workers if there are 20 or less employees; and
  - Before the agreement was made available for signature it must be provided to all workers whom it is intended to apply

- Workers may be entitled to ‘compensatory rest’ if they don’t have the right to specific rest breaks.
- Compensatory rest breaks are the same length of time as the break (or part of it) that they’ve missed

- A worker may be entitled to compensatory rest if:
  - they're a shift worker and can't take daily or weekly rest breaks between ending one shift and starting another
  - their workplace is a long way from their home (eg an oil rig)
  - they work in different places which are a reasonable distance from each other
  - they're doing security and surveillance-based work
  - they're working in an industry which is very busy at certain times of the year – like agriculture, retail, postal services or tourism

# Compensatory rest

- they need to work because there's an exceptional event, an accident or a risk that an accident is about to happen
  - the job needs round-the-clock staffing so there aren't interruptions to any services or production (eg hospital work)
  - they work in the rail industry on board trains or their job is linked to making sure trains run on time
  - their working day is split up (eg they're a cleaner and work for part of the morning and the evening)
- there is an agreement between management, trade unions or the workforce (a 'collective' or 'workforce' agreement) that has changed or removed rights to these rest breaks for a group of workers

- Workers aren't entitled to the 3 general types of rest break if they work in:
  - the armed forces, emergency services or police and they're dealing with an exceptional catastrophe or disaster
  - a job where they freely choose what hours they work (like a managing director) or where the work is not measured (ie no set hours)
  - sea transport
  - air or road transport (known as 'mobile' workers)
- Air, sea or road transport workers may be covered by special rules that give them different rest rights

- 5.6 weeks' entitlement must be taken in leave year.
- Additional unused leave can be carried over by agreement only.
- No statutory right to bank holidays
- Taken during the leave year it accrues (unless the holidays cannot be taken due to sickness absence)

# When do holidays accrue?

- Accrues during maternity, paternity and adoption leave
- Does not accrue during a career break
- Accrues during sickness absence

- **Stringer, Ainsworth and others v Commissioners of Inland Revenue**
- right to annual leave is a fundamental social right
- right to annual leave is not lost because a worker happens to be sick for the whole of the leave year prior to termination
- Workers still accrue the right to holidays if they are not able to take them in the current holiday year due to sickness absence
- can also be brought as a wages claim
  
- **Pereda v Madrid Movilidad SA**
- Employees have the right to take holidays at another time if they are sick during booked holidays but must ask for this to happen

- *Plumb v Duncan Print Group*
- An employee on sick leave has a choice.
- May take annual leave during a period of sickness absence, but they are not required to do so.
- Cannot be compelled to take leave during sick leave
- The carry-over period is in fact subject to a limit of 18 months

## Payment in lieu of the untaken entitlement

- $(A \times B) - C$
- A = annual leave entitlement.
- B = the proportion of leave year expired.  
C = period of leave taken.
- $28 \times 4/12 = 9.33$  minus any days taken.

# Booking annual leave

- The employer may by notice require the worker to take leave on particular days.
- The Employers notice must be twice as long as the period requested.
- Worker books leave by notice.
- Workers notice must again be twice as long as the period requested.
- Employer can refuse as long as give as much notice as leave requested.

# Payment during annual leave

This is an incredibly complicated subject.

Basic rule is that 4.0 weeks should include all payments normally made including overtime but not including expenses and costs

Additional 1.6 weeks should also include normal pay, but won't include voluntary or non-guaranteed overtime, only compulsory overtime

Normally calculated using an average earnings over 12 weeks/3months.

Rolled up holiday pay - unlawful.

- The impact of Britain leaving the EU is likely to have a detrimental impact on working time laws as the domestic legislation is based upon European Directives requiring the UK to implement certain minimums outlined in this talk.
- This could have a detrimental impact upon holiday entitlements, the amount of hours worked each day and how many days are worked each week

# Conclusion

- LELR
- [www.Thompsons.law.co.uk](http://www.Thompsons.law.co.uk)