

The working time regulations and the national minimum wage

The organisation of work has taken on a new dimension over recent years. The time employees spend at work and the pay that they receive as a result has become something to plan, to regulate and to record in order to keep within the law. On 1st October 1998, the Working Time Directive was implemented in the UK and since April 1999, employers have been subject to the National Minimum Wage Act. This legislation adds another layer of constraint to the organisation of businesses and, in particular, their human resources. The principles behind the legislation are the protection of the health and safety of workers and avoidance of their exploitation.

The Working Time Regulations 1998

These Regulations were introduced to implement the European Working Time Directive and part of the Young Workers Directive.

Main provisions for adult workers

The main provisions for all workers aged 18 and over are as follows:

- Weekly working time must not exceed 48 hours on average
- Workers must have 11 hours daily rest and 48 hours rest every fortnight
- Workers must have rest breaks if they work for 6 hours or more
- Workers must have 4 weeks paid holiday
- If the pattern of work is monotonous, adequate rest breaks must be given

Night workers

There are special provisions for night workers because their work involves particular health and safety concerns.

- They must not work longer than an average 8 hours per night
- The employer must provide free health assessments for night workers
- If health problems are caused by working nights, the worker should be transferred to days

Young people

Special rules apply to workers who are above the minimum school leaving age, but under 18 years of age. These are as follows:

- Minimum 12 hours daily rest and two days rest each week
- Minimum 30 minutes rest breaks if they work for 4.5 hours or more
- No work between 10.00pm and 6.00am or 11.00pm and 7.00am, unless exceptional circumstances apply
- Working time must not exceed 40 hours per week or 8 hours per day

Doctors in training

From 1 August 2004 doctors in training with be subject to weekly working time limits. These time limits will be phased in over 5 years.

Complex legislation

The rules set out above sound relatively simple. The details are not. Who is a

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worker? What is night work? How do you calculate average working time? How is a worker to exercise his or her right to paid holiday? Can an employer pay holiday pay as part of a rolled up rate of pay? How long must rest breaks be? The Regulations and subsequent case law provides answers to these questions and many more in detailed definitions and procedures which all employers need to consider.

Exemptions

Not least of these complexities are the opt outs or, in European speak, “derogations”, available to employers to avoid the worst impact on their business of the rules. These are the main ones:

- Workers with unmeasured working time are excluded from certain provisions
- In special cases (e.g. businesses requiring continuity of service) employers can contravene certain provisions if compensatory rest is given to the worker
- Employers can reach special agreements with their workers to reduce the impact of some of the provisions

Penalties for getting it wrong

It is a criminal offence to contravene some of the provisions, with the Health and Safety Executive or Local Authority Environmental Health Officers, being responsible for enforcement. Errant employers could face fines and enforcement notices.

In respect of other provisions, the worker can ask the Employment Tribunal for compensation. If the worker is dismissed for refusing to contravene the Regulations, the dismissal will be automatically unfair,

even if the worker has less than a year’s service.

The Working Time Regulations 1999

Amendments to the original Regulations came into force in December 1999. There were two main changes

- Any part of a worker’s working time which he can determine for himself can be disregarded when calculating weekly and night-time working hours
- Employers do not have to keep records of the working hours of employees who have agreed to work more than an average of 48 hours per week

Working Time Regulations 2001

Further amendments came into force on 25th October 2001 to remedy an inconsistency between the Working Time Regulations and the European Working Time Directive. The amendments replaced the 13-week qualifying period for paid annual leave with the right for employers to limit new employees to taking one-twelfth of their annual holiday entitlement for each month worked in the first year of employment.

National Minimum Wage Act

This Act, together with various regulations, imposes the payment of a minimum hourly wage of £4.85 to practically all workers, regardless of their location or industry sector. The only exceptions are based on age: 16 and 17 year olds (who are above the compulsory school leaving age) are entitled to a minimum hourly rate of £3.00. However there is no minimum wage for 16

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to 17 year old apprentices. 18 to 21 year olds are entitled to a minimum hourly rate of £4.10. For workers aged 22 or over on certain accredited training, the minimum is also £4.10. The rates are reviewed annually in October taking into account recommendations made by the Low Pay Commission. There are complex rules on how the minimum wage is calculated.

Record Keeping

Employers who do not already have systems for recording the hours which are worked in their business must implement them. The Working Time Regulations expressly demand this in relation to the provisions for weekly and nightly working hours, on penalty of committing a criminal offence. The National Minimum Wage Act requires employers to keep relevant records. Because the minimum wage is calculated on an hourly basis, recording the number of hours actually worked will be essential to prove compliance. If a worker claims he or she has not received the minimum wage, the burden of proof will be on the business to prove that it has complied.

Who Is Protected?

Both the National Minimum Wage Act and The Working Time Regulations cover “workers”, not simply “employees”. A worker is anyone who works under a contract of employment or who agrees to perform any work personally. This definition covers many self employed people but those genuinely running their own business are excluded. This extension of rights beyond employees to other workers is one which businesses will need to take on board. The Government has indicated that it is considering extending the net of other existing employment rights in this way.

Although this information sheet highlights some of the key issues relating to working time and the minimum wage, it is neither comprehensive nor a substitute for seeking professional advice on specific issues.

For further information or to be sure of receiving other information sheets on employment issues, please contact Nick Hobden on 01892 510000 or by e-mail at nick.hobden@ts-p.co.uk

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