

## **WORKING HOURS, REST BREAKS AND HOLIDAYS**

### **Working Hours**

The average working week cannot exceed 48 hours. The average can be calculated over 17 weeks. Work related training or travel where it is part of the duties and working lunches must be included as average working hours.

It is possible for employees to agree in writing to work longer than 48 hours. The agreement must be signed by the worker. Mobile workers such as road transport workers cannot opt out of the weekly maximum. Workers can cancel the opt out agreement whenever they want, provided they give not less than seven days' notice.

### **Rests and Breaks**

Employees are entitled to a 20 minute break per shift. The employer can decide the timing of the break but it must not be at the beginning or the end of the shift. There is a duty on employers to ensure that employees can take their breaks.

Employees are entitled to regular rest periods between working days in addition to holiday entitlement. Employees over the age of 18 should have a minimum of 11 hours rest between each working day and should not be required to work more than 6 days in every 7 or 12 days in every 14. There is an obligation on employers to manage employee's working hours.

Certain businesses have special exemptions. There are exemptions in relation to employees who work a long way from where they live or have to travel to different places in work. There are also exceptions covering security or surveillance work and jobs that require around the clock staffing such as rail transport.

There are exceptions for exceptionally busy periods and emergencies. In these cases, it is possible to average a workers hours over 26 weeks rather than 17. Employees are entitled to accumulate their rest periods and take them at a later date.

### **Holidays and Leave**

Entitlement to holidays start on the first day of employment and are not subject to a minimum period of employment. For each week of leave, workers are entitled to a week's pay. This is pay based on fixed hours. Where there is variable or piece work, it is equal to the average hourly rate multiplied by the normal working hours. Holiday pay must be paid at the actual time it is taken. There is no obligation to allow extended leave with or without pay. However, this may be negotiated.

Public holidays include bank holidays, common law holidays and holidays by Royal announcement. The minimum annual leave will increase from 4.8 weeks to 5.6 weeks on 1st April 2009 subject to a maximum statutory entitlement of 28 days.

Employees must be give notice if they wish to take leave. This can be agreed. If there is no agreement, it must be at least twice the intended leave. Employers must reply within the same length of time as the intended leave. It is possible to restrict the taking of leave and this may be provided in employment contracts, customer practice or negotiated with the Trade Unions. Examples include shutting down for certain periods e.g. Christmas, summer holidays. Nominating particular dates as closed e.g. New Year's Eve, New Year's Day.

### **Sunday Working**

The obligation to work on Sundays depends, for the most part, on the terms of the employment contract. There are special rules for shops and betting workers. They have the right to refuse to work on Sunday and are protected against dismissal, selection for redundancy or detrimental treatment if they refuse.

Some shop and betting workers are automatically protected. These are, broadly, workers who have been with the same employer since 1994. Employees who are automatically protected can give up the right by signing a written opt out. Shop and betting workers must be given a written statement explaining their opt out rights.

### **Night Working**

There are special rules about night time working. Night time working is working between 11.00 p.m. and 6.00 a.m. A night worker is someone who regularly works at least three hours during this period. Night workers should not work more than an average of 8 hours in a 24 hour period averaged over 17 weeks. Generally, this time limit cannot be opted out of, other than by collective agreement.

Night workers must be offered a free health assessment before they start working nights and on a regular basis after that. For some workers, such as those dealing with special hazards or under mental or physical strain, there can be no averaging at all. The eight hour daily limit is absolute.

Employees under 18 years of age are not generally permitted to work at night at all. There are some limited exceptions.

### **Overtime Issues**

In principle, the matter of overtime is one for agreement between employee and employer subject to the Maximum Working Hours Provisions. There are no direct statutory regulations. If regular overtime is required from an employee, this should be agreed in the employee's contract.

Health and Safety issues may arise in the context of overtime such as fatigue, employees working alone (safety issues). An alternative to overtime is time off in lieu. Once again, this must be contractually agreed.

---

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

© Lavelle Coleman 2009