

## **INTRODUCTION**

The Working Time Regulations 1998 implement the Working Time Directive and came into force on 1 October 1998. The Regulations extend to Great Britain only.

## **AREAS COVERED BY THE REGULATIONS**

The Regulations apply to workers over the minimum school leaving age. Therefore, in *Addison t/a Brayton News v Ashby*, the EAT held that in light of separate legislation for children (please refer to our factsheet on **Young Persons in the Workplace**), the Regulations did not apply to those under minimum school leaving age even though they were not expressly excluded.

The definition of “worker” covers those under a contract of employment plus a wider group who undertake work under other forms of contact (e.g. agency and temporary workers, freelancers, etc), but does not cover the genuinely self-employed.

The Regulations also apply to trainees who are engaged on work experience or training other than that on a course run by an educational institution or training establishment.

An adolescent worker is defined in the Regulations as someone who is above the minimum school leaving age but under 18.

The Regulations also apply in part to domestic servants.

## **WHO IS THE EMPLOYER?**

Generally, a worker’s employer will be obvious. In the case of temporary workers supplied by an agency, who the employer is will depend on the particular contractual arrangements in relation to the worker. If there is no contract between the worker and either the agency or agency’s client, the employer is deemed to be whoever is responsible for paying the worker or, if neither is responsible, whichever of them in fact pays the worker.

## **PREVIOUSLY EXCLUDED SECTORS**

When first implemented, the Regulations, other than the provisions relating solely to adolescent workers, did not apply to workers who are employed in the following activities or sectors of activity: air transport, rail transport, road transport, sea transport, inland waterway and lake transport, sea fishing and “other work at sea”.

However, now these sectors either have been brought within the scope of the Regulations (wholly or partially) or have separate working time legislation applicable to them. The Regulations also did not originally apply to doctors in training and certain activities of the armed forces, police and civil protection services where characteristics peculiar to those services conflict with the provisions of the Regulations.

In the case of *Bowden v Tuffnells Parcels Express Limited*, the European Court of Justice held that the previous exclusion of the road transport sector from the scope of the Working Time Directive extended to all workers in that sector, including office staff.

The same broad exclusions therefore applied to all previously excluded sectors of activity.

Further details of Directives adopted in relation to the previously excluded sectors are referred to at the end of this Information Pack.

## WEEKLY WORKING HOURS LIMIT

An employer may not require a worker to work more than 48 hours on average over a reference period of 17 weeks unless the worker has agreed in writing to do so.

This agreement can only be reached on an individual basis.

The reference period can be extended to 26 weeks if the worker is covered by one of the exceptions (“the Exceptions”) –

1. a worker’s *“activities are such that his place of work and place of residence are distant from one another or his different places of work are distant from one another”*
2. a worker is *“engaged in security and surveillance activities”* such as a security guard or caretaker
3. a worker’s *“activities involve the need for continuity of service or production”* such as hospitals, prisons, docks or airports, industries in which work cannot be interrupted on technical grounds, research and development activities
4. *“there is a foreseeable surge of activity”* such as tourism and postal services
5. a worker’s *“activities are affected by an occurrence due to unusual and unforeseeable circumstances ...”*

In *Gallagher v Alpha Catering Services Limited* (2004), the Court of Appeal held that –

1. *“continuity of service or production”* refers to the activities of the worker, rather than of the employer generally
2. *“foreseeable surge of activity”* refers to *“an exceptional level of activity arising seasonally or during particular periods which can be foreseen”*

The reference period can be extended to a maximum of 52 weeks by an agreement between employers and workers.

If a worker has agreed in writing to work more than 48 hours per week, they have the right to terminate this agreement on the giving of such notice as may be set down in the agreement. Subject to any provision in the agreement as to notice (which may not exceed three months), the agreement shall be terminable by the worker giving not less than seven days’ notice to the employer.

## WHAT IS WORKING TIME?

“Working time” is defined as when a worker is *“working, at his employer’s disposal and carrying out his activity or duties”*.

In the Spanish *SIMAP* case, the European Court of Justice held that “on-call” time will be working time when a worker is required to be at their place of work with a view to providing their services. Where a worker is “on-call” away from the workplace and free to pursue leisure activities to any extent, this time will not be working time.

A lunch break spent at leisure would not be working time, whereas if an employer required the worker to participate in a working lunch as part of their work, then it would be working time.

The Regulations allow workers (or their representatives) and employers to make agreements to add to the definition of working time if there is any doubt as to whether time counts as working time.

### **HOW A WORKER'S AVERAGE WORKING TIME IS CALCULATED**

The Regulations set out a formula for determining a worker's average working time for each seven days during a reference period:-

$$\frac{A + B}{C}$$

**A** is the aggregate number of hours comprised in the worker's working time during the course of the reference period

**B** is the number of working hours comprised in his/her working time during the course of the period beginning immediately after the end of the reference period and ending when the number of days in that subsequent period on which he has worked equals a number of excluded days during the reference period.

**C** is the number of weeks in the reference period.

Excluded days are days during annual leave, sick leave, maternity leave and any period where the worker has agreed to exclude the maximum hours in his contract.

### **WHAT IF A WORKER IS WORKING FOR MORE THAN ONE EMPLOYER?**

The Guidance Notes state that employers are required to take all reasonable steps to ensure that workers do not exceed an average of 48 hours of weekly working time. They suggest enquiring whether the worker is working elsewhere (or requesting that they be notified on a worker getting other work) and if they were, adjusting working arrangements accordingly.

It is therefore recommended that an employer makes it a term of the contract of employment that the worker will not work for another employer without first obtaining permission from the employer (or placing a total prohibition on undertaking any such work).

### **UNMEASURED WORKING TIME**

The working time limit does not apply to a worker where *"... on account of the specific characteristics of the activity in which he/she is engaged, the duration of his/her working time is not measured or predetermined or can be determined by the worker himself ..."*.

The Guidance Notes suggest that this applies to workers who have complete control of the hours they work and whose time is not monitored or determined by their employer. The Regulations give examples of people who may come within this category which are: *"managing executives or other persons with autonomous decision taking powers, family workers or workers officiating at religious ceremonies in churches and religious communities"*.

The Working Time Regulations 1999 introduced a further provision that the working time limit does not apply to a worker in respect of whom *"part of the working time is measured or predetermined ... but the specific characteristics of the activity are such that, without being required to do so by the employer, the worker may also do work the duration of which is not measured or pre-determined."*

However, this amendment was repealed by the Working Time (Amendment) Regulations 2006 with effect from 6 April 2006 after the European Commission challenged the amendment in the European Court of Justice on the basis that it failed to comply with the Directive and that the additional hours should be included within “working time”.

### **NIGHT WORKERS**

Night time is defined in the Regulations as a period, the duration of which is not less than seven hours and which includes a period between midnight and 5am, which is determined by a relevant agreement or, in default, the period between 11pm and 6am.

A night worker is someone who, “*as a normal course*”, works at least three hours of his daily working time during night time or he/she is likely during night time to work at least such proportion of his/her annual working time as may be specified for the purposes of the Regulations in a collective agreement or workforce agreement.

The High Court has held that “*as a normal course*” involves “*no more than this should be a regular feature of ... employment*”.

Night workers are subject to a working time limit of an average of eight hours in each 24 hour period. A standard reference period is again 17 weeks, but can be extended by an agreement between employers and workers.

The night work limit does not apply where the Exceptions (see above) apply.

Night workers whose work involves special hazards or heavy physical or mental strain are subject to an eight hour limit for each 24 hour period.

It should be noted that the weekly working hours limits also apply to night workers.

### **WHAT IS A HEALTH ASSESSMENT?**

Night workers are entitled to a health assessment (an adolescent worker to a health and capacity assessment) before being required to perform night work, and periodically thereafter.

There is no prescribed procedure for conducting a health assessment in the Regulations. The Guidance Notes do give some suggestions as to the factors which should be taken into account when conducting a health assessment and suggests that as a minimum, employers could construct a screening questionnaire for workers to complete before beginning night work.

Where questionnaires raise any doubt about an individual's fitness to work at night, the individual should be referred to a suitably qualified health care professional for further assessment and for an opinion as to whether the worker is fit to carry out the work to which they are to be assigned.

It is suggested in the Guidance Notes that health assessments are conducted on an annual basis, but the kind of work may necessitate more frequent assessments.

A night worker is entitled to be transferred, wherever possible, to other suitable day work, where a registered medical practitioner has advised the employer that the worker is suffering from health problems connected with the fact that they work at night. Where a worker's fitness for night work becomes affected by a disability, employers have a duty under the Disability Discrimination Act 1995 to make reasonable adjustments, which might include changes to the worker's hours of work.

### **REST BREAKS**

Adult workers are entitled to one day off each week, and adolescent workers to two. Adult workers are entitled to eleven hours' consecutive rest per day, and adolescent workers twelve. Adult workers will be entitled to a minimum 20 minute rest break if their working day is longer than six hours, whereas adolescent workers are entitled to a minimum 30 minute rest break if they work for longer than four hours.

Once again, these provisions are subject to the Exceptions which provide flexibility in certain circumstances. Where the Exceptions apply, the employer is required, wherever possible, to make provision for compensatory rest periods.

The Regulations provide that particular workers or groups of workers may by collective agreement or workforce agreement, contract out of the working time provisions relating to daily rest breaks, daily rest periods, weekly rest periods and the daily hours of work for night workers.

### **SHIFT WORKERS**

Where a shift worker changes shifts, it may not be possible for them to take their full rest entitlement before starting the new pattern of work. In such a case, the entitlement to daily and weekly rest does not apply.

However, it should be noted that the employer is still required to allow the worker, wherever possible, an equivalent period of compensatory rest.

### **PAID ANNUAL LEAVE**

Workers are entitled to accrue four weeks' paid annual leave. The entitlement arises immediately on the commencement of employment.

Following a preliminary ruling by the European Court of Justice (2001) in a case brought by BECTU (the stage screen and media union) that the 13 week qualifying period before a worker becomes entitled to paid holiday under Working Time Regulations *did* breach the Working Time Directive, the Government was obliged to amend the Working Time Regulations.

As of 25 October 2001, the 13 week period was removed and a worker has had the right to accrue  $\frac{1}{12}$ <sup>th</sup> of the annual holiday entitlement for each month worked. Where a worker joins or leaves within a leave year, their entitlement to leave is proportional to the fraction of the year for which they have been employed. Until 1 October 2007, any fraction is rounded up to the nearest day.

The Regulations provide for procedures for employers and workers to inform each other when leave is and is not to be taken.

The holiday year, unless altered by agreement will start with the month in which the employee started except in the case of those that were employed before October 1998. For these workers, unless otherwise agreed the leave year starts in October. Leave accruing under the Regulations may not be carried forward into a subsequent year nor are employers permitted to pay in lieu of holiday untaken, except on termination.

### **Bank and Public Holidays**

At present, employees have no statutory right to “public holidays”. In *Campbell & Smith Construction Group Ltd v Greenwood* (2001), the EAT held that employees therefore had no right to an additional day’s paid holiday when the Government declares an additional day’s public holiday.

It follows that bank and public holidays can be used for the time being to discharge an employer’s responsibility for providing the statutory leave under the Regulations. Accordingly, where a worker is paid for a public holiday, this will count towards their entitlement to annual leave.

### **Increasing the Statutory Entitlement to Paid Holiday**

The Working Time (Amendment) Regulations 2007 provide that the statutory entitlement to paid holiday will rise to 4.8 weeks (24 days FTE) as of 1 October 2007 and to 5.6 weeks (28 days FTE) as of 1 April 2009. If a holiday year starts on a date other than 1 October, a proportion of the additional statutory entitlement will fall into all holiday years commencing after 1 October 2006.

Employers will still be unable to make a payment in lieu of untaken holiday, other than on termination of employment. However, a payment in lieu of the initial increase taking effect on 1 October 2007 will be permitted until 1 April 2009. A collective agreement or workforce agreement may provide for the additional leave entitlement (over and above the first four weeks) to be carried over into the next holiday year.

These provisions will not apply where a worker is already entitled to at least 5.6 weeks holiday as at 1 October 2007, provided that the additional 1.6 weeks can only be replaced with a payment in lieu on termination (rather than during employment), can only be carried forward into the next holiday year (and no further) and is paid at a normal rate of pay for such holiday.

Finally, employers will no longer be required to round up partial days holiday entitlement to the nearest full day.

### **HOW IS A WEEK’S PAY CALCULATED?**

The Regulations provide that a normal week’s pay in the case of a worker with regular working hours is what they would earn for a normal working week. Where a worker’s normal working hours vary from week to week, the average hourly rate of pay they get multiplied by an average of their normal weekly working hours over the previous 12 weeks is a normal week’s pay. In the case of a worker with no normal working hours, it is the average pay received over the previous twelve weeks.

The Guidance Notes state that a worker’s normal working hours are their normal hours fixed by their contract of employment. Overtime hours are not normal working hours unless a worker’s contract fixes a minimum number of hours (in which overtime is included) which is more than their notional fixed hours.

The Regulations provide that a worker has a right to a payment in lieu of their entitlement to annual leave if their employment terminates during a leave year.

### **Loss of Accrued Holiday Pay for Misconduct**

In *Whitley and District Men's Club v Mackay* (2001), the EAT held the right to a payment in lieu of accrued but untaken holiday on termination of employment is mandatory. A provision that there was no entitlement to accrued holiday pay in the event of dishonesty was therefore void.

The EAT's decision was based upon the proposition that "such sum" in the Working Time Regulations was not satisfied by provision to pay "no sum". However, this does leave it open for an employer to pay such holiday pay at a rate less than the normal rate of pay, if a provision to this effect is set out in the contract of employment. Whether this rate can be less than the rate of the National Minimum Wage is not clear.

### **Accruing Holiday through Periods of Absence**

In *Commissioners of the Inland Revenue v Ainsworth & Others* (2005), the Court of Appeal has held that workers do not continue to accrue entitlement to paid holiday whilst on long-term sick leave. Thus, where employees' contractual sick pay and SSP entitlement have run out, they would not be entitled to four weeks' paid holiday per annum unless they returned to work during any particular leave year.

However, the House of Lords has now referred this matter to the ECJ.

Although it is well established that holiday continues to accrue throughout ordinary maternity leave, it is unclear whether it accrues during additional maternity leave and parental leave. Although the Maternity and Parental Leave etc Regulations 1999 do not provide that an employee is entitled to the benefit of the accrual of holiday, the Working Time Regulations would appear to provide no such exception and this issue is soon to be decided by the European Court of Justice.

### **Deducting Overpaid Holidays**

In *Hill v Chapell* (2002), the EAT held that an employer is not entitled to make a deduction from an employee's final salary representing holiday taken in excess of that employee's entitlement in the absence of provision in a "relevant agreement" (such as a contract of employment) authorising such a deduction.

### **Calculating Outstanding Holiday Pay**

In the cases of *Leisure Leagues UK Ltd v Maconnachie* (2002) and *Yarrow v Edwards Chartered Accountants* (2007), the EAT held that the calculation of accrued holiday pay owing to a worker should be based upon the number of working days in the year, rather than the number of calendar days in the year. An employer can avoid any confusion in this regard by specifically stating in the contract of employment how holiday pay will be calculated.

### **"Rolled-up" Holiday**

The Regulations provide that any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under the Regulations in respect of holiday pay.

In the case of *Robinson-Steele v PD Retail Services* (2006), the European Court of Justice held that –

- (a) employers must make payment for holiday additional to that for work done, so cannot allocate part of a remuneration package existing on the coming into force of the Regulations where the worker was not previously entitled to paid holiday; and
- (b) employers must not make payment for holiday in the form of part payments staggered over the corresponding annual period of work and paid together with the remuneration for work done, rather than in the form of a payment in respect of a specific period during which the worker actually takes leave, so cannot roll up payment of holiday; but
- (c) employers can set off sums paid in the form of part payments staggered over the corresponding annual period of work and paid together with the remuneration for work done against the payment for specific leave which is actually taken by the worker, provided that it is done so transparently and comprehensibly.

As a result of this judgment, the DTI (now DBERR) amended its non-statutory guidance several times and it now states that –

*"Following a European Court of Justice (ECJ) judgment on 16 March 2006, (1) Rolled-Up Holiday Pay (RHP) is considered unlawful and payment for statutory annual leave should be made at a time when leave is taken. Employers should have taken steps to renegotiate contracts involving RHP to eliminate this practice. Any payments in respect of annual leave, additional to wages or salary, made during this **transitional** period in a transparent and comprehensible manner, may be offset against any future liability to make payment in respect of annual leave, to avoid any overpayment of holiday pay."*

In a series of cases led by *Smith v A J Morrisroes & Sons Limited* (2004) prior to the judgment of the ECJ, the EAT had redrafted good practice guidance on the best way to evidence a genuine payment for holidays, representing a true addition to the contractual rate of pay for time worked.

- (a) **the provision of rolled-up holiday pay to be clearly incorporated into the contract of employment;**
- (b) **the percentage or amount allocated to holiday pay (or particulars sufficient to enable it to be calculated) to be identified in the contract, and preferably also in the payslip;**
- (c) **records to be kept of holidays taken (or of absences from work when holidays can be taken) and for reasonably practicable steps to be taken to ensure that workers take their holidays before the end of the relevant holiday year.**

In conclusion, it is technically unlawful (according to the ECJ) to make payment of rolled-up holiday and employers have been granted a transitional period in which to renegotiate contracts involving rolled-up holiday pay to eliminate this practice. In the meantime payments of such sums can be set off against holiday pay which would have been otherwise paid when the worker actually takes holiday.

## **EMPLOYER/WORKER AGREEMENTS**

Remember – if an employee wishes to work more than 48 hours a week, they must agree to do so preferably in an individual written agreement, whereas, if other parts of the regulations are to be excluded, this can only be done on a collective basis.

The Regulations provide for collective agreements which can be made with an independent trade union and “workforce” agreements which can be made with workers where there is no recognised trade union. The workforce can individually sign the agreements (which is more practical for small firms) or they can elect representatives to negotiate on their behalf. The Regulations provide for a mechanism for representatives to be chosen.

As mentioned previously, a collective agreement or workforce agreement may modify or exclude the application of the Regulations relating to length of night work, daily rest periods, weekly rest periods and rest breaks, but not the 48 hour average weekly limit.

In addition, where for objective or technical reasons or reasons concerning the organisation of work, such an agreement may modify the application of the Regulation relating to maximum weekly working time so that instead of a reference period of 17 weeks, a different period not exceeding 52 weeks may be substituted.

Where an agreement modifies or excludes the application of the Regulation referred to above, the employer should wherever possible allow the workers an equivalent period of compensatory rest.

## **ENFORCEMENT**

The limits (e.g. the weekly working time and night work limits) in the Regulations will be enforced by the health and safety enforcing authorities, e.g. the Health & Safety Executive and the local authority.

Where a worker wishes to formally complain that they have been denied their various entitlements (e.g. rest periods, rest breaks and annual paid leave), a complaint should be made to the Employment Tribunal. A claim in relation to the non-payment of a sum in lieu of accrued holiday on the termination of employment may be brought as a claim for unlawful deductions from wages as well as under the Regulations themselves (*List Design Group Limited v Douglas*, 2003). If upheld, the Tribunal would make a declaration to that effect and award compensation.

A worker may also bring a claim in the Employment Tribunal that they have either been subjected to a detriment or dismissed for asserting any entitlement under the Regulations.

An employer who fails to comply with any requirement of the Regulations, including the requirement to keep records, may be prosecuted. If found guilty in the magistrates’ court, an employer may be liable to a £5,000 fine in respect of each breach. This could be in respect of each employee.

In more serious cases, an employer may be prosecuted in the Crown Court. If found guilty in this instance, an employer may be liable to an unlimited fine.

## **IMPLEMENTATION AND RECORD KEEPING**

First, an employer must assess whether its employees and other workers fall within the scope of the Regulations. This will be so in most cases unless the various exclusions can be used.

An employer must then ascertain whether or not each individual worker works more than 48 hours on average each week. If so, the worker should be asked if they wish to waive this particular provision, and any agreement should be in writing. If the worker does not wish to agree, they must not be permitted to work more than 48 hours.

Employers must also consider whether their current working practices comply with the requirements for night work limits, rest periods, rest breaks and paid annual leave. Any necessary changes must be with the agreement of the workers. An employer may invite workers to enter into a workforce or collective agreement.

An employer must keep adequate records to show that they have complied with the various limits on working time.

Under the Regulations, no records need be kept of rest periods, rest breaks and annual paid leave.

It may be possible for an employer to utilise existing methods of time recording, such as clocking in, flexitime sheets or pay records for hourly paid staff.

Where a worker is required to work standard hours at certain premises, it might be possible to show that these hours have been kept by a system as simple as the receptionist signing individuals in and out the premises.

If a worker has contracted out of any of the working time provisions, the employer is obliged to maintain an up-to-date record identifying such workers.

The employer should also keep records to establish whether an individual worker is working over 48 hours.

In the absence of other adequate record keeping procedures, the worker should be instructed to complete timesheets and submit these to their manager not less often than once a week. Failure to complete or submit timesheets should be made a disciplinary offence.

An employer must also keep adequate records to show that they have complied with the requirement to offer regular free health assessments to all night workers. The record should state the identity of the night worker, the date of the offer of the assessment, the date of any assessment and the result of any assessment.

Employers must also consider whether their current working practices comply with the requirements for night work limits, rest periods, rest breaks and paid annual leave. Any necessary changes must be with the agreement of the workers. An employer may invite workers to enter into a workforce or collective agreement.

Finally, an employer must keep all records required under the Regulations and retain them for two years.

### **SUMMARY**

As this is Health & Safety legislation, an employer should be aware of the implied term in every contract of employment that an employer has a general duty, so far as is reasonably practicable, to ensure the health, safety and welfare at work of all its workers.

Where the Regulations stipulate limits on working time, etc, it should be noted that these are minimum standards and the employer may not be complying with his duty under the Health & Safety at Work Act by imposing the limits in the Regulations. Indeed, the Regulations themselves and the Guidance Notes refer to the management of Health & Safety at Work Regulations 1992 and it is expected that an employer will be carrying out risk assessments under those Regulations.

Where a worker is granted an “entitlement” under the Regulations, the employer cannot lawfully require the worker to do anything which would effectively deny that entitlement, nor impose any detriment on the worker for asserting the entitlement, and must take any necessary measures to make sure that the worker can take up the entitlement.

However, if any worker wants to work during time to which they are “entitled” not to do so, the employer may let them do so – provided, of course, that it involves no otherwise unlawful act (such as posing a risk to health and safety, or ignoring an applicable limit on weekly working time).

### **FURTHER EC DIRECTIVES IN THE PREVIOUSLY EXCLUDED SECTORS**

The Horizontal Amending Directive (HAD) extended the Working Time Regulations (WTR) in full to non-mobile workers in all excluded sectors (unless otherwise stated below) and to mobile workers in varying degrees.

The Working Time (Amendment) Regulations 2003 (which came into force on 1 August 2003) amended the Working Time Regulations 1998 and implemented the HAD relating to non-mobile workers in road, sea, inland waterways and lake transport, to all workers in the railway and offshore sectors, and to all workers in aviation who are not covered by the Aviation Directive. The Regulations have applied to junior doctors since 1 August 2004.

The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (which came into force on 24 December 2003) implemented the HAD relating to mobile workers in inland waterways and lake transport. The increased statutory entitlement to paid holiday as of 1 October 2007 will apply to this sector.

The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (which came into force on 16 August 2004) implemented the HAD in relation to *“united Kingdom fishing vessels wherever they may be”* and to *“fishing vessels registered in Member States other than the United Kingdom when they are within United Kingdom waters”*. The increased statutory entitlement to paid holiday as of 1 October 2007 will apply to this sector.

Four sector specific Directives have also been adopted and implemented into national law –

The Seafarers’ Directive and Seafarer’s Enforcement Directive (SED) have been implemented by The Merchant Shipping (Hours of Work) Regulations 2002 which came into force on 7 September 2002. The increased statutory entitlement to paid holiday as of 1 October 2007 does not apply to this sector.

The Aviation Directive has been implemented by The Civil Aviation (Working Time) Regulations 2004 which came into force on 13 April 2004. The increased statutory entitlement to paid holiday as of 1 October 2007 does not apply to this sector.

The Road Transport Directive (RTD) has been implemented by The Road Transport (Working Time) Regulations 2005 which came into force on 4 April 2005. The increased statutory entitlement to paid holiday as of 1 October 2007 will apply to this sector.

### **Road**

- HAD Non-mobile workers – WTR in full  
Mobile workers (other than those covered by the RTD) – WTR in full, other than rest breaks and rest periods
- RTD For drivers subject to tachograph rules – paid annual leave and health assessment provisions of the HAD; also provides for rest breaks, rest periods and working time

### **Rail**

- HAD Non-mobile and mobile workers – WTR in full, subject to derogations for daily rest, rest breaks, weekly rest and night work provisions for railway workers whose activities are intermittent, whose hours of work are spent on trains (mobile workers) and whose activities are linked to railway transport timetables and ensuring continuity and regularity of railway traffic

### **Air**

- HAD Non-mobile workers – WTR in full  
Mobile workers – 48 hour average working week, four weeks' paid annual leave, health assessments for night workers and adequate rest
- Aviation Airborne workers – 2000 hours annual working time and 900 hours annual flying time; also provides for monthly and yearly numbers of rest days, limits on standby time  
Mobile workers - "appropriate" health and safety protection and four weeks' paid annual leave

### **Sea**

- HAD Non-mobile workers – WTR in full
- Seafarers' Mobile workers – Maximum working week of 72 hours and 14 hours rest in any 24 hour period OR minimum weekly rest of 77 hours and 10 hours rest in any 24 hour period; also provides for four weeks' paid annual leave and health assessments to night workers
- SED Mobile workers – extends certain provisions of the Seafarers' Directive to third country vessels using EC ports

**Inland Waterway and Lake Transport**

HAD Non-mobile workers – WTR in full  
Mobile workers - 48 hour average working week, four weeks' paid annual leave, health assessments for night workers and adequate rest

**Seafishing**

HAD Non-mobile workers – WTR in full  
Mobile – provides for daily, weekly and average weekly maximum hours of work, together with daily and weekly minimum hours of rest, four weeks' paid annual leave, health assessments for night workers and adequate rest

**Offshore**

HAD Non-mobile workers (shore-based) – WTR in full  
Mobile workers (offshore activities) – WTR in full, subject to a derogation to allow for a reference period of longer than 17 weeks in respect of the average weekly working hours limit

**Junior Doctors**

HAD WTR in full, subject to a phased implementation of the 48 hour maximum weekly working limit

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For further information on any employment matters, please contact a member of the **asb law** Employment Team –

Crawley

Telephone: 01293 603626  
Fax: 01293 603669  
email: [employment@asb-law.com](mailto:employment@asb-law.com)

Maidstone

Telephone: 01622 656543  
Fax: 01622 656690  
email: [employment@asb-law.com](mailto:employment@asb-law.com)

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