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The Working Time Regulations

Dr Roselyn Borg
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The Organisation of Working Time Regulations (Subsidiary Legislation 452.87) set out the minimum conditions laid out in the *EU Directive 2003/88/(2003) concerning certain aspects of the organisation of working time.*

The Regulations



Working time is defined as:

*“any period during which the worker is **available for service** to the employer and is **carrying out his activity or duties**, and includes **any relevant training** and any other additional period which is to be treated as working time for the purpose of these regulations under any relevant agreement and "work" shall be construed accordingly”*



Working Time

- Minimum periods of daily rest
- Weekly rest
- Annual leave
- Breaks
- Maximum weekly working time
- To certain aspects of night work, shift work and patterns of work

These regulations shall apply to all sectors of activity, **both public and private** (unless otherwise stated in any other law)



Scope

The WT Regulations do not apply where other **sectoral regulations** (i.e. WROs) are in force

EXCEPT

Where the conditions laid down in the WT Regulations are more favourable than those provided for in the WRO



“rest period” means any period which is not working time and does not include leave to which a worker is entitled under these regulations

Employees are entitled to a rest break **for every 6 hours worked**, calculated according to:

- Collective agreements
- WROs
- Agreements between the employer and employee



Periodical Breaks

Employees are entitled to **11 consecutive rest hours** for each 24 hour period worked.

Employees are entitled to a rest period of **24 consecutive hours for each 7 day period** (i.e. 1 full day per week), in addition to the 11 consecutive rest hours per day:

- Derogations from this rule may apply (upon obtaining DIER permission) for technical/organisational reasons

Daily & Weekly Rest



Employees cannot work more than 48 hours per week (7-day period), including overtime. This is to be calculated over a reference period:

- Of 17 weeks; or
- According to collective agreements

For the manufacturing and tourism industries, the reference period is of 52 weeks.

Weekly Working Time



Employees who are on-call duty, even if not actively working and even if they are provided with a place to rest by the employer, are still considered to be **working** and therefore on-call hours constitute **working time**.

This was decided by the ECJ in several judgments, where it was concluded that the decisive factors are the employee's presence at a place determined by the employer and the fact that they would immediately be ready for work when called upon.



On-Call Hours

Employees cannot work more than 48 hours per week (7-day period), including 8 hours overtime. This is to be calculated over a reference period:

- Of 17 weeks; or
- According to collective agreements

For the manufacturing and tourism industries, the reference period is of 52 weeks. Several other sectors are excluded from the scope of this provision (covered by WROs)

Weekly Working Time



Employees may voluntarily opt-out of the 48-hour per week maximum, as long as:

- A written agreement is made
- Records of such employees are kept
- Records are available for DIER inspection at any given time
- Employees who do not choose to opt-out are not treated in a more detrimental manner
- Such agreement can be terminated by the employee with 7 days notice



Overtime Opt-Out

Employees are entitled to 24 days (192 hours) vacation leave per year, calculated pro rata.

Vacation days have been increasing gradually since 2018 to compensate for public/national holidays falling on a weekend. Therefore in 2020, employees had a minimum of 27 days (24 + 3)

There is still doubt as to whether in 2021, another day will be added as per the 2021 Budget speech, or that the situation will remain the same as 2020 as per the DIER website guidance.

Annual Leave



- A minimum period of **4 weeks'** leave may not be replaced by allowance in lieu, so therefore 20 days must be taken as leave.
- When employment is terminated, the remaining accrual is to be paid out in cash to the employee.
- During leave, bonuses must still be paid out as long as they are not directly related to performance or production output.
- Leave must be taken as days (except for urgent leave) unless otherwise agreed

Annual Leave



A maximum of 50% of leave entitlement may be carried over to the following year, subject to the agreement of both the employer and the employee.

The leave carried over must be utilised first.

Annual Leave – Carry Over



Public and national holidays are given on full pay, apart from one's annual leave entitlement:

- For workers on a regular schedule, when a PH/NH falls on a weekly day of rest, they shall be compensated with extra leave (proportionally)
- For workers on irregular/varying schedules, the above compensatory leave hours shall be calculated on the basis of a 17 week reference period



Public/National Holidays

“night time” means the period between 10 p.m. of any one day and 6 a.m. of the next day;

“night worker” means a worker who:

- (a) works at least three hours of his daily working time as a normal course during night time; or*
- (b) works more than fifty per cent of his annual working time, or such lower proportion as may be specified in appropriate provisions of a relevant collective agreement during night time:*



Night Work

For employees doing strenuous night work (involving hazards or heavy physical or mental strain), working time is limited to 8 hours for every 24-hour period. Such hazards or strains are assessed via an adequate risk assessment.

Otherwise, a reference period of 17 weeks is to be applied.

Strenuous and Light Night Work



For employees doing strenuous night work (involving hazards or heavy physical or mental strain), working time is limited to 8 hours for every 24-hour period. Such hazards or strains are assessed via an adequate risk assessment.

Otherwise, a reference period of 17 weeks is to be applied.

Adequate records of employees on night work must be kept by the employer.

Strenuous and Light Night Work



The content of the WT Regulations discussed up to now would not apply to workers whose working time is not predetermined and can be determined by the employee, particularly for:

- Managers/others with decision-making power
- Family workers
- Workers officiating at religious ceremonies

Exceptions



Provisions on breaks, daily and weekly rest and night work shall not apply to:

- Cases where employees work far from home (place of rest)
- Security/surveillance activity
- Continuous services (ex. hospitals, utilities, media, transport)
- Foreseeable surges of activity (e. tourism)
- Railway services
- Unforeseeable circumstances, exception events or accidents
- Offshore workers, with some exceptions

Exceptions



*“**shift work**” means any method of organising work in shifts whereby workers succeed each other at the same work stations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks*

- Daily & weekly rest provisions shall not apply where shifts are close to each other
- Daily rest provisions shall not apply where work is split up over an entire day, such as cleaning staff

Shift Work



- Collective agreements may:
 - Exclude/modify the content of breaks, daily and weekly rest periods and night work provisions
 - Modify the manner in which reference periods are calculated for the purposes of weekly working time, applying any period between 17 and 52 weeks. This may only be done “when there are sufficient objective or technical reasons or reasons concerning the organisation of working time”



Collective Agreements

An employee will be considered to have been **unfairly dismissed** if the reason (or main reason) for dismissal was:

- Refusal to comply with a provision of the employer which violates the content of the regulations
- Refusal to forgo a right provided to employees by virtue of the regulations

Employees may seek recourse before the Industrial Tribunal.
Failure to comply with the Regulations is a criminal offence.

Unfair Dismissal





Question Time





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