

WORKING HOURS, REST BREAKS AND TIME OFF

Employers must ensure that the limits on the hours worked and breaks given comply with the Working Time Regulations (NI) Order 2016. This legislation generally affects all workers although there are stricter obligations with regard to night workers and young workers. Shop employees have special rules relating to them if they work on Sundays.

The minimum regulatory standards that employers must comply with relate to:

- the average weekly working time and night work;
- daily and weekly rest periods, and in work rest breaks; and
- annual leave.

While employers must ensure compliance, workers are not obliged to make use of their entitlements and an employer cannot force a worker to take an entitlement that is made available to him, subject to health and safety considerations.

Working Hours

- An employee's **average working time**, including overtime, for each seven-day period must not exceed 48 hours, unless the employee has given their **voluntary consent in writing** to opt-out. For **younger workers under 18**, the maximum working week is **40 hours** and **no opt-out** is available. Young workers should not usually work more than eight hours per day.
- The legal requirements on working time apply to all workers, agency workers and those receiving relevant training, e.g. work experience.
- Hours are **averaged over a 17-week period**, though this can be **extended by agreement up to 52 weeks**. This "reference period" does not include time spent on holiday or sick leave.
- Employees are required to work **no more than 6 days in every 7, or 12 days in every 14**.
- Employers are required to keep records to show they are complying with the 48-hour limit – but can do this using records they already keep for pay (i.e. a payslip quoting hours worked).
- Employers need to keep up-to-date records of employees who have voluntarily waived the 48-hour limit (see Appendix 4A). Employees can cancel the opt-out agreement whenever they want, although they must give at least 7 days' notice.

- There are special regulations governing **lorry drivers** and **night workers' hours**. Employees should not **work more than an average of 8 hours a night** and should also be offered a **free health assessment** to check they are fit to work at night (this should be repeated regularly, typically once per year).

What counts as work

As well as carrying out their normal duties, an employee's working week can include:

- job-related training
- job-related travelling time (e.g. a sales rep)
- working lunches
- time spent working abroad
- paid and some unpaid overtime
- time spent 'on-call' at the workplace
- anytime that is treated as 'working time' under a contract
- travel between home and work at the start and the end of the working day may count if an employee doesn't have a fixed place of work. Employers should seek further advice.

Rest Breaks

- Employees have the right to have a minimum **20 minute rest break in each shift lasting more than 6 hours**. This break may be paid or unpaid. The contract of employment should clarify this issue. Lunch breaks count as rest breaks. A worker **under 18** who works for more than **4.5 hours** is entitled to a rest break of **30 minutes**. Employers can determine the break's timing, avoiding taking this at the beginning or end of a shift.
- Employees have a right to **11 hours rest between each working day**. **Young workers must have 12 hours rest** between each working day and 2 rest days per week. Young workers must not work at night between 10.00 pm and 6.00 am, or between 11.00 pm and 7.00 am if the contract of employment provides for work after 10.00 pm.
- It is advisable to offer breaks as required to employees as a result of any health condition or disability.

SECTION 4

Time Off - Leave

- Employees are legally entitled to a minimum of **5.6 weeks' paid holiday**. For those working a **5 day week** this means **28 days (5.6 x 5)**. Leave is reduced on a **pro rata** basis for those working **part-time** (see Appendix 4B for sample calculation). The contract of employment may provide the right to take more than the statutory minimum.
- Certain aspects of holiday pay should be based on the employee's average pay i.e. normal remuneration and can include overtime and other allowances etc. This is a complex and ever changing area of law. Specific advice should be obtained, from the Labour Relations Agency (www.lra.org.uk) or an employment law solicitor, depending on the individual's circumstances. However, there is no legal right to time off on public holidays.
- Calculating holiday pay for a worker with no normal or regular working hours can be difficult. It is advisable to seek further advice from the Labour Relations Agency. Also see www.nibusinessinfo.co.uk/content/calculate-holiday-entitlement-and-holiday-pay
- The entitlement to 5.6 weeks' paid holiday **can include public holidays**.
- The leave entitlement starts building up from an employees' first day at work. During the first year the amount of leave taken at any time can be limited to the amount the employee has accrued.
- Employers and employees can agree how much notice of leave is required.
- An employer may **require employees to take all their leave at specified times** as long as they give notice which is twice as long as the holiday they wish employees to take. Employers may also refuse requests for leave provided they give the same amount of notice as the holiday the employee wishes to take. Refusal should be with good reason, fair and not based on prohibited
- discrimination grounds (See section 1).
Employers may agree to allow employees to **carry over** a portion of their holiday entitlement to be taken in the next holiday year, but employees should take at least 4 weeks per year. Employees **cannot request payment in place of taking the time off**.

Employers must allow carryover of at least 4 weeks' leave where an employee has not taken their leave due to absence from work due to illness. In these circumstances the employee has the right to carry over this leave for a period of 18 months post the end of the leave year in which the leave accrued. The Labour Relations Agency can offer further guidance and advice should be sought in terms of calculating the amount of leave an employee can carry over in the event of a long term absence.

If someone stops working for you, they are entitled to be paid for any leave they have accrued but not taken (see Appendix 4C for sample calculation).

Time Off - Other circumstances

Employees may be entitled to time off work in specified circumstances.

If an employee is pregnant, she is entitled to paid time off for any antenatal appointments made on the advice of a registered medical practitioner, midwife or health visitor. Employees are entitled to '**reasonable' paid time off** to:

- Carry out duties or receive training as a **Safety Representative**;
- Carry out **industrial relations** duties or be trained as an official of a recognised trade union;
- Carry out duties as an **Information and Consultation Negotiating Representative** or employee representative;
- Carry out duties as a **pension scheme trustee**;
- **Look for another job** or arrange training for future employment **when being made redundant**;
- Carry out duties or receive training as an **employee representative for consultation** over collective redundancies or business transfers;
- **Study or train leading to a relevant qualification** (if the employee is aged 16 or 17);
- Attend **antenatal care appointments** (pregnant women).

Employees are entitled to '**reasonable' unpaid time off** for:

- Taking action to deal with an **emergency** involving a dependant (see section 12);
- To accompany their partner to an antenatal appointment in the case of an expected child's father or certain other people who are in a relationship with the expectant mother e.g. husband or civil partner (maximum of 2 occasions for up to 6.5 hours each time).
- Taking part in certain **union activities**;
- Performing **public duties** i.e. jury service, school board of governors.

When deciding how much time off to allow for public duties, employers should take into account:

- How much time off the employee requires;
- How much time off the employee has already had;
- The effect the time off will have on the business.

Employees may also require time off for reasons related to disability e.g. for treatment or rehabilitation.

Employers may allow time off work to visit the doctor or dentist but are not legally obliged to do so unless the contract of employment allows this.

Penalties

The Health and Safety Executive for Northern Ireland is the body responsible for enforcing the Regulations. For more information please see www.hseni.gov.uk

Employers will commit a criminal offence and will be subject to penalties if they do not comply with some of the above Regulations. Workers can also ensure that employers comply with their entitlements and have the option of pursuing remedies through either the Civil Courts or the Employment Tribunals.

[insert company name]

WORKING TIME REGULATIONS OPT-OUT AGREEMENT

Name of Employee _____

Post _____

This agreement is drawn up under the Working Time Regulations (Northern Ireland) 2016 and provides for you to enter into an agreement with [insert company name] to opt out of the 48 hours limit in respect of the total weekly average hours required in your case.

- 1 I agree that the 48 hours weekly limit specified in the Working Time Regulations (Northern Ireland) 2016 shall not apply in my case.
- 2 I understand that this agreement will apply from _____.
- 3 Notwithstanding my agreement to dis-apply this limit, I am fully aware that I have a responsibility not to work hours so long that they may impair my efficiency or expose my colleagues, the public or property to risk.
- 4 I understand that [insert company name] may need me to keep a record of my working hours and I will do this as and when required. If requested at any time, I will produce the record to [insert company name].
- 5 I agree to give not less than one month's notice to bring this agreement to an end.
- 6 I am aware that I am under no obligation to sign this agreement and that it is illegal for me to be subject to any detriment if I decline to sign.

Signature: _____ Date: _____

The original to be placed in the Employee's Personal File.

APPENDIX 4B

CALCULATING PRO RATA LEAVE ENTITLEMENT FOR STAFF WHO WORK REGULAR PART-TIME HOURS

(Specific advice should be sought for workers with irregular and inconsistent work hours which takes into account the individual circumstances)

Stage 1

Calculate the number of hours a full-time employee is entitled to.

Full-time leave entitlement in days x number of hours contracted to work per day

e.g. the staff member has 28 days leave per year and is contracted to work 7.25 hours per day (36.25 hours per week)

$$28 \times 7.25 = 203 \text{ hours}$$

Stage 2

Calculate the number of hours a part-time employee is entitled to.

Full-time leave entitlement in hours **divided** by full-time working hours per week multiplied by number of part-time hours to be worked per week

e.g. $203 / 36.25 \times 25 = 140$ hours
(where the part-time employee is working 25 hours)

The part-time employee is entitled to 140 hours per leave year.

Stage 3

If the employee reduces their hours during the leave year, the leave calculation will need to be calculated on a pro rata basis to reflect the proportion of the year worked full-time and the proportion to be worked part-time. For example:

1 Jan – 30 September – full time hrs

203 hours divided by 12 months x 9 months =
152.25 hours

1 October – 31 December – part-time hrs

140 hours divided by 12 months x 3 months = 35 hours

TOTAL HOURS per year = $152.25 + 35 = 187.25$ hours

CALCULATING LEAVE FOR LEAVERS

Stage 1

Determine the employee's leave entitlement

e.g. 28 days

Stage 2

Determine the number of days leave the employee is entitled to for the period up to and including their last day of employment with you (ensure any carry over of leave is included in this calculation if applicable)

e.g. Leave year runs from 1 April – 30 March.
Employee is entitled to 28 days per leave year, employee resigns and their last day of employment is 31 July.

No of days per year (28 days) divided by 12 months
x 4 months worked = 9.333 days.
This is the actual number of days the employee is entitled to from 1 April – 31 July

Stage 3

Check the number of leave days the employee has taken up to and including their last day of employment with you.

e.g. 7 days

The 7 days are then deducted from the 9.333 days and you should ensure that the employee receives payment in lieu of the leave untaken i.e. 2.333 days. Similarly, if the employee has taken more leave than the actual number of days allowed you should advise the employee that the deficit will be deducted from their final pay.