Title: Working Time Policy

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Compliance: Mandatory for all permanent & temporary employees, contractors & sub-contractors of North Yorkshire & York PCT

Equality Statement: This policy has been subject to a full Equality Impact Assessment

CHANGE RECORD

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<td>23-05-08</td>
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**APPENDIX 1** Summary of Provisions under The Working Time Directive

**APPENDIX 2** Questions and Answers for PCT Employees

**APPENDIX 3** Frequent Questions
Preamble

This Policy is made between NYYPCT and the recognised staff side organisations, using the mechanisms of the JNCC and LNC. It will remain in force until superseded by a replacement Policy, or until terminated by either management or staff side, giving no less than six months notice. The purpose of the notice to terminate the Policy is to provide the opportunity for both parties to renegotiate a replacement Policy. Withdrawal by one party, giving no less than six months notice, will not of itself invalidate the agreement. If agreement cannot be reached on a revised policy, then the matter will be dealt with through the PCT’s Grievance Procedure.

1. Introduction

The monitoring and enforcement of working time regulations are a vital tool in ensuring the working time and working patterns of employees of the PCT are conducive to a healthy workplace for both staff and patients.

The Working Time Directive 1998 SI 1998/1833 lays down minimum conditions relating to weekly working time, rest entitlements and annual leave, and makes special provision for working hours and health assessments in relation to night workers.

The Directive imposes responsibilities on both managers and employees to ensure that working time conditions and safe working arrangements are observed. This policy outlines those responsibilities as well as providing guidance on how the working time regulations apply to the PCT and its employees.

2. Scope

The entitlements outlined in this policy apply to all staff, excluding career grade and junior doctors, defined as workers under the Directive in accordance with their terms of employment. This includes:-

- PCT employees
- Agency and temporary workers, including locums
- Bank staff

3. Responsibilities

It is the responsibility of all employees of the PCT to ensure they are aware of their entitlements under this policy and under the Working Time Directive.

It is the responsibility of managers and staff to ensure that working hours and practices adhere to this policy and to constantly review working arrangements.
to ensure they protect the health of safety of employees, patients and the general public.

Failure to comply with this policy could potential lead to individuals being subject to disciplinary action by the PCT.

4. Working Time Regulations

4.1 Health and Safety

There is a general responsibility under health and safety law for both managers and staff to protect as far as is practicable, the health and safety at work of all employees. NHS employers also have a responsibility to protect the health and safety of patients and others receiving health care, and the general public.

Both managers and staff have a responsibility to monitor working hours and patterns and to identify and address any practices which may give rise to a foreseeable risk to employees, patients or the public.

4.2 Weekly working hours

It is the responsibility of both managers and staff to ensure that no employee works more than an average of 48 hours a week calculated over the appropriate reference period of 17 weeks. The PCT will not allow any opt-outs from the weekly working hours limit.

All calculations of working hours must include:

- On call, sleep ins, overtime etc.
- Any additional work for the PCT e.g. Bank working
- Any work undertaken for other organisations

4.3 Daily rest

All staff are entitled to 11 hours consecutive rest in each 24 hour period. It is the responsibility of both managers and staff to ensure that rotas allow for this to be taken by monitoring shift patterns and rotas.

In exceptional circumstances when it is not possible for 11 hours rest to be taken an equivalent period of compensatory rest must be provided.

4.4 Weekly rest
All staff must receive an uninterrupted rest period of not less than 24 hours in each 7 day period or 48 hours in a 14 day period. Managers must ensure that all staff receive these breaks unless:

- This is not possible for service reasons, in which case compensatory rest equivalent to the time that the employee was unable to take must be given.
- A shift worker changing shifts, in which case compensatory rest must be given.
- An emergency arises, in which case compensatory rest must also be given.

4.5 Rest breaks

All staff whose working day is longer than 6 hours are entitled to be provided with a rest break of at least 20 minutes away from the workstation. This should be unpaid and should be accommodated by:

- Existing lunch or other break arrangements for staff providing the break is longer than 20 minutes.
- Where exceptionally a break after 6 hours is not possible, 20 minutes should be provided at the earliest possible opportunity and should not be at the beginning or end of the working day.
- In exceptional circumstances where a break cannot be taken at any point during a shift, with the individual’s agreement, equivalent compensatory rest must be given.

Where breaks are provided but not taken, or because of an emergency staff cannot be given compensatory rest, managers must work closely with the affected member(s) of staff in order to identify any health and safety concerns.

On occasions, especially when considering qualified nursing staff working on a night shift, affected employees may not always be in a position where they are able to leave the building they are working in during their break. As long as the employee receives the required time away from their workstation for the purposes of this policy they will have been considered to have received their break. However, if the employee is interrupted during their ‘break’ period they will not be classed as having taken a break and would therefore be entitled to compensatory rest. Further guidance can be found in appendix 2 part 3.3.

Please see appendix 3 part B for further guidance relating to compensatory rest.

4.6 Annual leave
For heath and safety reasons it is important that all employees take their full holiday allowance in accordance with the appropriate terms and conditions and staff only carry over minimum allowances approved by their line manager at the end of the leave year in exceptional circumstances.

For Health and Safety reasons and to comply with legislation, no employee is permitted to perform other work for the PCT or any other organisation during the first four weeks of their annual leave entitlement.

4.7 Night work

All staff who meet the night worker classification must not work more than an average of 8 hours in 24 over a 17 week reference period. Risk assessments must be undertaken for all night workers in order to identify special hazards or physical or mental strain. Where this is identified it may be necessary to ensure night workers do not work more than 8 hours at any time.

*Please see appendix 2 for further guidance relating to night workers.*

4.8 Health assessments

For health and safety reasons all night staff must undertake a health assessment prior to commencing night work. All staff required to work nights will be given a health assessment on appointment or upon commencement of night shifts. All night staff are entitled to a regular free and confidential health assessment through the Occupational Health department.

4.9 No detriment

No employee should suffer any detriment as a result of exercising any entitlement under the directive. This includes any discrimination or disadvantage because of family or carer responsibilities.

Employees should raise any concerns with their line manager in the first instance or their Human Resources/ Staff Side representative as soon as they arise.

4.10 Appeal

Any appeal arising from the application of these guidelines should be raised through the PCT’s Grievance Procedure.

5. Equality Statement
The PCT recognises the diversity of the local community and those in its employ. Our aim is therefore to provide a safe environment free from discrimination and a place where individuals are treated fairly, with dignity and appropriate to their need. The PCT recognises that equality impacts on all aspects of its day to day operations and has produced an Equality Policy Statement to reflect this. All policies and procedures are assessed in accordance with the Equality Screening Toolkit, the results for which are monitored centrally.

6. Review

This policy will be reviewed in 1 year’s time. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation or guidance.

7. Monitoring

The use of this policy will be monitored by the Human Resources Department and reports will be produced annually highlighting:

- Number of breaches raised
- Occurrences of Compensatory rest
- Occurrences of compensatory rest not being taken and therefore payment made.
## Table 1


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<thead>
<tr>
<th>Directive Provision</th>
<th>Regulation</th>
<th>Potential local impact</th>
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<tbody>
<tr>
<td>Daily rest - 11 hours in each 24</td>
<td>Must be consecutive rest. Compensatory rest applies.</td>
<td>Out of hours work - on call etc. Rotas Overtime Staff sleeping in</td>
</tr>
<tr>
<td>Rest breaks - every 6 hours</td>
<td>At least 20 minutes away from the work station, where possible. Compensatory rest applies.</td>
<td>Staff in critical care or isolated areas unable to take a break.</td>
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<tr>
<td>Weekly rest - 24 hours in every 7 days</td>
<td>Additional to the daily rest and annual leave</td>
<td>Out of hours work - on call etc. Rotas Overtime</td>
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<tr>
<td>Maximum weekly Working - average 48 hours in each 7 day period</td>
<td>Standard averaging period 17 weeks.</td>
<td>Bank staff that are Trust employees. Overtime Sleep ins</td>
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<tr>
<td>Annual Leave- 4 weeks</td>
<td></td>
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<tr>
<td>Night work - average 8 hours in each 24</td>
<td>Standard averaging period 17 weeks. Can be extended by collective</td>
<td>Rotas Hazardous work Health &amp; Safety</td>
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<td>Provide free health assessments</td>
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agreement. Eight hour limit for special hazards etc. protection
1. **Introduction**

The Working Time Directive 1998 give rights to employees and obligations for employers relating to work and rest and some PCT staff have been asking what the provisions mean for them. This information sheet aims to provide preliminary answers to some of the most commonly asked questions affecting NHS staff. We hope they will be helpful to staff. Requests for further information should be addressed to your manager, who will raise this with the Human Resources Department if necessary.

2. **General questions**

*How does the Directive relate to the European Working Time Directive?*

The Directive provides the legal framework to implement the European Working Time Directive in the UK, using the flexibility and other options available to EC member states. These are explained in later answers.

*What are the main provisions of the Directive?*

As a brief summary, the Directive provides limits on:-

- Average weekly working time
- Night workers' average normal working time
- Daily and weekly working time
- Working without rest breaks

Additional provisions include:-

- Minimum paid annual leave entitlements
- A requirement to offer health assessments to night workers

*Who is covered by the Directive?*

In general, the Directive covers all workers, including temporary staff and the self employed in some circumstances. Exceptions include:-

- The genuinely self - employed
- Road transport sector workers
- Doctors in training
3. Working Time Limits

3.1 Average weekly working hours

*What are the weekly limits and can I work more if I wish?*

The Directive limits average weekly working hours to 48. The standard reference period for calculating the 48 hour average is 17 weeks which has been recognised by the PCT.

*I currently work four 12 hour shifts - does this mean I must reduce my hours?*

Not necessarily as the 48 hour limit is calculated as an average over the reference period of 17 weeks.

3.2 Daily and weekly rest breaks

*What daily rest breaks am I entitled to?*

Staff are entitled to 11 hours rest from work in each 24 hours - under 18's qualify for 12 hours rest from work in every 24 hours.

*What if I am called out and this prevents me from taking the 11 hour break?*

If staff are called out, this will count as working time, and individuals will be entitled to "compensatory" rest. The PCT is developing procedures to ensure staff receive compensatory rest without detriment to patient services.

*What are the weekly rest breaks?*

Staff are entitled to a minimum of one day's rest from work each week, or two days every two weeks - if you are under 18 you should have two days rest from work each week. This may be varied but compensatory rest would need to be given.

3.3 In-work rest breaks

*How often should I have a rest break during my working day?*

If you have been working longer than 6 hours, you are entitled to an unpaid uninterrupted rest break of 20 minutes. It is likely that for most staff this will be taken as part of their established lunch break arrangements. Under 18's qualify for a 30 minute break.
What if I am unable to take my in-work rest break because of pressures of work?

If in exceptional circumstances you are unable to take an ‘in work’ rest break then you should have the opportunity to reclaim the time through compensatory rest (see below).

Do I have to take these rest breaks?

No, but they must be provided for you, if necessary as compensatory rest, and you must not be prevented from taking them.

Are there any legal guidelines as to what constitutes a rest break and where I can take my break?

Firstly it is important to recognise the importance of all employees working practices conforming with the provisions outlined in the working time regulations. The Working Time Directive is in essence health and safety legislation, and therefore it is imperative that whenever possible employees receive the necessary break periods.

Regulation 12 (3) of the working time regulations states that in the absence of a relevant agreement, a worker is entitled to spend his or her rest break away from his or her workstation if he or she has one. This however opens the debate as to what constitutes a workstation.

In Heath and Anor v Bedford Hospitals NHS Trust (ET Case Nos. 1200712-13/00) Heath and Anor worked permanent night shifts in the operating theatre in Bedford Hospital. They usually worked from 8pm until 7.30am with an hour and a half break. However, they were not allowed to leave the hospital complex during their break in case an emergency arose. At employment tribunal the argument was made that as the employees were unable to leave the workplace, the employers were in breach of Reg 12 (i.e. they were not offering the opportunity for a break). The tribunal however dismissed the claims. Although the employees were not allowed to leave the hospital, they were allowed to leave their workstation which was deemed to be the Operating Theatre and were able to use rest rooms within the hospital.

From this ruling it would appear that workers on night shifts who are unable to leave their department would still in effect be receiving a break as long as they were able to receive the appropriate amount of time as an uninterrupted rest break.
3.4 Night Work

What are the limits on night workers?

The Directive places a limit on night workers’ average normal daily working time of 8 hours for each 24 hours over the agreed reference period of 17 weeks. Where the work involves special hazards, heavy physical or mental strain, there is an 8 hour absolute limit.

My night shift is longer than 8 hours - does this mean I must reduce my hours?

Not necessarily as the 8 hour limit is calculated as an average over the reference period of 17 weeks.

Who qualifies as a night worker?

Any worker whose daily working time includes at least 3 hours of night-time for the NHS between 11 pm and 6 am: -

- On the majority of days they work
- Often enough to be said to work these hours as a matter of course

This means that some NHS staff whose work includes night shifts on a rotational basis may not count as night workers.

How do I know if my work involves special hazards?

This will be identified by a risk assessment under the Management of Health and Safety at Work Directive 1992.

4. Health Assessments

Who is entitled to a health assessment?

Under the Directive, all adult night workers are entitled to a health assessment before being required to perform night work and at regular intervals afterwards. The health assessment is free and arranged by the employer. Adolescent night workers are entitled to a health and capacities assessment.

What is the health assessment for?

It is intended to determine whether the worker is fit to undertake the night work which he/she does.

Will the health assessment be confidential?
Yes, the information shall not be disclosed to any person other than the worker unless he/she has given their consent in writing or unless the assessment is confined to a simple statement about fitness for night work.

*What if I am found unfit to work at night?*

If your fitness for night work becomes affected in circumstances covered by the Directive, you are entitled to be transferred, where this is possible, to other suitable work, which is not at night with the pay and conditions of service appropriate for day work. If fitness is affected by a disability, employers have a duty under the Disability Discrimination Act 1995 to make reasonable adjustments, which might include changes to your hours of work.
Frequent Questions

There are a number of areas of the Working Time Regulations that have been problematic for a large number of NHS organisations. The key areas are annual leave payment and entitlement, compensatory rest and rest breaks. Other aspects such as collective and workforce agreements, calculation of working time, opt-out agreements, health assessments and night working have also been raised by some NHS employers. The answers to the questions asked gives the view of the NHS Executive but you may wish to seek your own legal opinion.

A. General

1. Q. Who do the Regulations apply to?

A. The Regulations apply to workers, with the exception of those in certain sectors (see below). A worker is essentially anyone who is employed by another party to do work, i.e. is paid to perform tasks at the direction of another (their employer). This is a broader group than just employees with a contract of employment and includes nurses working on the bank. The Regulations do not apply to those below the minimum school leaving age.

At present the Regulations do not apply to junior doctors who were one of the groups excluded from the Working Time Directive.

2. Q. Do the Regulations apply to Agency workers?

A. Yes, but it is a matter for whoever, in legal terms, holds the employment contract to ensure that they receive their rights under the Working Time Regulations. For most NHS employers that will simply mean ensuring that the agency staff used in their organisation are receiving their legal entitlement. This requirement is covered under Regulation 36.

B. Compensatory rest

3. Q. What is compensatory rest?

A. "Compensatory rest" is granted in lieu where the prescribed rest breaks are encroached upon and is a period of rest of the same duration as the period of rest missed. A worker has a right to a minimum of 90 hours of rest in a week, possibly averaged over a 14 day period, (i.e.the daily and weekly rest periods). Some of the derogations allow this rest to be taken in a different pattern to that
set out in the Regulations, or for the periods of rest to be interrupted, subject to the worker receiving "compensatory rest". The principle is that the worker receives the minimum 90 hours rest to which they are entitled, though some of it may be slightly deferred.

4. **Q. When should compensatory rest be taken?**

   **A.** Compensatory rest should be provided within a reasonable time from when the entitlement to rest accrued - this should usually be possible within a couple of weeks for daily rest and a couple of months for weekly rest. It should be taken when the employee would otherwise be working.

5. **Q. What does the British Medical Association (BMA) agreement say about compensatory rest?**

   **A.** Regulation 21 disapplies the entitlement to the rest breaks prescribed in the legislation - but not the average 48 hours weekly limit - provided that compensatory rest is provided in lieu wherever these breaks are interrupted. These derogations have been applied to senior hospital doctors to avoid severe disruptions to the continuity of the service and patient care whilst affording protection to these doctors under the Directive.

   For the purposes of implementation of this part of the agreement, we have agreed with the BMA that interruptions should be categorised as 'trivial' and 'significant'. Where an interruption is significant, doctors will be entitled to full compensatory rest periods. If the interruptions are trivial, doctors might not be entitled to the full compensatory rest, but should agree locally how such interruptions might be taken e.g. in the form of late starts. What constitutes a significant or trivial interruption also needs to be agreed locally, although a good rule of thumb is any interruption to sleep between the hours of 11.00pm and 7.00am would constitute a significant interruption and entitle the doctor to a full compensatory rest period.

   Our view on the application of the compensatory rest provisions is that NHS employers and doctors should use the four week monitoring period both to check that the 48 hour limit is being observed and to establish the typical interruptions incurred when the doctor is on-call. The compensatory rest would then be built into the doctor's normal working pattern e.g. through rostered half days off and long weekends. They would not be entitled to further compensatory rest if they were interrupted on-call to the extent that they have already been built into the roster. Only if the interruptions exceed the level observed during the monitoring period would further compensatory rest accrue.
C. **In-work rest breaks and periods**

6. **Q. Are rest breaks in addition to lunch breaks?**
   
   **A.** No, lunch breaks would provide the necessary rest break.

7. **Q. Should breaks be paid?**
   
   **A.** The Regulations do not require that breaks are paid. This is a matter to be agreed by the worker and employer.

8. **Q. When should rest breaks be taken?**
   
   **A.** During the course of the working day, though the exact timing is left to the discretion of workers and employers. Breaks at the beginning and at the end of the day are not recommended as they are unlikely to provide adequate rest breaks.

9. **Q. Is a worker entitled to 20 minutes rest for every 6 hours worked?**
   
   **A.** No. A worker is entitled to a minimum of a 20 minute break in any period of work that is longer than 6 hours.

D **Daily and weekly rest periods**

10. **Q. What if a worker wants to work longer than 13 hours in a day?**

    **A.** The rest periods are entitlements. If a worker chooses to forgo them, it is a matter for the worker and the employer. However, no pressure should be placed on an employee to take this option.

    It is however also important to note that working time legislation is in place to protect the health and safety of staff, patients and the general public, so therefore it would not be advisable for someone to work more than 13 hours in a 24 hour period except for in exceptional circumstances.