



WORKING TIME REGULATIONS - MANAGERS GUIDANCE

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Section 1. Introduction

- 1.1 The Working Time Regulations 1998 (the Regulations) implement the Working Time Directive in the UK. The Regulations regulate workers' hours of work, rest breaks and holiday entitlements the aim of which is to protect the health and safety of workers. The Regulations apply to all Culture NL workplaces.
- 1.2 Managers must comply with this guidance to ensure that workers receive the health and safety protections provided by the Regulations. This guidance sets out managers specific responsibilities to assist in the health safety and wellbeing of workers. It is managers' responsibility to ensure that their staff are informed of the content of this guidance.
- 1.3 The Health and Safety Executive (HSE) is responsible for enforcement and ensuring that employers take all reasonable steps to protect the health and safety of workers and comply with:
 - the maximum weekly working time;
 - the average length of night work;
 - the maximum 8 hour duration of night work for those where the work involves special hazards or heavy physical or mental strain;
 - the opportunity for night workers to have free and confidential health assessments;
 - transferring night workers to day time work for health reasons;
 - providing adequate rest breaks;
 - keeping adequate records; and
 - the granting of compensatory rest.
- 1.4 If Culture NL fails to comply with an enforcement notice it, or a Culture NL officer, shall be guilty of a criminal offence and penalties similar to those for offences under the Health and Safety at Work Act 1974 can be imposed.

Section 2. Scope – Who do these regulations apply to?

- 2.1. The Regulations apply to anyone who is a worker. Worker has a broader definition than an employee and includes:
 - employees
 - those working under a contract of employment (including fixed term, seasonal and casual staff);
 - temporary workers;
 - apprentices;
 - agency workers; and
 - trainees on work experience or training programmes.
- 2.2 Young workers, those who have reached school leaving age but are under 18, and Night Workers have specific rights under the Regulations and as a manager you have additional responsibilities to these workers. Further details are given in Section 10 for Young Workers and Section 11 for Night Workers.
- 2.3 The self employed are not covered by the Regulations. Self employment for the purposes of the Regulations is defined as a client/contractor relationship, involving payment by invoice and where the worker has more than one employer with the freedom to accept or reject work. The distinction between someone who is self-employed and a worker may not always be clear and should you have any concerns

about who is a worker or self-employed, please contact HR in the first instance

- 2.4 **The Road Transport (Working Time) Regulations 2005** regulations only concern the drivers and crews of vehicles involved in the transport of goods or passengers in the “transport sector”. Consequently none of Culture NL ’s drivers are covered by the terms of those regulations and must therefore comply with the Working Time Regulations as specified in this guidance.

Section 3. What is Working Time?

- 3.1 Working time is defined as any period during which the worker is carrying out their duties and at Culture NL ’s disposal. This will include carrying out duties away from the workers’ normal designated workplace, e.g. when on an outing with service users.
- 3.2 Working time includes:
- training relevant to the job;
 - ‘sleeping in’ on Culture NL premises;
 - work undertaken as part of a callout during ‘standby’ duties;
 - working lunches;
 - undertaking a public duty e.g. jury duty;
 - travelling as part of the job; and
 - working at home with appropriate authorisation.
 - overtime
- 3.3 Working time is not:
- rest breaks;
 - working from home voluntarily;
 - attending work related social events;
 - unpaid voluntary additional hours;
 - travelling to and from work; and
 - time spent on ‘standby’ or ‘on call’ away from the workplace.
 - TOIL

Section 4. Responsibilities for the implementation and application of the Working Time Regulations

4.1 Senior managers must:

- oversee the implementation of the guidance in their Service Area: and
- ensure that the guidance is observed and applied consistently.

4.2 Line managers must:

- ensure all working patterns are working time compliant;
- ensure employees are aware of their responsibilities under the Regulations and Culture NL Policy; and
- provide a safe and healthy workplace environment.
- Maintain records as detailed below:

4.2.1 Managers must keep adequate records to show the extent of compliance with:

- the maximum working weekly time;
- details of staff who have ‘opted out’ of the 48 hour working week;

- average night worker hours both in general and for those whose work involves special hazards or mental strain;
 - details of young workers patterns of work;
 - the opportunity for free health assessments for night workers; and
 - recording the offer and acceptance or decline of the free health assessment.
- 4.2.2 Managers must record details of staff who have 'opted out' and those who are defined as night workers, together with confidential details of any health assessments carried out.
- 4.2.3 Managers should monitor the hours of every worker but must also decide what records are appropriate taking into account the provisions of paragraph 4.2.1.
- 4.2.4 Managers must take particular care to monitor the working times of any member of staff or group of workers where the working arrangements border on the limits of the Regulations e.g. workers on regularly changing shift patterns and/or undertaking stand by. Advice can be sought from HR.
- 4.2.5 Should managers have any questions or queries regarding record keeping they should contact HR for advice.
- 4.3 **Workers must:**
- ensure that they are aware of their responsibilities under the Regulations and Culture NL Policy.
 - raise any concerns on the application of the Regulations with their line manager; and
 - adhere to their specific responsibility to inform their line manager of all other employment, including employment within another service area or with an external employer

Section 5. Working Time

- 5.1 Working time is defined as any period during which the worker is carrying out their duties and at Culture NL 's disposal. This will include carrying out duties outwith the workers' normal designated workplace, e.g. when on an outing with service users.
- 5.2 Working time must not exceed an average 48 hours in each seven day period averaged over a 17 week reference period. Each seven day period starts at midnight on Sunday.
- 5.3 When calculating working time over a 17 week reference period any annual leave, maternity, paternity, adoption or special leave, or sickness absence must be included in the working time calculation. Examples of how to calculate working time are shown in the **FAQ's**.
- 5.4 Working time includes:
- training relevant to the job;
 - work undertaken as part of a callout during 'standby';
 - working lunches;
 - undertaking a public duty e.g. jury duty;
 - travelling as part of the job; and
 - working at home with appropriate authorisation.
 - overtime

- 5.5 Working time is not:
- rest breaks;
 - working from home voluntarily;
 - attending work related social events;
 - unpaid voluntary additional hours; (Not TOIL)
 - travelling to and from work; and
 - time spent on 'standby' or 'on call' away from the workplace.
- 5.6 Employees may 'opt out' of the maximum 48 hour working week (**see section 6**). This is the only 'opt out' available under the Regulations. There is no entitlement to 'opt out' of the statutory rest breaks/periods. Managers must undertake an assessment to determine whether it is appropriate for an employee to 'opt out'. Specific advice can be sought from HR

Section 6. Opting Out

- 6.1 The Regulations are designed to prevent workers from working excessive hours however workers can choose, on an individual basis, to work longer than 48 hours i.e. they can 'opt out' of the 48 hour weekly average. There is no provision to 'opt out' of the statutory rest breaks/periods. Young workers cannot 'opt out' of the 48 hour working week.
- 6.2 Culture NL cannot require any worker to 'opt out'; however, if a worker wishes to 'opt out' of the minimum 48 hour working week, then they must sign a written agreement. A pro forma for this purpose is available from HR. The manager must ensure that an assessment is completed to ensure that it is safe to allow the worker the opportunity to 'Opt out' before the worker completes the 'opt out' form.
- 6.3 Even where a worker has signed an 'opt out' agreement managers must ensure that they do not work more than 78 hours in any week. This is to ensure that the worker still receives their statutory entitlement to 90 hours rest every week.
- 6.4 A worker has the right to cancel their 'opt out' agreement by giving at least 7 days notice in writing.

Section 7. Statutory Rest Breaks/Periods

The Regulations give workers a statutory entitlement to a number of rest breaks/ periods:

7.1 Rest breaks during the working day

- when working for a period of more than six hours the statutory break entitlement is 20 minutes which is unpaid. Workers covered by the provisions of the "Red Book" have a standard minimum unpaid break of 30 minutes
- The rest break cannot be given at the start or at the end of a period of work, i.e. the working period cannot be reduced by 30 minutes at the start or the end of the working period, the break must be taken during the working period;
- In certain limited circumstances a worker may be requested to take their unpaid break in their workplace, but away from their workstation, e.g. for the purposes of continuity of care of service users or in an emergency.

7.2 Rest periods between working days

- workers are entitled to a rest period of 11 consecutive hours in each 24 hour period. This does not apply to shift workers on split shifts (see 8.5 below)
- The eleven hour rest period does not need to occur within one calendar day, e.g. a 10.00pm finish followed by a 09.00am start the following day is compliant;
- A work period should not be longer than 13 hours, inclusive of an unpaid 30 minute rest break, to ensure compliance with the 11 hour rest period applicable in each 24 hour period.

7.3 Weekly Rest Periods

- workers are entitled to an uninterrupted rest period of not less than 24 hours in each 7 day period. This can be averaged over a 14 day reference period. This means that a worker must receive at least 2 periods of uninterrupted 24 hour rest in each 14 day period; or at least one period of 48 hours of uninterrupted rest in each 14 day period in which they have worked. The seven day period starts at midnight on the Sunday;
- this weekly rest period is in addition to the 11 hour rest break between working periods; therefore a shift worker who has been rostered for 6 days is entitled to receive the 11 hour rest period between working days, plus their weekly rest entitlement of 24 hours. This would total a rest period of 90 hours that week.

7.4 The Regulations stipulate that each of the above entitlements is distinct and separate. All of these rest entitlements are unpaid.

7.5 A checklist on working patterns is shown at **Appendix 2**. If you need further assistance please contact the HR in the first instance.

7.6 Workers cannot 'opt out' of the statutory requirements to rest breaks/periods.

Section 8. Compensatory Rest

- 8.1 Compensatory rest is required when a worker does not receive their full daily rest in any 24 hour period.
- 8.2 Compensatory rest is a period of rest equivalent to the period of rest that the worker has missed. If a worker has only missed part of the rest, then the compensatory rest will equate to part of the period of rest missed and not the whole period of rest.
- 8.3 Where a worker is required to work beyond their scheduled finish time, and will not receive the full daily rest period, compensatory rest must be given immediately thereafter i.e. before the beginning of the next scheduled start time.
- 8.4 Where a worker is required to work during a period which would normally be a daily rest period, e.g. called out while on 'stand by' a worker can start late the next morning to ensure that they receive their daily rest entitlement. This compensatory rest must be equivalent to the amount of rest time that has been missed, e.g. where a worker finishes at 4.00pm and is due to return to work the following day at 7.30 am this equates to 15 ½ hours scheduled rest. If the worker is called out to work from 11.00pm they will only have received 7 hours rest, therefore they must receive an additional 4 hours rest before the start of their next shift to ensure they get a minimum of 11hrs rest. Normally to compensate for the late start they would also have to finish later as their normal hours of work should not be shortened. This will have a significant impact on services which use stand by and call out or overtime on a regular basis.
- 8.5 Where a shift worker cannot be rostered to receive the required 11 hours rest between the end of one shift and the start of the next compensatory rest must be given before the start of the next shift; e.g. 10.30pm finish followed by a 07.30 am start. The 2 hours rest not received between these times must be given as compensatory rest before the start of the next shift, i.e. the subsequent rest period from the shift finish time must be for at least 13 hours before another shift can be rostered.
- 8.6 In certain circumstances it may not be possible during the work period for the unpaid 30 minute rest break to be taken, e.g. if a worker is required to work through the rest break to deal with an emergency situation. In those circumstances the manager must ensure that the worker is given an equivalent period of rest within the same day. Finishing the work period early to compensate for a rest break not taken is unacceptable practice. Managers may allow staff to finish their shift early to compensate for work undertaken during a rest period, only if it has not been possible to provide the rest period during the working period as a result of exceptional circumstances, alternatively the period of interrupted rest can be given on the subsequent working day in addition to the normal unpaid rest break for that work period.
- 8.7 Workers cannot 'opt out' of the requirement to receive compensatory rest. Payment in lieu of compensatory rest **cannot** be made.

Section 9. Emergency Circumstances

- 9.1 In emergency situations workers are exempt from the eligibility to receive their right to daily rest; weekly rest; and rest breaks in the following circumstances where:
- unforeseeable circumstances outwith the control of Culture NL occur;
 - the consequences of exceptional events could not have been avoided despite Culture NL exercising due care; or
 - there is an accident or the imminent risk of an accident.

In these situations managers should ensure that workers receive compensatory rest equivalent to the hours worked during what would normally have been one of the above rest entitlements described at **section 8**, to be taken as quickly as possible and within a reasonable timescale.

- 9.2 Where an emergency situation covers more than a single 24 hour period and compensatory rest cannot, because of the emergency, be granted then managers must ensure that the worker receives adequate rest to ensure the workers health and safety.
- 9.3 Please contact HR in the first instance if you need to determine action required in specific circumstances.

Section 10. Young Workers

- 10.1 Young workers are defined in the Regulations as those, in Scotland, who are aged between 16 and 18 years. Note - Any workers who are under 16 are afforded further protection and not covered by this guidance.
- 10.2 Young Workers have specific rights under the Regulations and these cannot be breached or modified either by agreement with the young worker, or by an agreement with a Trade Union.
- 10.3 Young workers are not permitted under the Regulations to 'opt out' of the maximum 40 hour working week which specifically applies to them.
- 10.4 Young Workers cannot work more than 8 hours per day or work more than 40 hours per week.
- 10.5 Young workers cannot work 'at night' i.e. between 10.00pm and 6.00am.
- 10.6 Entitlements to rest break/periods under the Regulations are:
- **Rest breaks during the working day**
 - Young workers must be given a 30 minute unpaid break if their daily working time is more than 4.5 hours. This must be taken during the working day and cannot be used to alter the start or finish time. The daily working time will include any time worked by a young worker for each employer, if he/she has more than one employer e.g. a paper round.
 - **Rest period between working days**
 - Young workers must have an uninterrupted rest period of not less than 12 hours in a 24 hour period.
 - **Weekly rest periods**
 - Young workers are entitled to an uninterrupted rest period of not less than 48 hours in each seven day period. The seven day period starts at midnight on the Sunday.
 - **Compensatory Rest**
 - Compensatory rest does not apply to young workers. In very exceptional circumstances a young worker may have their rest break during the working day interrupted, but the equivalent amount of rest must be given immediately thereafter.

Section 11. Night Workers

- 11.1 A night worker is someone who works at least one third of their annual working time at night. The Regulations define night work as being the during the period of 11.00 p.m. to 6.00 a.m. Night Workers have specific rights under the Regulations.
- 11.2 A worker is considered to be working at night if they work at least 3 hours of their working time during the night work period. This will include workers who undertake night work as part of a work pattern e.g. constant night shift or a rotating shift pattern which includes night shift.
- 11.3 A night worker's normal hours of work must not exceed an average 8 hours in a 24 hour period during the 17 week reference period, e.g. a 4 on 4 off 12 ½ hour shift pattern is acceptable
- 11.4 Managers should note that night hours defined for payment purposes, may be different to the night hours defined under Working Time regulations. e.g. for local government employees, any hours worked between 9 p.m. and 7am are paid as night hours.
- 11.5 Examples of how to calculate night working within the 17 week reference period are shown in the **FAQ's**.
- 11.6 **Special Hazards** - Where night work includes special hazards e.g. working with dangerous chemicals, or heavy physical or mental strain, the worker is restricted to 8 hours of actual working time. This limit is not averaged and applies to any 24 hour period that this work is carried out. Work to which this limit applies must be identified by a risk assessment carried out in accordance with the relevant Health & Safety Regulations. It is the line managers responsibility to ensure that risk assessments take place, e.g. with night work involving the use of heavy machinery or hazardous chemicals.
- 11.7 **Health Assessments** - Culture NL must provide night workers with the opportunity to undergo a free and confidential health assessment in the form of a questionnaire before commencing a night work position and on a regular basis thereafter. Workers are not obliged to complete the health questionnaire. Contact HR for further information.

Section 12. Secondary Employment - People with more than one job or contract

- 12.1 Culture NL must take all reasonable steps to ensure that workers do not work more than an average 48 hours a week. This will include hours worked in other employment with either Culture NL or an external employer.
- 12.2 Where a worker with secondary employment works more than 48 hours per week then they should be asked if they would consider reducing their hours to an average of 48 per week. If this is declined then the worker should be asked if they are willing to sign an 'opt out' agreement to protect both their rights and Culture NL's position under the Regulations.
- 12.3 Where a worker has more than one employment contract with Culture NL, the direct line manager, in discussion with the worker, must ensure that the total of the overall contractual hours satisfies the requirements of the Regulations. If the total contractual hours exceed 48 then an assessment must be completed for each post. Both managers must be involved. If the assessment is satisfactory the worker can be asked to complete an 'opt out' form.

- 12.4 Where the worker refuses to sign an 'opt out' then the respective manager or managers must assess the risks involved and decide what action is necessary in the best interests of both the individual and Culture NL . This may include a referral to Occupational Health and/or a change to one or more contracts. In these circumstances please contact the HR in the first instance.
- 12.5 Where secondary employment is permitted managers have a duty to assess the Health and Safety implications under the Regulations. Advice **must** be sought from the HR in the first instance.
- 12.6 If the worker has another contract of employment with an external employer then the worker should be asked to consider reducing their hours with their other employer and only if this is declined then the worker will be asked to complete an 'opt out' form with Culture NL , only if this is an acceptable risk. Where the risk is unacceptable it may be necessary to dismiss on the grounds of Health and Safety. In these circumstances advice **must** be sought from the HR in the first instance.
- 12.7 Examples on how to deal with staff that have 2 posts are shown in the **FAQ's** at **Appendix 1**.

Section 13. Getting Help and Raising Concerns

- 14.1 Managers who need advice on the application of WT regulations should contact HR in the first instance.
- 14.2 Where a worker has a concern over their entitlements under the Working Time regulations they should raise this with their line manager in the first instance. Where the worker remains dissatisfied with the outcome they may formally raise their concerns under Culture NL 's Grievance Procedure.

Section 14. Review

- 15.1 This guidance will be reviewed, as required, in light of experience and/or developing case law.

Appendix 1.

Frequently Asked Questions

Q.1 Can the Regulations be ignored?

A.1. No, the Regulations cannot be ignored. They are a legal requirement under UK and EU legislation. Employers are obliged to comply with all of its requirements, and employees are entitled to the protection afforded.

Q.2 Do additional jobs count towards working time?

A.2. Yes, the limit of 48 hours applies to all working time regardless of the number of employers. Culture NL requires all workers to declare other employment. This applies to further employment within Culture NL and employment with external, unrelated employers.

Q.3 Can a collective agreement with the trade unions be reached on 'opting out' of the 48 hour limit?

A.3. No, the 'opt out' arrangement can only be agreed between an individual worker and their employer/s.

Q.4. Can workers 'opt out' of the rest periods/breaks?

A.4. No, there is no provision in the Regulations which allows workers to 'opt out' of the requirements on rest breaks/periods.

Q.5. Can workers who have not 'opted out' work more than 48 hours per week?

A.5. Yes as long as the average weekly hours calculated over the reference period (17 weeks) do not exceed 48 hours.

Q.6. How is the average calculated?

A.6.

Example 1:

A worker has a standard working week of 35 hours and does overtime of 12 hours a week for the first 10 weeks of the 17-week reference period. No leave is taken during the reference period.

The total hours worked is:

17 weeks of 35 hours and 10 weeks of 12 hours of overtime

$$(17 \times 35) + (10 \times 12) = 715$$

Therefore their average (total hours divided by number of weeks):

715

$$/ \quad = 42.06 \text{ hours a week}$$

17

The average limit of 48 hours has been complied with.

When calculating the average weekly working time, if the worker is not at work at any point during the reference period because he or she is taking paid annual leave, maternity, paternity, adoption or parental leave, or is off sick This should be included in the calculation.

Example 2:

A worker has a standard working week of 35 hours (7 hours a day) and does overtime of 8 hours a week for the first 12 weeks of the 17-week reference period. 4 days' leave are also taken during the reference period.

The total hours worked in the reference period is:

16 weeks and 1 day (35 hours a week and 7 hours a day) and 12 weeks of 8 hours of overtime

$$(16 \times 35) + (1 \times 7) + (12 \times 8) = 663$$

The worker does no overtime during the leave period, so 4 days of 7 hours (4 x 7=28) should be added to the total.

Therefore their average is (total hours divided by number of weeks):

$$663 + 28 =$$

$$691$$

$$/ \quad \quad \quad = 40.6 \text{ hours per week}$$

$$17$$

The average limit of 48 hours has been complied with.

- Q.7. Who is responsible for ensuring that workers do not work more than 48 hour per week?**
- A.7. It is the line manager's responsibility to ensure that the working time limit is complied with. If the employee has more than one manager, both managers have a responsibility. Employees have responsibility to inform manager if they have other employment.
- Q.8. Can a worker use annual leave to reduce their average working time?**
- A.8. No. When calculating the average working time during the fixed reference period, any annual leave taken e.g. annual leave, maternity, paternity etc. must be included in the calculation of working time.
- Q.9. What is the basic entitlement for night working hours?**
- A.9. A night worker's normal hours should not exceed 8 hours in any 24 hour period. This can be calculated as an average over the 17 week reference period. See **Q.13** for examples on how to calculate average night working.
- Q.10. Who is considered to be a night worker?**
- A.10. Someone who regularly works at least 3 hours at night. For this purpose regular means at least one third of annual working time.
- Q.11. How is night work defined?**
- A.11. Night work is defined as covering a time period of 7 hours and including the period from 11.00 p.m. to 6.00 a.m. Culture NL defines night work as any hours worked between 10 p.m. to 7 a.m. for payment purposes only.
- Q.12. Does the limit on night working mean that workers cannot work 12 hour shifts at night?**
- A.12. No, as long as the worker does not work more than 48 hours per week during the 17 week reference period, then the length of shift can be adjusted to accommodate night working shifts in excess of 8 hours.

Q.13 How is the average night work calculated?

A.13. The average hours worked at night are calculated by dividing the number of normal hours worked in the 17 week reference period by the number of days in the period, after the number of rest days has been subtracted.

Example 1:

A night worker normally works four 12-hour shifts each week.

The total number of normal hours of work for the 17-week reference period is :

17 weeks of 4 shifts of 12 hours

$$17 \times (4 \times 12) = 816$$

There are 119 days (17 weeks) and the worker takes 17 weekly rest periods, as entitled to under the regulations. Therefore the number of days the worker could be asked to work is $119 - 17 = 102$

To calculate the daily average working time, the total of hours is divided by the number of days a worker could be required to work.

$$\begin{array}{r} 816 \\ \hline 102 \end{array} = 8$$

This equals an average of 8 hours per day.

Example 2:

A night worker normally works 5 nights of 10 hours followed by 3 days of rest. The rota pattern is for 15 weeks. The worker takes 2 weeks' leave and works 6 hours overtime every five weeks. The overtime is worked in the fifth, tenth, and fifteenth weeks. The leave does not affect the calculation of normal hours, but the overtime does.

15 cycles of 5 shifts of 10 hours = $15 \times (5 \times 10) = 750$ hours (including annual leave)

$$6 \text{ hours overtime} \times 3 = 18$$

Total hours 768 (including overtime)

There are 119 days (17 weeks) and the worker takes 17 weekly rest periods, as entitled to under the regulations. Therefore the number of days the worker could be asked to work is: $119 - 17 = 102$

To calculate the daily average working time, the total of hours is divided by the number of days a worker could be required to work.

$$\begin{array}{r} 768 \\ \hline 102 \end{array} = 7.53$$

This equals an average of 7.53 hours per day.

- Q. 14 What are a night worker's rights to a health assessment?**
 A.14 A night worker must be offered the opportunity to undergo a free and confidential health assessment. This will be provided by Culture NL 's Occupational Health provider. Line managers must offer all night workers the opportunity to complete the health questionnaire on appointment to a night post and yearly thereafter.
- Q.15 Must all night workers complete a health questionnaire?**
 A.15 No Culture NL must offer night workers the opportunity to complete the health assessment questionnaire, but they are not obliged to complete it. Culture NL believes that it is in workers best interests to complete the questionnaire. Line managers will give all new night workers the assessment form to complete, and ask all night workers on an annual basis if they wish to complete the health questionnaire. Line managers are required to record the offer and acceptance/decline of a health assessment on myPeople.
- Q.16 Do the assessments have to be made by a doctor?**
 A.16 The initial assessment can be a health questionnaire. It may be necessary to have an assessment undertaken by a doctor if there are any concerns about a workers fitness to undertake night duty. Both forms of assessment will be carried out by Culture NL 's Occupational Health Provider.
- Q.17 Does Culture NL have to provide suitable alternative work if there is medical evidence to confirm that a worker is unsuitable for night work?**
 A.17 Culture NL is only obliged to transfer the worker to day duties if there is suitable alternative employment available. Where medical opinion confirms that an employee is not suitable for night work then advice should be sought from HR.
- Q.18 What is the daily rest entitlement?**
 A.18 A worker is entitled to a break of 11 hours between each period of work.
- Q.19 Must this entitlement be on the same day?**
 A.19 No, this can be given at any time in a 24 hour period e.g. a finish at 8.30 pm and the following shift starting again at 7.30 am the following day would comply.
- Q.20 Does this apply to workers on split shifts?**
 A.20 No, the entitlement to daily rest is not applicable to workers who undertake split shifts.
- Q.21 What is the basic entitlement to weekly rest?**
 A.21 A worker is entitled to an uninterrupted rest period of at least 24 hours in each seven day period. This can be changed to include a period of 48 hours rest in a 14 day period.
- Q.22 When is the seven day period calculated from?**
 A.22 The seven day period begins at midnight on the Sunday.
- Q.23 Can the weekly rest include part of the daily rest entitlement?**
 A.23 No workers should have a minimum of 35 hours free from work at the end of their 7 day working period before returning to work following their weekly rest break.
- Q.24 What is the entitlement to a rest break during the working day/night?**
 A.24 The basic entitlement is 20 minutes when a working day is for 6 hours or longer. Culture NL has increased this to 30 minutes per day/night for all Red Book Employees.

- Q.25 Is the break paid time?**
A.25 No, the break is unpaid.
- Q.26 When should the break be granted?**
A.26 The break can be given at any time during the working day to meet the needs of the service, but not 30 minutes into or before the end of a period of work.
- Q.27 How can a lunch break be at anytime during the working day/night?**
A.27 The break is not defined as a lunch/meal break.
- Q.28 Can workers be required to take their break in the building?**
A.28 In certain workplaces, e.g. a residential unit, school, public facilities etc. managers can require a worker to take their 30 minute break in the building. This must be in a separate rest area away from the workstation, client group etc. This break should not be interrupted, unless there is an emergency.
- Q.29 Does this mean that workers are on call during their break?**
A.29 No, workers are still on their break, just not outwith the building.
- Q.30 Can workers be called on to undertake work when they are on their break?**
A.30 In the case of an emergency, e.g. if a service user is injured, workers on their break could be called on to assist with the emergency, but must be allowed to take the part of their break that they have missed at another time during the work period.
- Q.31 Why can a worker not leave the premises if they are on unpaid time?**
A.30 The rest break during the work period, albeit unpaid, is still part of the work period. i.e. a work period of 8.5 hours inclusive of an unpaid break is the contractual work period. The break is to ensure a rest from working.
- Q.32 What happens if a worker refuses to remain in the building?**
A.32 This would be viewed as failure to obey a reasonable instruction.
- Q.33 What does compensatory rest mean?**
A.33 Compensatory rest is a period of rest the same length as the period of rest, or part of the period of rest that a worker has missed.
- Q.34 When could compensatory rest be required?**
A.34 Anytime when a workers has been required to work during their daily rest break, daily rest period or weekly rest period. This could be because of an emergency, call out when on standby, or working through their break.
- Q.35 When should compensatory rest be given?**
A.35 It must be given immediately after the interrupted rest period. However in emergency circumstances compensatory rest should be taken as quickly as possible and within a reasonable timescale. Emergency circumstances have a very narrow definition – see Section 9 – and advise should be sought from HR.

Q.36 A member of staff has declared additional employment within Culture NL which means that they are not in receipt of their daily rest; what do I need to consider?

A.36 Example:

Post 1 - 30 hours per week Monday to Friday -10.00am to 4.00pm
Post 2 – 9.5 hours night shift - every Thursday - 10.00pm to 7.30am

The 11 hours daily rest cannot be given between the end of the Thursday night shift in post 2 & the start of Fridays shift in post 1.

Options:

1. Change night shift to a Friday or Saturday night.
2. Alter working hours in post 1. to Monday to Thursday & Saturday, if the service provides a Saturday Service.
3. Determine if another unit can offer a Friday or Saturday night shift for post 2.
4. Determine if another workplace can offer Saturday working for post 1.
5. Consider reducing hours in post 1.
6. Consider voluntary terminations of post 2.

Only when all of the above options have been considered and ruled out should the manager seek advice on the enforced reduction of hours in post 1.; or the termination of post 2. Each of these enforced changes would be on the grounds of Health and Safety and specific advice **must** be sought.

Q.37 A member of staff has 2 posts within Culture NL , works less than 48 hours per week but, works 7 days per week; what do I do?

A.37 Example:

In this scenario the issues is no weekly rest.

Post 1. – 36 hours per week (Monday to Friday)
Post 2. – 10 hours per week (Saturday and Sunday)

The employee will be required to either:

1. reduce their working days in post 1.; or
2. reduce their working days in post 2.

Q.38 A worker works more than 48 hours per week and has 2 posts e.g. a full time post with Culture NL plus another post either with Culture NL ; as a casual worker; within another service area; or with another employer and is refusing to sign an 'opt out' form, what do I do?

A.38 Example:

The issue here is one of Health and Safety.

The manager must:

1. consider the Health and Safety implications for the worker;
2. consider the Health and Safety risks for service delivery and/ or services users and/or the public;
3. carry out an assessment on the suitability/impact of any additional post;
4. if secondary employment is considered appropriate ask the worker again to sign an 'opt out' form;
5. if the worker continues to refuse to sign an 'opt out' form consider terminating the secondary employment, where the secondary employment is with Culture NL .
6. consider reducing the hours in Culture NL post, where the secondary employment is outwith Culture NL
7. advice **must** be sought before enacting any termination of employment or reducing a workers hours on the grounds of Health and Safety.

Q.39 How are the requirements to working time, health assessment etc. enforced?

A.39 The limits on working time, night work and the right to a health assessment and the keeping of records are enforceable by the HSE (Health and Safety Executive).

Q.40 What about rest periods, breaks and annual leave?

A.40 .An individual worker can bring a claim to an Employment Tribunal. Where a complaint is well founded, the Tribunal must make a declaration to that effect and may make an award of compensation. In the case of a failure to pay holiday pay the Tribunal must award the holiday pay due.

APPENDIX 2
Working Time Regulations - Checklist for Working Patterns
Please work through the questions in order.

1 **Is the worker over 18 year of age?**

YES **NO** → Go to Young Workers Checklist

2 **Does the worker work an average of 48hrs or less per week?**

Please refer to manager guidance to identify all working hours. Work may be under one or more contracts or with different employers.

YES **NO** → Risk Assessment required
OPT out may be suitable.

3 **Does the worker have a rest period of at least 11 hours between working days?**

YES **NO** → Consider if Compensatory rest is provided in pattern.
May require to revise the workign pattern

4 **Does the worker have an average of one day off per week**

This can be averaged over two weeks - must have at least two days off every two weeks

YES **NO** → Must revise working pattern to ensure the weekly rest is provided

5 **Does the post holder work continuously longer than 6 hours in any work period?**

YES **NO** → Proceed to Question 7

6 **Does the worker receive aminimum 30 minute unpaid break in all work periods over 6 hours?**

Note - The rest break must not be at the beginning or end of the work period.

YES **NO** → Must revise the workign pattern to ensure the worker receives the rest break during the working day.

7 **Does the worker, work at least three hours between 11pm and 6am on most days worked**

YES **NO** → This worker may be a Night Worker - Please consult manager guidance - there are specific requirements for Night Workers

8 **Does the worker spend at least a third of working time between 11pm and 6am**

NO **YES** → The worker is a Night Worker - please consult manager guidance - there are specific requirements for Night Workers.

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