

WORKING TIME REGULATIONS

MANAGEMENT PROCEDURE (HRp009)

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1. Why we need this Procedure

The Working Time Regulations came into force on 1 October 1998. The regulations provide for minimum daily and weekly rest periods, annual paid holidays, a limit on the working week to an average of 48 hours and restrictions on night work. The regulations also relate to the working time of adolescents.

The regulations establish that working time is a health and safety issue and are considered as a positive approach to eliminating excessive working hours and unsafe working practices. In this context, the Trust requires all staff to declare any additional work that they carry out and for which they receive payment.

This procedure has been written in consultation with the Trust's Staff Side representatives and with reference to the Working Time Regulations 1998 and supporting guidance issued by the NHS Executive – Working Time Regulations: Implementation in the NHS HSC/204.

Junior Doctors are not covered in this Procedure as medical staff have a separate policy, which is referred to as an Associated Document.

Further advice and support can be obtained from the Trust's Human Resources Department.

The Trust is committed to treating people with dignity and respect in accordance with the Equality Act 2010 and Human Rights Act 1998. Throughout the production of this procedure due regard has been given to the elimination of unlawful discrimination, harassment and victimisation (as cited in the Equality Act 2010).

2. What the Procedure is trying to do

The purpose of this procedure is to assist managers in the interpretation of Working Time Regulations and to help managers with implementation. This procedure acts as a summary of workers' rights and key issues which need to be considered to ensure that safe working arrangements exist. Managers are responsible for implementing the regulations and must ensure in doing so that they actively encourage safe working arrangements and conditions. Managers must also ensure that all staff are aware of their own responsibilities towards the health, safety and welfare of patients, work colleagues and the public.

3. Which stakeholders have been involved in the creation of this Procedure

Human Resources

Staff Side

4. Any required definitions/explanations

NHFT - Northamptonshire Healthcare NHS Foundation Trust

5. Key duties

Director of Human Resources – lead Director for this procedure

HR Department – provide support and guidance on the application of this procedure

All Managers – to be fully conversant with the terms of this procedure

All staff – all staff are responsible for complying with this procedure and supporting its implementation

Role of Union Representatives - Where managers identify the need for changes to current working arrangements as a result of the Regulations, these changes should be the subject of consultation with the relevant union representative(s).

6. Procedure detail

Working time is defined as:

Any time during which the employee is working at their employer's disposal and carrying out their activities or duties. Examples include: Sleep-ins/time spent on work related training/time spent on business travel.

6.1. Maximum Working Time Limit

The regulations stipulate a working time limit of an average of 48 hours per week. This average is calculated using a 17 week reference period. Managers must ensure employees do not exceed this limit. The design of shift work/rota systems must take account of this and the need to ensure that adequate breaks are provided for.

Where workers are employed in one or more job with one or more employer, reasonable steps must be taken to ensure that these workers do not exceed the maximum working time limit. Managers are advised to explore such issues on appointment and to keep accurate records.

Individuals may opt to work more than the 48 hours per week through individual agreement. Where an individual decides to work above the working time limit, managers must obtain agreement in writing from the worker agreeing to disapply the maximum weekly limit. A copy of the Consent to Agreement form can be found at Appendix 2. Normally, a maximum of 120 worked hours will be allowed in any 14 day period.

The total hours worked in any 7 day period must not exceed 60 hours.

6.2. On Call

On-Call is not regarded as working time, however, working time will commence when the employee receives a call to go to work or if they are required to give advice over the telephone. In this case the period of time on the telephone will count towards working time.

6.3. Sleep-Ins

Staff who are rostered for sleep-ins will have the time considered as working time as the staff member is at the employer's disposal and available to carry out their duties in an emergency situation if required. Where sleep-ins are required, rest periods must not be compromised and every effort must be made to ensure that individuals are not required to work a shift directly before or following a sleep-in. If individuals are required to work directly before or after a sleep-in then compensatory rest must be provided (see Compensatory Rest).

Managers are strongly advised to give careful consideration to sleep-in arrangements and where possible to make alternative arrangements. The use of compensatory rest as a means of rostering staff to work on 2

consecutive shifts, one of these being a sleep-in, is strongly opposed and must only happen in exceptional circumstances.

6.4. Night Workers

A night worker is considered as someone who normally works at least 3 hours daily during night hours. Night-time is a period of at least 7 hours, this includes the period from midnight to 5:00 am. For the purpose of this procedure night-time is defined as 11:00 pm to 6:00 am.

Managers are responsible for drawing up safe and practical rota systems. Managers must ensure that this exercise is done so that night workers do not work more than an average of 8 hours in any 24 hour period over a 17 week reference period. This means that it is still possible to have 10, 11 or 12 hour shifts. Compensatory rest periods must be provided where rest periods are compromised.

6.5. Annual Health Assessments for Night Workers

Night workers are entitled to an annual health assessment. The Occupational Health Department will be responsible for carrying out the health assessments which will entail the member of staff completing a health screening questionnaire; however, this will be followed up by a medical examination if necessary. (Appointments for medical examinations will be considered as work time and paid accordingly). The manager will need to inform the Occupational Health Department of individual working arrangements including details of shifts/hours worked or the outcome of any health and safety risk assessment pertaining to night work.

All new staff will be screened through the Pre-employment Health Screening process using the Night Workers - Health Screening Questionnaire at Appendix 3.

Managers must provide staff with questionnaires on an annual basis. Individuals do not have to participate. Individuals will be responsible for completing the forms and returning them directly to the Occupational Health Department for processing. The Occupational Health Department is responsible for determining whether it is necessary to see individual staff based on the information supplied.

On completion of the assessment the Occupational Health Department will provide the manager with a simple fitness-for-work-statement.

Confidential clinical information will only be provided to the individual concerned.

Where a member of staff is identified as having medical problems linked to night work, alternative day employment will be pursued. Any offer of alternative employment will be based on the terms and conditions applicable to the day post. In these circumstances the manager should contact the Human Resources department for further advice.

6.6. Special Hazards or Heavy Physical or Mental Strain in Relation to Night Work

Managers are responsible for carrying out a health and safety risk assessment to identify any special hazards. These should be taken into account in the health assessment and consequently must be notified to the Occupational Health Department.

Advice on how to carry out a risk assessment can be obtained from the Health and Safety Officer.

6.7. Breaks and Rest Periods

6.7.1. Rest Breaks

All staff are entitled to an uninterrupted rest period of not less than 20 minutes during any period of work which is longer than 6 hours. This break need not be paid. The break will usually be taken during the course of the working day and will, where possible, be taken away from the work place. For most staff this will usually be considered as the lunch break and it will probably be taken over a longer period of time. This practice should not be discouraged. Managers must ensure that they do not deduct 20 minutes to the beginning or end of a 6 hour working period. This is not permitted. For example, it is not permissible to start 20 minutes late or finish 20 early.

In exceptional circumstances and only where it has not been possible to provide staff with a break then equivalent compensatory rest must be given as an alternative.

6.7.2. Daily Rest

All staff are entitled to an 11 hour rest break in every 24 hour period. Managers must ensure that work plans and rotas are structured accordingly. Where for service needs it has not been possible to adhere to this, compensatory rest must be given. Managers must keep accurate records.

6.7.3. Weekly Rest

All staff are entitled to an uninterrupted rest period of not less than 24 hours in each 7 day period or when averaged out over a 2 week period, 2 days rest over a fortnight. Managers must take this into account when planning rotas. If staff are unable to take their weekly rest periods as planned due to service requirements then compensatory rest can be granted. Once again, managers will need to keep accurate records.

6.7.4. Daily and Weekly Rest Periods

Daily and weekly rest periods are separate entitlements and should be taken consecutively, e.g., one 35 hours rest per 7 day period/one 70 hours rest per 14 day period.

6.8. Young Workers (16+ years to 18 years of age)

The maximum working hours for young workers is 8 hours per day, with a combined total of 40 hours per week.

The daily rest period for young workers must not be less than 12 hours in each 24 hour period.

Young workers are entitled to an uninterrupted rest period of not less than 30 minutes during any period of work which is longer than 4.5 hours. This break need not be paid. The break will usually be taken during the course of the working day and will, where possible, be taken away from the work place. For most staff this will usually be considered as the lunch break and it will probably be taken over a longer period of time. This practice should not be discouraged. Managers should not deduct 30 minutes to the beginning or end of the working day.

Young workers are entitled to a minimum rest period of not less than 48 hours in each seven day period during which they work. The hours may be reduced if activities are split up over the day but to not less than 36 hours.

6.9. Compensatory Rest

Ideally, a compensatory rest break should be taken in the same working period. For example, if someone is working a 10 hour shift and they are not able to take their break at the usual time during that shift because of an emergency then they should be allowed to take the rest later on in the same shift. If there is an objective reason why a break cannot be provided then the obligation is to afford such protection as may be appropriate to safeguard the worker's health and safety. Compensatory rest could be given on the next shift but this should only be in exceptional circumstances and this should not be allowed to happen as a matter of course.

Where a member of staff is required to work during any time which is supposed to be a rest period then the equivalent rest period (the same number of hours lost) must be given. Managers must make sure that accurate records are kept and that compensatory rest periods are provided within a period of 2 working weeks. Managers must also ensure that compensatory rest is only accumulated where absolutely necessary.

6.10. Bank Staff

Bank Staff are considered as workers under the meaning of the Working Time Regulations.

Bank Staff who work solely on one or more of the Trust's Schemes are paid in lieu of annual leave of 5.6 weeks - pro rata, for which payment will be made as an additional payment, calculated retrospectively on the basis of shifts worked in a given period.

6.11. Record Keeping

The Trust is required to keep accurate records of time worked so that it is possible to demonstrate it has complied with the working time limits and provided night workers with an opportunity for a health assessment. Managers are required therefore to monitor hours where necessary and to keep records of the following:

- Total hours worked
- On call activities
- Number of hours worked as sleep-in
- Hours worked for other employers
- Written consent to work above the 48 hour limit if applicable
- Compensatory rest
- Any relevant agreements
- Health Assessment Outcomes

- Risk Assessments

Records will include:

- Time sheets
- Rotas
- Travel claims
- Flexi-time sheets/time owing forms
- On-call rotas

Managers should note that there is a legal requirement to keep accurate records and that these records may be accessed by Health and Safety Representatives in order to be reviewed at Health and Safety Committee Meetings.

In the circumstances where monitoring oh hours demonstrate an excessive increase in hours worked, management reserve the right to pit any necessary restrictions in place.

7. Training requirements associated with this Procedure

7.1. Mandatory Training

There is no mandatory training associated with this procedure.

7.2. Specific Training not covered by Mandatory Training

Not applicable to this document

8. How this Procedure will be monitored for compliance and effectiveness

The table below outlines the Trust's monitoring arrangements for this document. The Trust reserves the right to commission additional work or change the monitoring arrangements to meet organisational needs.

9. For further information

Further advice can be obtained from a Human Resources Business Partner by contacting the Human Resources Department.

This Procedure will be reviewed annually.

10. Equality considerations

The Trust has a duty under the Equality Act and the Public Sector Equality Duty to assess the impact of Procedure changes for different groups within the community. In particular, the Trust is required to assess the impact (both positive and negative) for a number of 'protected characteristics' including:

- Age;
- Disability;
- Gender reassignment;

- Marriage and civil partnership;
- Race;
- Religion or belief;
- Sexual orientation;
- Pregnancy and maternity; and
- Other excluded groups and/or those with multiple and social deprivation (for example carers, transient communities, ex-offenders, asylum seekers, sex-workers and homeless people).

The author has considered the impact on these groups of the adoption of this Procedure.

11. Reference Guide

There are no references or bibliography associated with this document

12. Document control details

Author:	Alex Ridley
Approved by and date:	TPB – 19.01.2018
Responsible committee:	TSPF – 20.12.2017
Any other linked Policies:	e-Rostering Protocol (HRPr003); Safer Working hours, exception reporting and work schedule review procedure; Guidance re : working arrangements under the Terms and Conditions of Service for NHS Doctors and Dentists in Training (England) 2016 (TCS 2016)
Procedure number:	HRp009
Version control:	2

Version No.	Date Ratified/ Amended	Date of Implementation	Next Review Date	Reason for Change (eg. full rewrite, amendment to reflect new legislation, updated flowchart, minor amendments, etc.)
1	01.09.2015	02.09.2015	01.09.2017	
2	19.01.18	20.01.18	19.01.21	Change into new format, minor amendments

APPENDIX 1 - WORKING TIME REGULATIONS – REST BREAKS

The Trust's Human Resources document 'Working Time Regulations - Management Procedure' includes the following provisions in respect of rest breaks:

Rest Breaks

All staff are entitled to an uninterrupted rest break of not less than 20 minutes during any period of work which is longer than 6 hours (30 minutes in any period of work which is longer than 4.5 hours for young workers). This break need not be paid. The break will usually be taken during the course of the working day and will, where possible, be taken away from the work station. For most staff this will usually be considered as the lunch break and it will probably be taken over a longer period of time. This practice should not be discouraged. Managers must ensure that they do not deduct 20 minutes to the beginning or end of a 6-hour working period. This is not permitted. For example, it is not permissible to start 20 minutes late or finish 20 minutes early.

Ideally, a compensatory rest break should be taken in the same working period. For example, if someone is working a 10 hour shift and they are not able to take their break at the usual time during that shift because of an emergency then they should be allowed to take the rest later on in the same shift. If there is an objective reason why a break cannot be provided then the obligation is to afford such protection as may be appropriate to safeguard the worker's health and safety. Compensatory rest could be given on the next shift but this should only be in exceptional circumstances and this should not be allowed to happen as a matter of course.

Where a member of staff is required to work during any time which is supposed to be a rest period then the equivalent rest period (the same number of hours lost) must be given. Managers must make sure that accurate records are kept and that compensatory rest periods are provided within a period of 2 working weeks. Managers must also ensure that compensatory rest is only accumulated where absolutely necessary.

In view of the different circumstances and environments that will be found at the Trust's many sites, the application of a single, rigid 'rule' to ensure compliance with these Regulations is untenable. In order to avoid any possibility of misunderstanding in the application of these provisions, however, the following principles will be followed:

- all staff who work a shift of more than 6 hours are entitled to an uninterrupted rest break of at least 20 minutes (30 minute break over 4.5 hours if a young worker). This break may be unpaid. This is a right.
- breaks will not be taken at the beginning or end of a shift
- breaks will be taken to suit the needs of the service
- managers/supervisors will work with their own group(s) of staff to organise rest breaks equitably and in the most appropriate way. This might include split breaks (see example below)
- staff will exercise a high degree of flexibility in responding to clinical emergencies if they should occur during the rest break
- breaks should be taken away from the immediate work area. In some locations, dedicated staff rooms will be available, whilst in other locations, provision may be made during certain times to ensure that a room is designated as a 'client-free area'
- in exceptional circumstances, it may not be possible to facilitate a rest break.

If this happens, the compensatory rest provisions will apply, in accordance with the 'Working Time Regulations - Management Procedure' :

'...where a member of staff is required to work during any time which is supposed to be a rest period, then the equivalent rest period (the same number of hours lost) must be given. Managers must make sure that accurate records are kept and that compensatory rest periods are provided within a period of 2 working weeks. Managers must also ensure that compensatory rest is only accumulated where absolutely necessary...'

- wherever possible, compensatory rest should be provided within the timescale described. Where this proves difficult, managers/supervisors might permit a member of staff to accumulate compensatory rest periods in order to facilitate a full shift in compensation. This practice is not encouraged, however, as compensatory rest is a health and safety at work requirement, not a means to accrue extra time-off
- It is imperative that accurate records of compensatory rest are maintained and it must be noted that this is different from 'time-owing', for which there is a separate policy

Please complete this form and return a **copy** to the Staff Bank Office, Dryland Block, St Mary's Hospital and retain the **original** on the individual's personal file.

If you are working above the 48-hour limit in a **substantive post only and you do not work additional hours for the bank**, then please return a **copy** to the Human Resources Department, Dryland Block, St Mary's Hospital and retain the **original** on the individual's personal file.

PLEASE ENSURE THE CONSENT FORM IS AUTHORISED BEFORE COPYING AND RETURNING AS ABOVE.

APPENDIX 3 –NIGHT WORKERS – HEALTH SCREENING

NAME:	TYPE OF WORK:
AREA OF WORK:	NAME OF MANAGER:
ADDRESS:	GP's NAME & ADDRESS:
DOB:	AGE:

How long have you been a night worker?
Do you experience any health problems?
Do you sleep well/have any sleep related problems?
Do you suffer from any back problems?

Signature:
.....

Date:

Findings:

Advice:

This form should be completed and returned directly to:

Occupational Health, St Mary's Hospital, Kettering