

Background to Working Time Directive (WTD)

DEFINITION

The definition of 'working time' given in the WTD is as follows:

Working time shall mean any period during which the worker is working, at the employer's disposal and carrying out his/her activity or duties, in accordance with national laws and/or practice.

HISTORY

The WTD was introduced in October 1998. The directive imposed:

- a limit on average weekly working time to 48 hours
- a limit on night workers' average normal daily working time to 8 hours
- a requirement to offer health assessments to night workers
- minimum daily and weekly rest periods
- rest breaks at work

Doctors in training provide a large service commitment to the NHS and it was recognised that a phased approach would be required in reducing their hours to bring them in line with other professionals.

Since August 2004, doctors in training have had to abide by the rules of the WTD (view the requirements page) and this has presented major challenges to the NHS - both in terms of service output and training. Traditionally, doctors in training have worked extremely long hours and provided out of hours medical cover for patients.

Compliance with WTD is a legal requirement. The directive is now UK health and safety law and, as such, will be enforced by the Health and Safety Executive. Trusts that do not adhere to the requirements of the directive could be fined for non-compliance—fines of up to £5,000 per breach could be levied, as well as imprisonment.

REQUIREMENTS

Working hours per week- phased approach

- August 2004: a reduction to overall average weekly working hours of 58 hours (in effect 56 hours under the New Deal)
- August 2007: an interim 56-hour week
- August 2009: a final reduction to 48 hours

Rest provisions as of August 2004

- 11 hours of continuous rest in every 24-hour period
- Minimum 20-minute break when shift exceeds 6 hours
- Minimum 24-hour rest in every 7 days or
- Minimum 48-hour rest in every 14 days
- Minimum 4 weeks of annual leave

The WTD applies to all health and social care staff. Staff can only be exempt from the regulations if they voluntarily sign a waiver to opt-out of the requirements. The continuation of the opt-out is currently under review by the European Commission.

THE OPT-OUT CLAUSE

The UK negotiated the opt-out clause in 1993—more recently, the European Parliament has debated the removal of the opt-out clause, as it is considered to be an unfair trade advantage. Further debate is required, but there is a possibility that the clause may well be removed.

At present, any individual can opt-out of the working hour's element of the WTD by voluntarily signing a waiver. Individuals cannot, however, opt-out of the requirement for rest.

The contract of employment for doctors in training states that they should not exceed an average of 56-hours per week, so contractually, opting out of the working hour's provision of the WTD would not be appropriate. In addition, individual doctors in training opting out of the Directive would not assist with rota planning arrangements.

Consultants and service grade doctors may opt-out of working hour's requirement of the WTD (although they cannot opt-out of the rest requirements).

Initially it appeared as though compliance with the WTD would be relatively straightforward for most NHS organisations. However, two rulings by the European Court of Justice made compliance extremely difficult to achieve:

- The [SiMAP ruling](#)
- [The Jaeger ruling](#) on compensatory rest

THE SiMAP RULING

In [*Sindicato de Médicos de Asistencia Pública ve. Conselleria de Sanidad y Consumo de la Generalidad Valenciana*](#) (SiMAP ruling) the European Court of Justice was asked to consider whether time spent by doctors 'on-call' either at the hospital or away from it, should be counted as 'working time', and therefore count towards the working time limits. The Court found that:

- Time spent on-call by doctors must be regarded in its entirety as working time if they are required to be present at the health centre. If they must merely be contactable at all times when on-call, only time linked to the actual provision of services must be regarded as working time.
- This can be translated as meaning that doctors who are resident on-call but sleeping are actually working. Consequently, resident on-call working patterns are generally not compatible with the WTD and this has resulted in many hospitals moving to utilize full shift working pattern.

THE JAEGER RULING

The European Court of Justice's ruling on [*Landeshauptstadt Kiel v. Norbert Jaeger*](#) builds on the findings of SiMAP with regards to the definition of 'working time' and on-call arrangements and also defines when compensatory rest should be taken.

The WTD provides that compensatory rest must be given when the daily/weekly rest requirements cannot be met. Compensatory rest will most likely be required when:

- Staff work shifts and the shift extends beyond 13 hours due to an unforeseen event; or
- Staff work on-call from home and are called upon to work during the period of duty; or
- Staff are resident on-call for more than 13 hours continuously.

In each situation, rest provided should make up for rest missed. Jaeger states that rest should be taken as quickly as possible after the end of the working period. The implications are that it will not be sufficient to aggregate rest available to an individual over a period and assume that the minimum rest requirements have thus been met.

Arrangements for taking compensatory rest are determined locally, although it is recognised that, especially in the hospital situation, there will be times when continuous emergency services must be maintained. Exceptionally, where it is not possible to grant a period of compensatory rest, an employer should ensure the worker's health, safety and welfare is protected.

You can email us with any queries relating to the Directive at publicaffairs@rcseng.ac.uk.