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## **MITREFINCH WORKING TIME REGULATIONS REPORT**

### **August 2007**

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## **Executive Summary**

The Working Time Regulations (WTR) were originally introduced to the UK on 1 October 1998 as part of European Community legislation and were then called the Working Time Directive (WTD). The intention was to improve working conditions and to standardise hours to a maximum 48 hour working week across most industries.<sup>1</sup>

At the time the WTR was introduced, Britain specifically requested the option to allow workers to opt-out voluntarily, enabling them to exceed the 48-hour working week limit. No other European country has used this clause.

Following a review of the WTR the EU is of the opinion that the opt-out clause is not in the best interests of the British workers and would be keen to see a highly significant change to the original legislative proposals. Under proposed new legislation, UK employees would no longer have the right to opt out.

4 million people in the UK work more than 48 hours and 1 in 6 people currently already work in excess of 60 hours each week.<sup>2</sup> It is a legal requirement for every UK company to keep accurate records to demonstrate that none of their employees is in breach of the WTR. The burden of proof is on the employer rather than the employee or enforcing agency.

It is vital for every company to maintain accurate and detailed records about each employee's attendance and working hours if they have not opted out from the WTR. If the opt-out clause is rescinded, companies must extend the monitoring to every single employee's hours and holidays. These records may be manual but would certainly be achieved more efficiently and effectively through the implementation of an electronic solution.

To-date, many UK businesses have failed to recognise their corporate responsibilities in respect of the WTR. Indeed, it may take the first action in an employment tribunal case for UK companies to sit up and realise that the burden of proof is on the employer to prove the number of hours worked by any employee.

### **Would your company pass a Working Time Regulations Audit?**

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<sup>1</sup> Exemptions apply to essential public services, some transport and sea workers, some shift workers and workers whose time is not measured for example Directors

<sup>2</sup> Guardian survey, 2002

## 1.0 A Guide to the Working Time Regulations

### WORKING TIME LIMITS

- Workers cannot be forced to work for more than 48 hours a week on average.
- Young Workers may not ordinarily work for more than 8 hours a day or 40 hours a week, although there are certain permitted exceptions.
- Working time includes travelling where it is part of the job, working lunches and job-related training.
- Working time does not include travelling between home and work, lunch breaks, evening classes or day-release courses.
- The average weekly working time is normally calculated over 17 weeks. This can be longer in certain situations (26 weeks) and employers can agree to extend it (up to 52 weeks).
- Workers can agree to work longer than the 48-hour limit. An agreement must be in writing and signed by the worker. This is called an opt-out. It does not need to be renewed. There must be no penalties for those who chose not to sign an opt-out. There is no opt-out available from the Young Workers limits.
- In the case of workers who have signed an opt-out agreement, an employer need only keep a record of the agreement. No further records for these workers are required.
- Workers can cancel the opt-out agreement whenever they want, although they must give their employer at least seven days' notice, or longer (up to three months) if this has been agreed.
- The working time limits do not apply if workers can decide how long they work.

#### CHECKLIST

Employers must check:

- *What counts as working time.*
- *How much time each worker spends working.*
- *If a worker is working more than an average of 48 hours a week, how you can reduce his or her hours or whether the worker wishes to sign an opt-out from the working time limit.*
- *What records need to be kept.*

***If you are an employer, you must take all reasonable steps to ensure that workers are not required to work more than an average of 48 hours a week, unless they have signed an opt-out.***

### *But what is 'working time'?*

The Working Time Regulations state that working time is when someone is "working, at his employer's disposal and carrying out his activity or duties".

This includes:

- Working lunches, such as business lunches.
- When a worker has to travel as part of his or her work, for example a 24-hour mobile repairman or travelling salesman.
- When a worker is doing job-related training that is directly related to his or her job.
- Time spent abroad working if a worker works for an employer who carries on business in Great Britain.

This does not include:

- Routine travel between home and work.
- Rest breaks when no work is done.
- Time spent travelling outside normal working time.
- Training such as non-job-related evening classes or day-release courses.
- On 3 October 2000 a judgment was passed at the European Court of Justice in a case concerning the status of 'on-call' time. The judgement relates to doctors employed in primary health care teams though a similar approach may now be taken in other areas. It indicates that 'on-call' time will be working time when a worker is required to be at their place of work. When a worker is away from the workplace when 'on-call' and accordingly free to pursue leisure activities, on-call time is not 'working time'.

### *How is the average weekly working time calculated?*

- The number of hours worked each week should be averaged out over 17 weeks or however long a worker has been working for their employer if this is less than 17 weeks. This period of time is called the 'reference period'.
- Workers and employers can agree to calculate the average weekly working time over a period of up to 52 weeks under a workforce or collective agreement. The reference period may also be extended to 26 weeks in other circumstances.
- The average weekly working time is calculated by dividing the number of hours worked by the number of weeks over which the average working week is being calculated, for example 17.

When calculating the average weekly working time, if the worker is away during the reference period because he or she is taking paid annual leave, maternity leave, or is off sick you will need to make up for this time in your calculation. Do this by adding the hours worked during

the days which immediately followed the 17-week period – use the same number of days as those when work was missed.

#### *What if a worker agrees to work longer hours?*

An individual worker may agree to work more than 48 hours a week. If so, he or she should sign an opt-out agreement, which they can cancel at any time. The employer and worker can agree how much notice is needed to cancel the agreement, which can be up to three months. Otherwise the worker needs to give a minimum of seven days' notice.

Employers cannot force a worker to sign an opt-out. Any opt-out must be agreed to. Workers cannot be fairly dismissed or subjected to detriment for refusing to sign an opt-out. Employers must keep a record of who has agreed to work longer hours.

## **TIME OFF**

### *Daily Rest*

- A worker is entitled to a rest period of 11 uninterrupted hours between each working day.

### *Weekly Rest*

- A worker is entitled to one whole day off a week.
- Days off can be averaged over a two-week period, meaning workers can take two days off a fortnight. Days off are taken in addition to paid annual leave.
- Employers must make sure that workers *can* take their rest, but are not required to make sure they *do* take their rest.

Contact DTI regarding Special Rules for Young Workers

### **CHECKLIST**

Employers must check:

- *How working time is arranged and whether workers can take the time off they are entitled to.*
- *If workers are unable to take their entitlements and whether any exceptions or flexibilities apply.*
- *The different entitlements for young workers.*

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## REST BREAKS AT WORK

- If a worker is required to work for more than six hours at a stretch, he or she is entitled to a rest break of 20 minutes.
- The break should be taken during the six-hour period and not at the beginning or end of it. The exact time the breaks are taken is up to the employer to decide.
- Employers must make sure that workers *can* take their rest, but are not required to make sure they *do* take their rest.

Contact DTI regarding Special Rules for Young Workers

### CHECKLIST

Employers must check:

- *How workers' working time is arranged and whether they are able to take the rest breaks they are entitled to.*
- *If workers are unable to take their breaks and whether any exceptions or flexibilities apply.*
- *The different rest break periods young workers are entitled to.*

## FREQUENTLY ASKED QUESTIONS

*Can an employer make an employee sign an opt-out agreement?*

No. Any opt-out must be agreed to. An employee cannot be fairly dismissed or subject to a detriment if they refuse to sign it.

*What should an employer do about a worker with a second job?*

If a worker is known to have a second job, an employer should agree an opt-out with the worker if the total time worked is in excess of 48 hours a week. More generally, employers may wish to make an enquiry of their workforce about any additional employment. However, if a worker does not tell an employer about other employment and the employer has no reason to suspect that the worker has another job, it is extremely unlikely that the employer would be found not to have complied.

*Are workers paid for rest breaks?*

This is up to the employer and the worker to agree between them. In many cases this will be determined by the existing contract.

*Are bank holidays additional to annual leave?*

No. If an employee takes a bank holiday as a paid leave, it can count as one day of their annual leave under the regulations. There is no statutory right to take bank holidays off. However this legislation is currently under review and may be amended in October 2007

*I have a number of workers working long hours – I am not sure whether they think this is expected of them or whether they are working voluntarily. As an employer, what should I do?*

It is suggested that an employer make it clear to workers that they are not expected to work beyond the hours fixed in their terms and conditions of employment. If this is made clear and workers are not *required* to work beyond these hours, it would be reasonable to assume that, unless workers indicate otherwise, the additional hours are voluntary and fall within the scope of the partly unmeasured working time exception.

## 2.0 Intelligent Employee Management

In every business, whatever its size and industry, its people are its most important asset but also the most expensive. To maximise business potential, it is crucial to have a highly motivated, efficient and productive workforce.

To achieve an effective return on investment in people, a business needs to identify necessary skill sets and achieve efficient management of these resources throughout the entire working day.

### ***Time is the scarcest resource and unless it is managed nothing else can be managed***

*Peter F. Drucker*

To comply with the Working Time Regulations, a business must specifically maintain comprehensive records that show:

- The weekly working time limit is complied with in your business. It is for you to determine what records need to be kept for this purpose. You may be able to use existing records maintained for other purposes, such as pay, or you may need to make new arrangements.
- You do not have to keep a running total of how much time workers work on average each week. How you monitor your workers' hours depends on particular contracts and work patterns.
- You need only make occasional checks of workers who do standard hours and who are unlikely to reach the average 48-hour limit. However, you should monitor the hours of workers who appear to be close to the working time limit – and make sure they do not work too many hours.
- You need to keep an up-to-date record of workers who have agreed to work more than 48 hours a week.
- You must offer regular health assessments to night workers. You should keep a record of: the name of the night worker, when he or she had the assessment and the result of the assessment.
- Records must be kept for 2 years.
- You do not need records for rest breaks, days off and annual leave.

Whilst using a time and attendance system to help you comply with the Working Time Regulations, you will at the same time be managing your human resource more effectively and thereby generating the following (demonstrable) benefits for your company:

- Cost reductions through administration and management time savings.
- Cost savings through automation which leads to and error reduction or even elimination. An error of one decimal place for example, easy to do when manually entering hundreds of numbers, can lead to salary overpayment which is difficult to recoup from the employee, even through legal channels.
- Planning and forecasting is enhanced because of an abundance of accurate management information, presented in easy to understand, comprehensive and relevant reports or graphs.
- Elimination of wastage – tasks which were previously duplicated in different departments are automated and resulting information is easy for any authorised person, regardless of department, to access.
- Quicker identification of potential problems – for example, in a similar way that WTR checking can identify danger areas which, unchecked, could result in a breach of regulations, managers can use a Bradford Factor report to check frequent short-term sickness absence and identify possible instances of stress.
- In the current economic climate, there are increasing pressures to cut costs whilst maintaining or even increasing productivity, quality and service levels. Most companies can ill-afford to increase staffing levels to meet these needs. Time and attendance systems provide the information and planning capabilities necessary to allow management to get the best out of their existing employees.

### **3.0 Enhanced Management Information**

To maintain up to the minute accurate records covering the Company's employees working hours including holidays, unplanned absences and shift changes is clearly a mammoth task if performed manually.

The attention of the Personnel and HR Department is distracted by excessive paperwork, the situation is made worse if the company does not have a dedicated person or department which manages this function. There is a danger that some companies may avoid keeping records in first place rather than spending time compiling them

An alternative solution is the implementation of a company-wide time and attendance solution which electronically captures the comprehensive records required. One of the benefits of such a system is that it also brings additional management planning and reporting systems to increase a business' overall efficiency and ultimately enables intelligent and profitable management of its human resources.

#### *3.1 Performance Against Budgets*

During the last recession in the early 1990s, workforces were rationalised through redundancies and those that remained had to increase their productivity in order to maintain Company's profitability. In many instances, levels of productivity could only be maintained through longer working hours for those that remained.

Subsequently, as the UK has moved out of recession, the number of new recruits to businesses has not kept pace. With the recent experience of recession, most businesses are leaner than before. A consequence is that to maintain their performance, many staff are still required to work hours in excess of 48 per week.

Should the opt-out clause be withdrawn, businesses need to ensure that productivity is maintained through the intelligent management of their workforce. This is especially important within manufacturing sectors where the ability to work overtime is limited by the 48 hour restriction, businesses will need to plan more effectively to ensure their performance against budget.

#### *3.2 Efficient Employees*

A direct consequence of the WTR is that the ability for a business to meet productivity through overtime could be curtailed. The option of extending the workforce could be a costly solution, particularly in a business which also suffers from seasonal peaks and troughs.

An alternative solution is to maximise the efficiency of each employee through computerised time and attendance planning modules. This enables supervisors and managers to look at the skillsets required and match these effectively with available personnel. Each department will also be able to take account of hours already worked and be alerted if a planned shift would cause a breach of the WTR.

### 3.3 *Absenteeism*

With working hours restricted to 48 per week, it is more imperative than ever that unplanned absence from work is for genuine reasons of ill health only. A computerised time and attendance solution can highlight repeated or unusual patterns of absenteeism and alert a manager to the problem at an early stage, for example by using Bradford Factor reporting. This enables the manager to address the problem with the employee before it becomes a serious personnel issue and one which ultimately affects the bottom line.

It also can help identify genuine ill health and ensure that the company has the opportunity to offer any available assistance to ensure that an employee can return to good health as soon as possible and get back to work.

### 3.4 *Presenteeism*

At the other end of the spectrum is the growing phenomenon of 'presenteeism'. This is where employees attempt to show their 'dedication' to their employer by remaining at work for long hours. In reality, there is not necessarily a direct correlation between the number of hours they have 'worked' and their level of productivity.

In essence the WTR is designed to ensure that employees can have a more balanced lifestyle and not suffer from the endemic long hours culture that has steadily grown to become the norm.

If the ability to opt-out is removed, businesses must ensure that the hours spent by employees at work are as fruitful as possible. This can be monitored through the introduction of project-based workflow timesheets and time allocation systems which integrate with a computerised time and attendance system. This enables management to identify real time spent on any one task and the rate of progress to ensure that projects are on target and within budget.

### 3.5 *Employee Morale*

The morale of the workforce is directly related to productivity. A happy, healthy workforce is far more likely to bring a positive attitude to the workplace with resulting levels of increased productivity.

### 3.6 *Redundant Paperwork*

Complying with the Working Time Regulations undoubtedly incurs an administrative burden, particularly for those companies that do not have a dedicated human resources department and those who try to keep manual records to cover daily attendance, absences and holidays.

To illustrate this, a computerised time and attendance solution would enable a company to record planned holidays and actual holidays taken. This is imperative to complying with the WTR since if an employee does not take their annual holiday entitlement, this will directly impact on the number of hours worked and averaged out across the 17 week rolling reference period.

Compiling reports on Working Time regulations compliance can also add hours of administration time to the HR department's workload. An effective time and attendance system curtails this to mere minutes because a pre-set WTR report can be run off at the touch of a button.

With the introduction of an electronic time and attendance solution, rather than become slaves to compliance to the WTR, those responsible for HR and payroll functions can focus on their other major responsibilities.

### 3.7 *Overtime Verification*

With the restrictions placed on the ability to work overtime by the WTR, it is essential that actual overtime worked is both within the 48 hours allowed and productive.

It is an age old problem within industry that overtime can be worked by an employee who needs to boost their basic salary rather than be driven by the need to complete a time critical project or provide cover for absent colleagues.

Overtime issues can be identified more clearly with an electronic solution. Where overtime is genuinely required, it can be planned for and the effects that it will have on overall budgets be understood in advance. The solution will also highlight anomalies such as employees who work excessive overtime hours.

### 3.8 *Evidence*

In the event of a dispute reaching a tribunal under the WTR legislation, the onus is on the employer to demonstrate clearly the working time of the employee in question. A computerised solution can provide admissible evidence to substantiate the Company's position. Furthermore, it is impossible to fabricate or amend computerised time and attendance records without leaving an audit trail, which means that they can be relied upon to give accurate and true evidence of employees' worked hours, rest breaks and leave.

## 4.0 Protecting Your Assets

Employees are a business' most vital asset. Every business needs to protect them to ensure ongoing efficiency and productivity. It's not simply about ensuring that no-one exceeds 48 hours, it's about providing an environment in which employees feel safe, secure, valued...

Whilst implementing a system which enables effective monitoring of working hours, a Company can immediately access enhanced management reports which can alert managers to risks affecting the staff. The risk may be to an individual's own welfare in the event that work pressure has in fact become stress due to long hours. These long hours cease to be productive and an early warning system can address this situation far quicker. Alternatively the risk may be to the business in the event that one or more of its staff are in fact fraudulently claiming hours not truly worked. Not only does this represent a threat to the level of productivity but unless it is addressed through additional security measures, it can skew the records being kept to show compliance with the WTR.

### 4.1 Stress

At the heart of the WTR legislation is the desire to ensure a better work - lifestyle balance for all employees, ensuring that there is plenty of time for leisure pursuits, relaxation, family... to balance the more hectic times spent at work.

Essentially, it is not just about complying with the 48 hour rule to meet EU regulations. A healthy, focused workforce will be more productive and it is in every business's interests to adopt a pragmatic approach to working hours to ensure that their workforce is fit and able to handle the tasks at hand.

When the work - lifestyle balance is upset and an employee is spending a disproportionate time at work rather than home, there is an increased chance that the pressure of work becomes a source of stress.

A stressed employee cannot function as well and there will be a direct impact on the rate of productivity and ultimately this will impact on the bottom line.

Stress is the second biggest cause of work-related illness and around half a million people in the UK have experienced work-related stress.<sup>3</sup> There are, however, early warning signs to look for and there are steps that managers can take to reduce its effects.

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<sup>3</sup> Health and Safety Executive information

A computerised time and attendance system can help managers to identify those members of staff who are spending long hours at work. With checks and balances within the system, managers can ensure that a more balanced work-lifestyle approach is adopted through discussions at an early stage and avoid the situation deteriorating from manageable work pressures to stress-related illness and potential absence.

#### 4.2 *Fraud and Security*

The WTR is enforced by the Health and Safety Executive and a Company that is found to be in breach of it may face stiff consequences and financial penalties. In the event of an employee bringing a tribunal action, it is the employer who must prove the hours worked and produce accurate records.

A computerised time and attendance system is one part of the solution that may be greatly enhanced by an integrated security system. The intention is not to create a 'big brother' environment but one that also ensures the safety of personnel. It may be programmed for example only to allow trained personnel into particular areas of a manufacturing plant. Using clocking systems and/or biometric identification such as fingerprint scanning, a business can help to eliminate any potential risk of fraud involved in, for example, syndicate/corporate clocking<sup>4</sup>. The combination of time and attendance system and integrated access and security data may provide greater reassurance for a Company that the records it keeps are a true reflection of events.

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<sup>4</sup> Sometimes referred to as 'buddy punching', this is where one person 'clocks in' or signs into work for a colleague, or many colleagues.

## 5.0 Return on Investment

Although an initial outlay is required to set up a computerised time and attendance system most companies see a return on their investment within weeks of going live with the system. A good computerised time and attendance system normally pays for itself within a year, with demonstrable cost savings.

If Britain is forced to remove the ability for employees to opt-out of the 48 hour limit British businesses will undoubtedly incur additional costs through the need to manage their workforce more efficiently. Companies who recognise the growing need to keep comprehensive records now will quickly begin to reap the benefits of setting up a computerised solution to their time and attendance requirements. Should the European legislation be put in place, these businesses will be ideally positioned to move into this restrictive working environment whilst others fall behind.

### 5.1 *Time Savings*

Through the removal of paperwork considerable time savings can be made across the company. For example, the automated processes allow employees to quickly and easily request holidays and shift changes which can be approved by the employer at the touch of a button. With a comprehensive record of the working time planned for the week at the employers fingertips any required changes are easily accommodated with all factors taken into account. This is particularly important for companies where changes to the planned working time directly impacts on productivity or health and safety regulations.

### 5.2 *Attendance improvements*

Installing a time and attendance system improves the attendance and timekeeping of staff because they know that these are being monitored. Companies could be overpaying each employee by as much as 30 minutes a day because of unmonitored late arrivals, early leaving, and longer breaks. This translates into lost productivity and thousands of pounds wasted on wages paid when the employees concerned may not even have been on the premises. As an example, a 1% increase in attendance for a company employing 240 staff at an average UK salary rate of £23,607 could translate to an annual saving of £57,000.

### 5.3 *Cost Savings*

The cost savings gained from the use of a computerised solution go hand in hand with the increase in the Company's productivity. Through effective budgeting of

working time complying with the 48 hour limit, excessive overtime can be limited and absenteeism and presenteeism problems can be rectified.

If you are using a manual system, or are manually transferring data to your payroll system, you are likely to be experiencing an error rate of between 1% and 5% of total labour costs. Reducing this by a conservative 0.5%, could give an annual saving of £23,500.

Fraud becomes less of a problem as 'buddy punching' can be reduced through the use of the latest biometric add-ons to time and attendance packages.

## 6.0 Important Government Bodies and Useful Contacts

HSE (enforces weekly and night working time limits and health assessments)	<ul style="list-style-type: none"> <li>• Call the HSE Infoline on 08701 545500 or</li> <li>• Contact the Environmental Health Department of your Local Authority, or</li> <li>• Write to: HSE Information Centre, Broad Lane, Sheffield, S3 7HQ.</li> </ul>
ACAS (enforces time off, rest breaks and paid annual leave)	<ul style="list-style-type: none"> <li>• <b>08457 47 47 47</b> National Helpline</li> <li>• <b>08456 06 16 00</b> for Textphone users.</li> </ul>
Employment Tribunals Service	0845 7959775
Employment Appeal Tribunal	<a href="http://www.employmentappeals.gov.uk">www.employmentappeals.gov.uk</a>
British & Irish Legal Information Institute	<a href="http://www.bailii.org">www.bailii.org</a>
- Database of legal material including case law and statutes	
Department of Trade and Industry	<a href="http://www.dti.gov.uk">www.dti.gov.uk</a>
Inland Revenue	<a href="http://www.inlandrevenue.gov.uk">www.inlandrevenue.gov.uk</a>
UK Online	<a href="http://www.ukonline.gov.uk">www.ukonline.gov.uk</a>
Business Link	<a href="http://www.businesslink.org">www.businesslink.org</a>
Skillsbase	<a href="http://www.skillsbase.dfee.gov.uk">www.skillsbase.dfee.gov.uk</a>
- Labour market information database on skills, provided by the Department for Education and Skills	
Government Gateway	<a href="http://www.gateway.gov.uk">www.gateway.gov.uk</a>
- Registration service for a digital certificate of identity to use UK Government forms on the Internet	
Investors in People	<a href="http://www.iipuk.co.uk">www.iipuk.co.uk</a>
Small Business Service	<a href="http://www.sbs.gov.uk">www.sbs.gov.uk</a>
National Group on Homeworking	<a href="http://www.gn.apc.org/homeworking">www.gn.apc.org/homeworking</a>
- Advice and information on employment rights for homeworkers	
Federation of European Employers	<a href="http://www.fedee.com">www.fedee.com</a>
Federation of Small Businesses	<a href="http://www.fsb.org.uk">www.fsb.org.uk</a>
Institute of Directors	<a href="http://www.iod.co.uk">www.iod.co.uk</a>

**7.0 Mitrefinch Contact Details**

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