

Working Time Checklist

Working time -- checklist of employee issues

- o **Underlying purpose**
 - Consider how the working time of workers affects:
 - their health and safety;
 - the health and safety of their colleagues;
 - the health and safety of others.

- o **Preliminary review**
 - Identify workers:
 - those who are employees working under a contract; and
 - those who fall within the extended definition of 'worker'.
 - Check whether the worker (or worker's activity) is excluded from the Working Time Regulations 1998:
 - see in particular Regulations 18 and 19 (excluded sectors).
 - identify workers who fall within the 'unmeasured working time' exception (Regulation 20).
 - Make a preliminary assessment of working practices to assess the impact of the Working Time Regulations 1998 in relation to:
 - 48-hour average working time per week;
 - 8-hour average night work per 24 hours;
 - 8-hour night work per 24 hours for hazardous work;
 - 20-minute daily rest break;
 - 11-hour break between starting and finishing work;
 - 24-hour weekly rest period;
 - 5.6 weeks' holiday entitlement; and
 - record keeping requirements.
 - In making a preliminary assessment, things to consider might include:
 - existing time records;
 - managers' views;
 - workers and/or workers' representatives' views;
 - time records kept over a trial period; and
 - risk assessments carried out under health and safety legislation.

- o **No impact -- minimal contractual changes?**
 - If the Working Time Regulations 1998 apply but have no impact on existing working practices, consider minimal contractual changes, for example:
 - an obligation on workers to keep time records if requested;

- › modification of holiday provisions, in particular to establish: (a) a common holiday year; and (b) simplified arrangements over the taking of holiday;
 - › workers to notify the employer of work done for other employers (alternatively, insert a contractual prohibition on the worker working for other employers).
- o **Working time**
 - o Consider whether to extend the meaning of 'working time' to cover, for example, breaks, by means of agreement (contract of employment) or workforce agreement.
- o **48-hour week**
 - o Discuss with worker.
 - o Consider direct solutions such as:
 - › reducing work; or
 - › re-allocating work.
 - o Consider whether flexibilities internal to the Working Time Regulations 1998 allow workers to work existing hours:
 - › does the unmeasured working time derogation apply?
 - › modify working time?
 - › switch from rolling to successive reference periods (or vice versa);
 - › modify reference periods: (a) increase to 26 weeks, if workers' activities fall within the special cases listed in Regulation 21 of the Working Time Regulations 1998; or (b) increase or reduce (maximum 52 weeks) if there are objective or technical reasons to justify this in relation to particular workers or groups of workers.
 - o Will workers agree to opt out of the limit? If so:
 - › prepare 'opt-out' documentation;
 - › decide on length of notice required to terminate 'opt out' (7 days in the absence of agreement or up to 3 months with agreement).
- o **Night work**
 - o Identify 'night workers' (defined as a worker who works at least three hours of his daily working time during 'night time');
 - o Consider whether night work provisions are excluded by reference to Regulation 20 (unmeasured working time).
 - o Consider whether night work provisions are excluded by reference to the activities and other matters in Regulation 21 of the Working Time Regulations 1998. If so, consider compensatory rest arrangements (for example, time off in lieu, flexitime or holiday).
 - o Consider the meaning of 'normal hours of work' for night workers.
 - o Do any night workers' 'normal hours of work' exceed an average of 8 hours for each 24-hour period? If so, consider the following steps:
 - › Discuss with worker.
 - › Consider direct solutions such as: (a) reducing night work; or (b) switching worker to day work from time to time.

- Consider whether flexibilities internal to the Working Time Regulations 1998 allow workers to work existing night work hours. If not, consider the following:
 - modify meaning of 'night time' (which employers can do provided that the new definition relates to a period the duration of which is not less than seven hours, and includes the period between midnight and 5 am);
 - modify meaning of 'night workers';
 - switch from rolling to successive reference periods (or vice versa); or
 - extend reference periods.
 - Modify or exclude average 8-hour limit by collective or workforce agreement applying to particular workers or groups of workers (subject to providing equivalent periods of compensatory rest, for example time off in lieu, flexitime or holiday).
 - Set up arrangements for compensatory rest (for example, time off in lieu, flexitime or holiday).
 - Set up arrangements for health assessments and repeat health assessments.
 - Consider whether any night workers are carrying out work involving special hazards or heavy physical or mental strain for more than 8 hours in any 24-hour period.? If they are or might be, consider identifying the work by collective or workforce agreement.
 - Modify or exclude 8-hour special hazards limit by collective or workforce agreement applying to particular workers or groups of workers (subject to providing equivalent periods of compensatory rest, for example, time off in lieu, flexitime or holiday).
- o Daily rest**
- Do all workers receive an 11-hour rest period? If not, consider the following steps.
 - Consider whether daily rest provisions are excluded by reference to the activities and other matters in Regulations 20 or 21 of the Working Time Regulations 1998. Consider compensatory rest arrangements (for example, time off in lieu, flexitime or holiday) for Regulation 21 reasons.
 - Consider whether the minimum rest period can be interrupted, ie activity involving periods of work that are split up over the day or of short duration, for example, cleaning staff with morning and evening shifts.
 - Discuss with worker.
 - Consider direct solutions such as:
 - reducing work; or
 - reallocating work. Will the worker assert entitlement?
 - Modify or exclude limit by collective or workforce agreement applying to particular workers or groups of workers (subject to providing equivalent periods of compensatory rest, for example, time off in lieu, flexitime or holiday).
 - Set up arrangements for compensatory rest (for example, time off in lieu, flexitime or holiday).
 - Consider the position of shift workers switching between shifts. Establish a system of compensatory rest.
- o Weekly rest period**
- Do all workers have a 24-hour rest period in each 7-day period (or a 48-hour rest period in each 14-day period) independent of a daily rest period? If not, consider the following steps.

- Consider whether weekly rest provisions are excluded by reference to the activities and other matters in Regulations 20 or 21 of the Working Time Regulations 1998. Consider compensatory rest arrangements (for example, time off in lieu, flexitime or holiday) for Regulation 21 reasons.
 - Discuss with worker.
 - Consider direct solutions such as:
 - reducing work; or
 - re-allocating work. Will the worker assert entitlement?
 - Modify or exclude limit by collective or workforce agreement applying to particular workers or groups of workers (subject to providing equivalent periods of compensatory rest, for example, time off in lieu, flexitime or holiday).
 - Set up arrangements for compensatory rest (for example, time off in lieu, flexitime or holiday).
 - Consider position of shift workers switching between shifts and periods of work that are split up over the day or of short duration. Establish a system of compensatory rest.
 - Consider the possibility of incorporating the daily rest entitlement into the weekly rest entitlement if justified by objective or technical reasons or reasons concerning the organisation of work due to the inherent nature of the work.
- o **Rest breaks**
- Do all workers have at least a 20-minute rest break after working for 6 hours?
 - Consider whether rest break provisions are excluded by reference to the activities and other matters in Regulations 20 or 21 of the Working Time Regulations 1998. Consider compensatory rest arrangements (for example, time off in lieu, flexitime or holiday) for Regulation 21 reasons.
 - Consider whether rest breaks are to be paid -- is this dealt with in the contract?
 - Consider prescribing details of the rest break, including its duration and the terms on which it is granted in accordance with a workforce or collective agreement.
 - Consider whether adequate rest breaks are being provided in the case of monotonous or uninterruptible activities.
 - Discuss with worker.
 - Consider direct solutions such as:
 - reducing work;
 - re-allocating work. Will the worker assert entitlement?
 - Modify or exclude limit by collective or workforce agreement applying to particular workers or groups of workers subject to providing equivalent periods of compensatory rest (for example, time off in lieu, flexitime or holiday).
 - Set up arrangements for compensatory rest (for example, time off in lieu, flexitime or holiday).
- o **Holidays**
- Check that contractual holiday entitlement equals or exceeds statutory entitlement.
 - In particular, consider position of 'casuals', bank nurses and persons who are not conventional employees.
 - In relation to the contract:
 - consider standardising the holiday year;
 - exclude statutory arrangements on taking holiday;

- ▶ exclude and modify contractual provision on accrued holiday and holiday claw-back at termination;
- ▶ define a week's leave in the situation of an employee working irregular hours;
- ▶ consider exclusion of entitlement for those employees with less than 13 weeks' continuous employment; and
- ▶ ensure that all employees receive a 'week's pay' in respect of each week of leave in accordance with ERA 1996, ss 221-224.

o **Young workers**

- o When drafting for young workers (persons 15 or over and over the minimum school leaving age but under 18), consider the following:
 - ▶ Working time: a young worker's working time should not exceed 8 hours a day or 40 hours a week;
 - ▶ Reference periods: same as for adults;
 - ▶ Average working time per week: same as for adults but a 40-hour average working time per week applies;
 - ▶ Night work: young workers should not ordinarily work during the restricted period, namely the period between 10 pm and 6 am or, where the worker's contract provides for him to work after 10 pm, the period between 11 pm and 7 am, subject to certain exceptions. If an exception applies, young workers are entitled to a health and capacities assessment if assigned to work during the period between 10 pm and 6 am (except where the work is of an exceptional nature);
 - ▶ Daily rest: entitled to 12 consecutive hours' rest in each 24-hour period (may be interrupted if periods of work are split up over the day or are of short duration). Flexibilities available for adult workers in Regulations 20-24 do not apply.
 - ▶ Weekly rest period: entitled to 48-hours' rest in each 7-day period (may be interrupted if periods of work are split up over the day or are of short duration). Weekly rest period may be reduced to 36 consecutive hours where justified by technical or organisational reasons. Flexibilities available for adult workers in Regulations 20-24 do not apply.
 - ▶ Rest breaks: entitled to a 30-minute break when daily working time is more than 4½ hours. If the young worker works for more than one employer, aggregate the working time for the purposes of rest break entitlement. Flexibilities available for adult workers in Regulations 20-24 do not apply.
 - ▶ Holiday: same as for adults.

o **Doctors in training**

- o From 1 August 2004, doctors in training are subject to weekly working time limits which is being phased in as follows
 - ▶ 58 hours from 1 August 2004 to 31 July 2007;
 - ▶ 56 hours from 1 August 2007;
 - ▶ 48 hours from 1 August 2009.