



# Working Time Policy

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2.1	13/02/13	Sally Peart	S	Approved policy for issue
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3.0	February 2019	Christine Brereton	A	TMG approved the amended date as policy is fit for purpose.
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S = Signed Off D = Draft

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This document is controlled.

If you would like to suggest amendments to this document, please contact the document author.

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## 1. STATEMENT OF INTENT

This policy has been produced to provide details of Yorkshire Ambulance Service NHS Trusts position in relation to working hours and to confirm the arrangements to be adopted in order to safeguard the safe delivery of patient care, to protect the wellbeing of staff and to ensure the principles of the Working Time regulations 1998 are applied.

## 2. INTRODUCTION

The Working Time Regulations 1998 (the Regulations) specify the rights of employees and the obligations of employers concerning Working Time.

There is a general responsibility for employers and employees under health and safety law to protect as far as is practicable the health and safety of all employees at work.

The Trust therefore considers that control over the working hours of its employees is an integral element of managing health and safety at work, reducing the risk of ill health, fatigue, errors and omissions and incidents/accidents within the workplace.

## 3. PURPOSE

The purpose of this policy and procedure is to:-

- Support the Trusts Strategic objective '**Our People**' by supporting staff in achieving a healthy work life balance.
- Ensure the Trust meets its legislative requirements in complying with the Working Time Regulations 1998.
- Ensure that staff do not work excessive hours, endangering the health and safety of themselves, their colleagues and our patients

## 4. DEFINITIONS

**4.1 Working Time:** The working time regulations state that working time is when someone is 'working, at the employer's disposal and carrying out their duties'. This includes:

- Paid hours of duty
- Overtime - including end of shift
- Paid travel time in own vehicle or Service vehicle as per terms and conditions of employment (for example employees who are called into work during a period of on-call)
- Where a worker is undertaking work related education and training
- Working time in other employment (as advised by the worker);
- Trade Union activities
- Actual work arising from periods of on-call
- Working lunches, such as business lunches
- Where a worker has to travel as part of their work

This does not include:

- Routine travel between work and home
- Unpaid 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
- Leave due to sickness, annual leave, maternity leave, accrued leave;

**4.2 Rest Period:** Any period that is not working time as defined above.

**4.3 Night Time:** A period of at least seven hours which includes the period from midnight to five a.m.

**4.4 Night Worker:** Someone who is classed as working for at least three hours daily during night-time hours as a 'normal course'. A person works as a normal course if they work such hours on the majority of days on which they work.

## 5. DUTIES WITHIN THE ORGANISATION

**5.1 The Trust Board** has overall responsibility for endorsing and supporting the application of this policy, ensuring that patient safety and staff well-being is not at risk through excessive working hours.

**5.2 Managers** are responsible for implementing this policy and ensuring it is adhered to within their own work area. Managers will endeavor to ensure that staff do not work excessive hours i.e., more than an average of 48 hours. Where staff wish to work in excess of the average 48 hour working week, managers will ensure that individuals have signed an opt out agreement, as per Appendix 1. A decision to exercise this option is an individual, voluntary one and no pressure should be placed on an employee to opt out or continue to opt out.

**5.3** Irrespective of any individual signing an opt out, **managers** will continue to monitor the situation to ensure that regularly working more than 48 hours is not having a detrimental impact on an individual's health and well-being. In all cases, managers will ensure that no member of staff works more than an average of 60 hours per week.

**5.4 Employees** must ensure that they adhere to this policy and take appropriate breaks in agreement with their line managers. Where staff wish to work more than an average 48 hours in a 52 week period, they must only do so once they have submitted an opt out agreement.

**5.5** In cases when an employee has more than one employer, the Trust will implement reasonable steps to ensure that workers are not working beyond the limits set out in the Regulations. All employees should inform the Trust if they have a job(s) outside the Trust together with the number of hours worked in that job(s) (refer to Trust policy on Secondary Employment). It is the employee's responsibility to ensure that he/she informs the Trust of any alterations to this information. Opt out agreements must be signed where the employee wishes to exceed an average of 48 hours per week by working for another employer and/or by holding a second contract with the Trust.

**5.6 Trade Unions representatives** are responsible for providing appropriate guidance, advice and support to their members on the application of this policy.

**5.7 Trade Union representatives** will raise any concerns about the application of this policy through the appropriate channel e.g. Line Manager, HR etc.

## **6. WEEKLY WORKING TIME**

**6.1** The purpose of the Regulations is to limit compulsory working time to an average of 48 hours per week, such that employees will normally not be expected to work more than 48 hours per week calculated over an agreed averaging period. The formula used to calculate average working time will be as specified in Section 4(6) of the Regulations. (The formula is attached as Appendix 2).

**6.2** In order to provide maximum flexibility, it is proposed that the reference period is extended from 17 to 52 weeks (refer S27.9 Agenda for Change Handbook). The reference period will commence at 00:01 hours on 1<sup>st</sup> April annually.

**6.3** In addition, line/departmental managers in conjunction with the Resource Department will review actual working time every 17 weeks to ensure any necessary measures are actioned during the year to ensure compliance with the Regulations. Such measures may include bringing to the attention of an employee the average hours worked during the period and/or reducing overtime opportunities. When considering such measures professional advice and guidance must be sought from the HR Department.

**6.4** Individual employees may choose at any time to opt out by agreeing in writing to work more than the 48 hours average weekly limit.

**6.5** This Agreement should be registered by completing a Trust Opt Out Agreement (attached as Appendix 1). One copy of the Opt Out Form will be retained by the HR department on the employee's personnel file and one copy will be retained by the employee.

**6.6** Individual Opt Out Agreements may relate to a specific period or apply indefinitely. In either case the employee or employer must give four weeks' notice to end the agreement.

**6.7** In circumstances in which the Trust considers that the existence and application of the Opt Out Agreement is detrimental to health and safety, 7 days notice will be given to terminate the Opt Out Agreement. In such circumstances, the member of staff will have access to the Issue resolution Procedure if he/she considered that this facility had been unreasonably withdrawn.

**6.8** Managers must draw employees' attention to the existence of an Opt Out Agreement should the need arise but shall not exert pressure on the employee to take this option.

**6.9** Active on-call time, which is counted as working time, commences when the worker is disturbed and undertakes actual work, including giving advice over the telephone and travelling to and from work if they are required to attend work. Inactive on-call time, which is not classed as working time, is time during which a worker is available to work but is not actually working or travelling to/from work.

## **7. NIGHT WORK AND NIGHT WORKERS**

**7.1** The NHS Terms and Conditions Handbook requires employers to ensure that night workers do not exceed an average of 8 hours per shift over a 17 week period. As far as is practicable the Trust will work with Managers and Staff side Representatives to ensure that Front-line and Out of Hours services can comply with the law in relation to this specific element of the regulations and that, as far as possible, the "normal" hours of night work do not exceed this guidance.

**7.2** Where it is determined that a member of staff meets the criteria of a night worker, as defined, they will be entitled to a free health assessment upon their request or as requested by the Trust. The assessment will be in the form of a health questionnaire followed by an assessment at the Occupational Health Department when deemed necessary.

**7.3** The purpose of the health assessment is to determine whether an employee is fit to carry out the night work to which they are assigned.

**7.4** Where a registered medical practitioner has advised the employer that the worker is suffering from health problems connected with the fact that they work at night, the employee will be referred to the Occupational Health Department. The Occupational Health Department will then make an assessment and advise on whether the employee should, if possible, be offered the option of transfer to suitable day work or other suitable deployment. In the event that an employee is deemed unfit for work at night this process will be managed through the Trust's Attendance Management and/or Capability Policy as appropriate.

**7.5** The HR and Risk Departments will liaise to ensure that Risk Assessments are conducted, where appropriate, to make sure that, on balance, the hazards faced by night workers do or/do not constitute special hazards or physical or mental strain when compared to activities undertaken at other times.

## **8. REST PERIODS**

**8.1** Employees may not opt out of daily or weekly rest periods which are defined in detail below.



## **8.2 Daily Rest Periods**

**8.2.1** An employee is entitled to a rest period of not less than 11 consecutive hours in each 24-hour period. In circumstances where 11 consecutive hours is not practical because of contingencies of the Service, which may include 'end of shift overtime', daily rest may be less than 11 hours.

**8.2.2** Where the employee has not been able to benefit from 11 consecutive hours' rest in a 24-hour period, compensatory rest should be provided at the earliest possible opportunity. The Working Time Regulations stipulate that compensatory rest should be taken within a reasonable time from when the break was missed but not necessarily before the next shift commences. However, wherever practicably possible, the Trust will endeavour to ensure that staff are able to have an 11-hour break between shifts.

**8.2.3** In accordance with the regulations, in exceptional circumstances, Accident and Emergency staff will not always benefit from this, in particular in the event of a major incident or other significant occurrence.

**8.2.4** It should be noted that travelling time (to and from work) is an individual's responsibility, is not included in the weekly work time, and, as such, is included in the 11 consecutive hour period of rest.

**8.2.5** Where staff finish shift later than their normal finish time and, as a result, would not be able to take an 11 hour rest break before the start of their next shift, they must inform their Clinical Supervisor of their finish time and agree how/when they will take their compensatory rest period (this may, or may not, be before the start of their next shift).

**8.2.6** Wherever possible, the daily rest period should be taken from the employee's work station.

**8.2.7** Where an overtime payment is claimed for hours worked in excess of contracted hours, and then time off in lieu is not applicable. This does not form part of an individual's entitlements under the working time regulations.

## **8.3 Weekly Rest Periods**

**8.3.1** In accordance with the NHS National Terms and Conditions of Employment (refer s27, para 27.19) employees shall be entitled to one uninterrupted rest period of not less than 35 hours (including the 11 hours of daily rest) in each seven-day period. Where this is not possible, the equivalent rest period over a 14-day period, either as one 70 hour period or two 35 hour periods must be taken.

**8.3.2** Weekly rest periods are taken in addition to paid annual leave.

**8.3.3** In circumstances where this is not possible compensatory rest must be granted as soon as possible to protect a worker's health and safety.

**8.3.4** Overtime payments will not be payable when compensatory rest has been granted.

## **8.4 Compensatory Rest**

**8.4.1** Where employees have been required, at the exigencies of the service, to work during either weekly or daily rest periods an equivalent number of hours rest should be provided within a reasonable period.

**8.4.2** In circumstances where this is not possible compensatory rest must be granted as soon as possible to protect a worker's health and safety.

**8.4.3** Compensatory rest will not be provided in the event of voluntary overtime.

## **8.5 Rest Breaks**

**8.5.1** When an employee's daily working time is more than six hours they are entitled to a 20 minute rest break, in accordance with the Working Time Regulations. For operational staff, rest breaks will be allocated in accordance with the Trust's Rest Breaks Agreement.

**8.5.2** Rest breaks should not be allocated at the start or end of a shift.

**8.5.3** The Regulations do not provide for rest breaks to be paid. NHS Terms and Conditions of Employment do not provide for rest breaks to be paid. As such, all rest breaks will be unpaid.

**8.5.4** Every effort must be made to ensure a rest break is taken during the shift. Where an employee is unable to take a rest break or where a rest break is interrupted, in exceptional circumstances, due to the need to maintain continuity of patient care, compensatory rest will be granted at the earliest possible opportunity.

**8.5.5** Further details regarding the daily allocation of rest breaks for 'operational' staff can be found within the Trust's Rest Break Policy. The allocation and timing of rest breaks for all other staff will be at the discretion of the employee's Line Manager/ Head of Department as appropriate and will be in accordance with this agreement and NHS Terms and Conditions of Employment.

## **8.6 Annual Leave**

The Trust's annual leave year runs from 1st April to the 31st of March. The full time equivalent entitlements are:

- On appointment to the NHS - 27 days plus 8 bank holidays
- After 5 years NHS service - 29 days plus 8 bank holidays
- After 10 years NHS service - 33 days plus 8 bank holidays

## **8.7 Ambulance Staff - Exceptional Circumstances**

In accordance with the regulations, in exceptional circumstances, where the exigencies of the Service dictate, staff may not necessarily fully benefit from the provisions outlined above e.g., in the event of a major incident or other significant occurrence.

## **9. YOUNG WORKERS**

**9.1** The Working Time Regulations lay down special provisions for young workers. A young worker is a worker who has reached the age of 15, but not the age of 18 and who is over compulsory school age.

**9.2** Daily Rest Periods: Young workers are entitled to a minimum daily rest period of 12 consecutive hours per 24-hour period.

**9.3** Breaks: Young workers are entitled to a minimum uninterrupted unpaid break of 30 minutes when working more than 4.5 consecutive hours. The break must not be taken at either the start or the end of a working day.

**9.4** Weekly Rest Periods: Young workers are entitled to an uninterrupted rest period of not less than 48 hours in each 7-day period.

**9.5** Night Work: Young workers may only work between the hours of 10pm and 6am if they have had the opportunity of a free Health and Capacities Assessment carried out by the Occupational Health department. They should then be offered further assessments at regular intervals.

## **10. EQUALITY IMPACT ASSESSMENT**

Yorkshire Ambulance Service NHS Trust is committed to ensuring that the way that we provide services and the way we recruit and treat staff reflect individual needs, promote equality and does not discriminate unfairly against any particular individual or group.

This procedure embraces diversity, dignity and inclusion in line with emerging Human Rights guidance. We recognise, acknowledge and value difference across all people and their backgrounds. We will treat everyone with courtesy and consideration and ensure that no-one is belittled, excluded or disadvantaged in any way, shape or form.

An Equality Impact Assessment has been completed and is available from the human Resource department.

## **11. IDENTIFICATION OF STAKEHOLDERS (SCOPE OF POLICY)**

This policy and procedure applies to all Trust employees. However, the Working Time Regulations also contain the facility for certain workers and/or activities within the Ambulance Service to be exempt from some of the rights and obligations of the Regulations. Specifically, Regulation 2 cites Ambulance staff as falling within the definition of Civil Protection services due to the particular nature of the services provided i.e. patient care, Accident and Emergency cover.

Therefore, in the case of employees unable to benefit from the protection of the Working Time Regulations, the Trust will apply the principles of the Regulations and this agreement, as far as the exigencies of the service permit (refer S27.5 Agenda for Change handbook).

## **12. CONSULTATION PROCESS**

Senior Managers, Staff Side Representatives and members of the JSG have been formally consulted about the development and review of this policy and procedure through the JSG consultation procedures.

The final policy will be communicated following ratification by the Trust Executive Group (documented in minutes) through an insert in the Trust's operational update, manager's briefings, and update of the Trust intranet and document library.

## **13. PROCESS FOR REVIEW AND REVISION**

This policy will be reviewed in three years' time unless legislative or other changes necessitate an earlier review.

## **14. COMMUNICATION AND DISSEMINATION**

Once ratified by the Trust Board this policy will be published on the Trust intranet. This policy will then be notified to the target audience named on the front page of the policy as follows:

- Directors. Communication directly by e-mail and discussion at Executive Team meetings
- Assistant Directors, senior operational and support managers. Communication directly by e-mail and to notify Directors through line management briefing.
- All staff. Trust communications channels including Operational Update.

This policy can be located via the staff library (policies) on the Trust's intranet, from any Human Resource representative, line manager or staff side representative.

## **15. POLICY IMPLEMENTATION**

As the policy is on of straightforward application, training will be given as and when required most likely in the form of one to guidance to managers and staff

The key for this policy is staff and manager awareness

## **16. MONITORING COMPLIANCE AND EFFECTIVENESS**

**16.1** The Trust will maintain the records necessary to comply with the Regulations. Records will be retained for a minimum of two years from the date they were made. All employees must keep and assist managers to keep accurate records of working time in order to support this process.

**16.2** Individual records are confidential and will be retained in accordance with the provisions of the Data Protection Act.

**16.3** An analysis of working time will be carried out on an annual basis with the resulting data and conclusions shared with staff side representatives via the JSG.

## **17. STANDARDS AND KEY PERFORMANCE INDICATORS**

KPIs are demonstrated by the Trusts compliance as set out within the Working Time Regulations regarding rest breaks, annual leave and working hours.

## **18. ASSOCIATED DOCUMENTATION**

This policy operates in conjunction with the following Trust policies and procedures:

- Rest Breaks Policy
- Secondary Employment
- Agenda for Change terms and conditions handbook

## **19. REFERENCES**

Sources of reference material include:-

<https://www.nhsemployers.org/publications/tchandbook>

**48 HOUR AVERAGE WEEKLY WORKING TIME - OPT OUT AGREEMENT**

I hereby agree that the 48-hour limit on average weekly working time, as specified in the Working Time Regulations 1998 (Regulation 4.1), shall not apply to me.

I understand that I have a responsibility not to work hours in this or other employment which are so long that they may impair my efficiency or expose myself, colleagues, the public or property to risk. I therefore agree that my average weekly working time must not exceed 60 hours averaged over a 52-week reference period, commencing 1 April each year.

I understand that this agreement: \* - delete as applicable

\* is for an indefinite period:

\* Will end on: ..... (date)

but can be terminated by either myself or my employer by giving four week's written notice of the intention to do so. I understand my employer has the right to terminate the agreement with 7 days notice if the existence of the agreement is deemed detrimental to health and safety.

Signature.....

Name (CAPITALS).....

Payroll number.....Date.....

Original form to be submitted to the HR department and a copy retained by the employee.

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**Notice to Terminate the Opt-Out Agreement**

Notice is hereby given on ..... to terminate the above opt-out agreement. The Agreement will therefore terminate on .....

Notice given by.....(signature)

Name..... Date.....

Notice to be sent to the employee or HR department as appropriate.

## APPENDIX 2

### CALCULATION OF AVERAGE WEEKLY WORKING TIME

The Regulations set a 48 hours limit on average weekly working time. However, a worker may exceed this limit providing an Opt-Out Agreement has been signed.

The Trust has a responsibility to keep records which are adequate to show whether the time limits specified in the Regulations are being complied with.

The records cover time actually worked. This means that the calculation must **include**:

- Paid hours of duty
- Overtime - including end of shift
- Paid travel time in own vehicle or Service vehicle as per terms and conditions of employment (for example employees who are called into work during a period of on-call)
- Where a worker is undertaking work related education and training
- Working time in other employment (as advised by the worker);
- Trade Union activities
- Actual work arising from on-call
- Working lunches, such as business lunches
- Where a worker has to travel as part of their work

The calculation must **exclude**:

- Routine travel between work and home
- Unpaid 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.
- Leave due to sickness, annual leave, maternity leave, accrued leave;
- On-call periods when no actual work is done
- Any period during which a signed Opt-Out Agreement is in operation

The average working week shall be calculated by applying the following formula:

$$\frac{A + B}{C}$$

In principle the formula can be explained as:

**A**  
(Total working hours during the reference period)

+

**B**  
(Total working hours in the subsequent days which equal the excluded days during the reference period)

## C

(The number of weeks in the reference period)

Examples of the calculations are therefore as follows:

### 1. Where the worker works a total of 2142 hours and has 22 days annual leave and no sickness:

A = the total working hours during the 52-week reference period = 2142

B = the total working hours in the (22) subsequent working days equal the excluded days during the 52 week reference period = 165

C = the number of weeks in the reference period = 52 weeks

$$\frac{A+B}{C} = \frac{2142 + 165}{52} = 44.37 \text{ hours}$$

This means that the worker has worked an average of 44.37 hours per week over a 52 week reference period.

### 2. Where the worker works a total of 1902 hours and has 22 days annual leave and 6 weeks of sickness:

A = the total working hours during the 52 week reference period = 1902

B = the total working hours in the 52 (i.e. 22 A/L + 30 sickness) subsequent working days equal the excluded days during the 52 week reference period = 390

C = the number of weeks in the reference period = 52 weeks

$$\frac{A+B}{C} = \frac{1902 + 390}{52} = 44.08 \text{ hours}$$

This means that the worker has worked an average of 44.08 hours per week over a 52 week reference period.