

## Working Time Regulations and Procedure

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## **Executive Summary**

East and North Hertfordshire Clinical Commissioning Group (hereafter referred to as the CCG) wishes to promote the general wellbeing of all employees, avoid unnecessary illnesses, absences, accidents and job losses, improve work performance and provide a working environment which ensures, as far as possible, the health and safety of all employees.

The purpose of this policy is to provide guidance and assistance in promoting employee health and wellbeing as well as providing a safe workplace by ensuring compliance with maximum working hours, minimum rest breaks and annual leave requirements and explanation on legal requirements in the length of night work.

A review of the previous Working Time Regulations Policy has taken place in order to keep pace with present legislation, reflect NHS Agenda for Change requirements and best employment practice, and to produce a comprehensive policy that is both fair and consistent with other employment policies. This policy has taken into consideration the following legislation; The Working Time Regulations 1998 (as amended), Disability Discrimination Act 1995, Equality Act 2010 and Agency Workers Regulations 2011.

The CCG can provide training for all managers and staff involved in implementing and applying this policy and procedure where required.

## **1. INTRODUCTION**

- 1.1. The CCG is an organisation within which diversity, equality and human rights are valued. We will not discriminate either directly or indirectly and will not tolerate harassment or victimisation in relation to gender, marital status (including civil partnership), gender reassignment, disability, race, age, sexual orientation, religion or belief, trade union membership, status as a fixed-term or part-time worker, socio - economic status and pregnancy or maternity.
- 1.2. The CCG works to a framework for handling personal information in a confidential and secure manner to meet ethical and quality standards. This enables National Health Service organisations in England and individuals working within them to ensure personal information is dealt with legally, securely, effectively and efficiently to deliver the best possible care to patients and clients.
- 1.3. The CCG, via the Information Governance Toolkit, provides the means by which the NHS can assess our compliance with current legislation, Government and National guidance.
- 1.4. Information Governance covers: Data Protection & IT Security (including smart cards), Human Rights Act, Caldicott Principles, Common Law Duty of Confidentiality, Freedom of Information Regulations and Information Quality Assurance.
- 1.5. The Working Time Regulations 1998 (as amended) came into force in the United Kingdom on 1<sup>st</sup> October 1998 and incorporates provisions of the European Working Time Directive (93/104/EC) and the Young Workers Directive (94/33/EC). The regulations were introduced as a health and safety measure for employees by setting minimum requirements for rest periods, weekly working hours, length of night work and annual leave.
- 1.6. Under the health and safety at work legislation there is a responsibility on all employers to ensure the health, welfare and safety of their employees, as far as practicable. Management and control of working hours should be regarded as an integral element of promoting and managing the health and welfare of the CCG's employees.

## **2. SCOPE AND PURPOSE**

- 2.1 This policy applies to all CCG staff including contractors and agency staff acting on behalf of the CCG.
- 2.2 The purpose of the policy is to inform managers and staff of their rights and to highlight the responsibilities of the CCG.

2.3 Individuals should not suffer any detriment in exercising their rights under this policy.

### **3. OTHER RELEVANT HR POLICIES**

3.1. Other relevant HR policies to consider when referring to this policy include;

- Capability Management
- Disciplinary
- Equality and Diversity in Employment
- Grievance
- Learning and Development
- Over Time and On-Call
- Work Life Balance
- Anti-Fraud and Bribery Policy

### **4. DEFINITIONS**

4.1 The definition of staff is:

- An individual who has entered into or works under a contract of employment, or
- An individual who is paid a regular salary or wage and works for the organisation. The employer normally provides the worker with work, controls when and how the work is done, supplies them with tools and other equipment and pays tax and national insurance contributions. This includes part time, temporary and the majority of agency workers and freelancers.

4.2 Working time is defined as any period where staff are:

- Working
- At their employer's disposal and
- Carrying out their activities or duties

All three aspects of this definition must be satisfied to be working time.

Working time includes periods where the worker is receiving education and training authorised by the CCG, attending civic and public duties where either special leave has been granted or where performing these duties on behalf of the CCG, working overtime and attending health and safety and trade union activities.

Working time excludes annual leave, sick leave, maternity leave, and meal breaks as the worker is not required to do any work or carry out any duties during these times.

4.3 Young workers are defined as someone aged between 15 and 18 and/or who is over compulsory school age.

## **5. WORKING TIME**

### **5.1 Weekly Working Hours**

The regulations state a worker's averaged working time, when aged eighteen or over, must not exceed 48 hours during a seven day period. This includes overtime.

To calculate average working time, a 'reference period' of 16 rolling weeks is used.

### **5.2 Voluntary Opt-Out Agreements**

Workers may voluntarily choose to work more than 48 hours per week. The agreement to do this must be in writing and must allow the worker to bring the agreement to an end (Appendix 1). The agreement can be indefinite but subject to termination by the worker providing a minimum of three months notice in writing. In exceptional circumstances managers have the discretion to waive this notice period.

The CCG cannot force workers to sign opt-out agreements and the regulations state it is unlawful to subject a worker to a detriment or to dismiss a worker who refuses to sign an opt-out agreement.

The CCG is required to maintain, and assess any risks to the health and safety of their workers. Managers and individuals have a responsibility to ensure staff are not affected because someone is working above the maximum weekly limit. If there is concern about the number of hours a worker is working in excess of their contracted hours the manager should discuss this with the individual concerned. If further concern continues after a discussion with the individual, the manager should seek advice from the HR department.

### **5.3 Unmeasured or Partly Unmeasured Working Time**

The 48 hour working time limit does **not** apply to workers where on account of specific characteristics of the activity in which s/he is engaged, the duration of the working time is not measured or predetermined or can not be determined by the worker themselves.

Essentially this applies to workers who have complete control over the hours they work, whose time is not monitored or determined by their employer and in particular to managing executives or other persons with autonomous decision-taking powers.

### **5.4 Travel to Allocated Base**

Travel to and from your allocated base is not classed as working time. However, travel between bases/sites during a working day and any travel in connection with business is classed as working time.

### 5.5 **On-Call**

When a worker is on-call, starting from when they are called upon to undertake work related activity up until the time the worker either returns home or finishes by advising a designated contact person by telephone, this is classed as working time. Where workers are on-call but otherwise free to pursue time as their own, this will **not** count towards working time. This method of calculating working time will not affect on-call payments.

### 5.6 **Trade Union Duties**

If workers receive paid time off to participate in trade union duties this is classed as working time. Trade Union representatives should take personal responsibility for ensuring their contracted hours and their trade union duties do not exceed an average of 48 hours per week.

### 5.7 **Employees Undertaking Secondary Employment Elsewhere**

Secondary employment is any additional work undertaken or planned to be undertaken for another employer or work undertaken as a self employed person or as the partner of a self employed person.

All workers participating in secondary employment else where must inform their line manager and should not work more than 48 hours per week in total. This is to protect the workers health and safety and potentially that of service users. It is a worker's personal responsibility to report for work in a fit and able state.

Employees must declare secondary employment during the recruitment process and must seek approval from their CCG line manager prior to any secondary work being undertaken.

Managers are required to ensure all staff complete and submit a secondary employment declaration form (Appendix 2), which should be placed on the worker's personal file. This form should be included as part of all new starters local induction.

If due to the secondary employment the 48 hour weekly limit is exceeded, the line manager and worker should discuss this and seek to agree how and if this arrangement can be facilitated. If the agreement results in the worker continuing with both employments, exceeding the 48 hour weekly working limit and agreeing to the conditions of opting out of the 48 hour weekly limit, a voluntary opt-out agreement should be obtained and the hours worked at the CCG recorded. If in the discussion the individual does not wish to agree to the conditions of opting out of the 48 hour weekly working limit and the manager can not facilitate decreasing the number of hours the worker is contracted to with the CCG, the manager should contact the HR department for further advice on how to proceed with this matter.

Both managers and workers have a responsibility to ensure the function of the organisation is not affected because someone is

working above the maximum weekly limit. If a manager is concerned about the number of hours a worker is working in excess of their contracted hours they should discuss this with the individual concerned and if the concerns continue following this discussion the manager should seek advice from the HR department.

#### 5.8 **Young Workers**

Working time for workers aged 15 and 18 cannot exceed 40 hours during a rolling seven day period or eight hours in a 24 hour period. These hours may not be averaged out and there is no opt-out option available.

### 6. **REST PERIODS**

6.1 Workers may **not** opt-out of daily or weekly rest periods.

6.2 Rest periods are defined as any time which is not working time. Annual leave is not considered towards daily or weekly rest periods.

#### 6.3 **Daily Rest Periods**

A worker is entitled to:

- A minimum rest period of 11 consecutive hours in each 24 hour period (12 hours in 24 hours for young workers).
- Workers should be offered a minimum 20 minute break for every shift lasting more than 6 hours. This break is not paid.
- The CCG must allow workers any breaks required as a result of a health condition or disability.
- Young workers should take at least a 30 minutes break if working a shift longer than four and a half hours. This break is not paid.

#### 6.4 **Weekly Rest Periods**

A worker is entitled to one uninterrupted rest period of not less than 24 hours in each 6 day period or not less than 48 hours in each 14 day period.

Young workers are entitled to one uninterrupted rest period of not less than 48 hours in each 6 day period. The weekly rest period should not include any part of the daily rest period.

6.5 Rights to rest periods do not apply where the job requires round the clock staffing as in hospitals, residential institutions, etc. However, the regulations give all workers a right to 90 hours of rest in a week, which is their total entitlement from daily and weekly rest periods. This exception allows staff to take rest in a different pattern to that set out in the regulations, so that everyone gets their entitlement to 90 hours rest a week on average.

#### 6.6 **Compensatory Rest**

In exceptional circumstances, provision is made in the regulations for workers to take an equivalent period of compensatory rest when daily



or weekly rest periods were not possible to take. Compensatory rests should be taken at the earliest, practical opportunity.

If workers *choose* not to take their rest breaks, they are not entitled to compensatory rest or pay for this.

## 7. RECORD KEEPING

The regulations state employers must keep up to date, accurate records, for a minimum of two years, which are available to locally recognised health and safety representatives, health and safety executive inspectors and local authority inspectors. The records which must be kept are:

- Records to show compliance with weekly working time limits. This will include a combination of employment contracts, time sheets, overtime records and rotas.
- Accurate lists of current night workers, evidence of being offered regular health assessments and records showing compliance with night work limits.
- Records to show compensatory rest has been granted. There is no requirement to keep records regarding rest periods.
- Records of annual leave granted and taken.
- Records of who has opted out of the 48 hours limit and the actual hours worked by each worker to whom the agreement applies.

**INDIVIDUAL VOLUNTARY AGREEMENT TO OPT-OUT OF THE  
AVERAGE MAXIMUM WEEKLY WORKING HOURS UNDER THE  
WORKING TIME REGULATION 1998**

- a) I confirm that I am aware of my statutory rights in relation to the Working Time Regulations,
- b) I hereby give you notice that I am willing to work, on average, in excess of 48 hours a week.
- c) This agreement is to remain effective for an indefinite period and I understand that should I wish to terminate this agreement, I can do so at any time by providing my Manager with 3 months notice of my intention to do so.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Department: \_\_\_\_\_

Date: \_\_\_\_\_

**Please return this form to your manager, who is required to hold your individual voluntary opt-out agreement and make it available for inspection, in line with the usual protocols of the CCG, when required to do so**

## SECONDARY EMPLOYMENT DECLARATION

### Section 1 Introduction

The Working Time Directive places limits on the number of hours employees are expected to work, the extent of night work and obligations upon employers regarding monitoring working time compliance. One such obligation for the CCG is to make reasonable enquiries concerning whether or not staff who also work for another employer are not exceeding the 48 hour working week limit. To do this the CCG requires all staff to make a positive declaration of all secondary employment.

In the interests of the health and safety of its staff, service users and the public the CCG expects that where significant secondary employment is disclosed, and particularly if this causes the employee to exceed the 48 hour maximum, line managers will counsel staff and evaluate any potential health and safety issues concerning secondary employment.

Employee Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Contracted Hours: \_\_\_\_\_

### Section 2 Employee's Declaration

Please read and sign the declaration below. Staff should also immediately bring future changes to their secondary working activities to the line manager's attention as and when they occur.

I certify that I have the following secondary employment:

Employer's Name & address	Nature of Work	Approximate Weekly Hours

Please indicate if any night work, e.g. between 9 pm and 6 am is involved in any employment listed above.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

### Section 3 Line Manager's Evaluation

Please document below any action felt necessary relating to the disclosure made under Section 2, for example where an individual's opt-out form has been completed. Also please indicate where no action was necessary.

Signed: \_\_\_\_\_

Designation: \_\_\_\_\_

Date: \_\_\_\_\_

***(Once completed this form should be placed in employee's personal file)***

**Appendix 3 – Equality Impact Assessment Stage 1 Screening**

1. Policy	EIA Completion Details
Title: Working Time Regulations Policy <input checked="" type="checkbox"/> Proposed      Date of Completion: July 2013 <input type="checkbox"/> Existing Review Date: July 2015	Names & Titles of staff involved in completing the EIA: Jenny Holland, Senior HR Advisor

**2. Details of the Policy. Who is likely to be affected by this policy?**

Staff                                     
  Patients                                     
  Public

**3. Impact on Groups with Protected Characteristics**

	Probable impact on group?			High, Medium or Low	Please explain your answers
	Positive	Adverse	None		
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Being married or in a civil partnership	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Disability, inc. learning difficulties, physical disability, sensory impairment etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Having just had a baby or being pregnant	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Race, ethnicity, nationality, language etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Religion or belief	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Sex (inc. being a transsexual person)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Sexual Orientation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		

**No impact on any of the groups above.**      Please explain and provide evidence

**4. Which equality legislative Act applies to the policy?**

<input checked="" type="checkbox"/> Human Rights Act 1998 <input checked="" type="checkbox"/> Equality Act 2010 <input checked="" type="checkbox"/> Health & Safety Regulations	<input type="checkbox"/> Mental Health Act 1983 <input type="checkbox"/> Mental Capacity Act 2005
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**5. How could the identified adverse effects be minimised or eradicated?**

**6. How is the effect of the policy on different Impact Groups going to be monitored?**

**Appendix 4 – Privacy Impact Assessment Stage 1 Screening**

1. Policy		PIA Completion Details	
Title: Working Time Regulations Policy <input checked="" type="checkbox"/> Proposed      Date of Completion: <input type="checkbox"/> Existing      July 2013  Review Date: July 2015		Names & Titles of staff involved in completing the PIA: Jenny Holland, Senior HR Advisor	
2. Details of the Policy. Who is likely to be affected by this policy?			
<input checked="" type="checkbox"/> Staff <input type="checkbox"/> Patients <input type="checkbox"/> Public			
	Yes	No	Please explain your answers
<b>Technology</b> Does the policy apply new or additional information technologies that have the potential for privacy intrusion? <i>(Example: use of smartcards)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>Identity</b> By adhering to the policy content does it involve the use or re-use of existing identifiers, intrusive identification or authentication? <i>(Example: digital signatures, presentation of identity documents, biometrics etc.)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
By adhering to the policy content is there a risk of denying anonymity and de-identification or converting previously anonymous or de-identified data into identifiable formats?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>Multiple Organisations</b> Does the policy affect multiple organisations? <i>(Example: joint working initiatives with other government departments or private sector organisations)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>Data</b> By adhering to the policy is there likelihood that the data handling processes are changed? <i>(Example: this would include a more intensive processing of data than that which was originally expected)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
If Yes to any of the above have the risks been assessed, can they be evidenced, has the policy content and its implications been understood and approved by the department?			