

WORKING TIME REGULATIONS

ROAD TRANSPORT

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I hereby confirm that I have received the Working Time Regulations booklet and will abide by the content therein.

Signed:

If the mobile worker is at all concerned about what they are doing and feels they are being forced to break the Regulations, we suggest they take the following steps:

1. Talk to their employer, they may be able to resolve the matter straight away
2. Contact their union if they are a member
3. If the matter still remains unresolved then contact either VOSA or the DVTA
VOSA's and the DVTA's main role is to educate and help drivers and employers alike. However if more formal action is required then they will:
 - a. Issue improvement notices
 - b. Issue enforcement notices
 - c. Issue prohibition notices

Ultimately, the courts have a system of fines and custodial sentences that can be applied both in relation to these Regulations and also to Health and Safety at Work Legislation.

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1. Introduction

A new set of Regulations called the Road Transport (Working Time) Regulations - RT(WT)R - came into force on 4th April 2005. They affect all workers termed 'mobile workers' (drivers and other vehicle crew) travelling in vehicles subject to EU Drivers' Hours Rules (EC 561).

The Regulations have three underlying objectives:

1. To improve the health and safety and welfare protection of persons covered by the Regulations
2. To improve road safety
3. To ensure a level competitive playing field for EU member states

The Road Transport (Working Time) Regulations work in conjunction with the EU Driver's Hours Rules (EC 561). They set out rules in relation to the amount of work that can be done within the road transport sector, rather than just driving hours. Where conflict exists between the two sets of regulations, the EU Drivers' Hours Rules takes precedence.

Specifically, the RT(WT)R imposes limits on weekly working time, a limit on the amount of work that can be done at night and specifies how much work can be done before taking a break. However, breaks and certain periods where the driver is available to work but not actually working are known as 'Periods of Availability' (which will be further explained in Section 3) and are excluded from the calculation of working time.

Under the RT(WT)R the mobile worker must not work more than:

1. An average of 48 hours per week, calculated over a period of time known as a 'reference period' (further explained in section 4)
2. 60 hours in any single week
3. 10 hours in any 24 hour period, if the mobile worker is working at night (night time being defined as 00:00 to 04:00 for goods vehicles and 01:00 to 05:00 for passenger vehicles)

3. If the system used to record working time uses the tachograph, the 'mode' switch must be used to identify the difference between other work, rest and POA
4. A mobile worker must provide the employer(s) with a separate record of activities/duties performed whilst not driving or accompanying a vehicle. If the employer chooses to use the tachograph to record and monitor working time, currently most drivers use the 'on duty and available for work' switch to record both 'other work' and 'periods of availability'. However, if this is the only switch used it may give a misleading record of the amount of working time that has been done.

The driver must use - if working in a vehicle fitted with an analogue tachograph:

1.  The cross-hammers mode for other work and for any other waiting time that they did not know about in advance
2.  The **on duty and available for work** mode for the recording of **periods of availability** that are known about in advance
3.  **Rest mode.** The bed symbol should be selected to illustrate **Rest Breaks and Daily Rest**, unlike common practise with Analogue Tachographs it is acceptable to leave the *Digicard* in over night (if the driver is on a night out in the cab) and select the bed symbol. It is still acceptable to remove the *Digicard* to mark a daily rest period, once the card is removed a period of rest is assumed.

8. Enforcing the Regulations

The Vehicle & Operator Services Agency (VOSA) enforces these Regulations in Great Britain. The Driver & Vehicle Testing Agency (DVTA) enforces the Regulations in Northern Ireland. The key points of their involvement are:

1. As with the EC 561 Rules they will normally enforce these new Regulations in response to any complaints they receive
2. They maintain the right to inspect records in the event of an accident or breach of Drivers' Hours Rules

without taking a break

2. That if working hours total between 6-9 hours a day, breaks of at least 30 minutes in total are taken
3. If working time totals more than 9 hours in a day, breaks must be a minimum of 45 minutes

Any breaks can be divided up in to 15-minute periods.

These rules for mobile workers must also be applied on days when they are not travelling with the vehicle e.g. working in the yard or warehouse.

Remember, when taking a break, they may not do any work. They can however remain with the vehicle providing they can reasonably relax e.g. read a book.

7. Keeping records

Both the mobile worker and the employer have a responsibility to keep records of working time. The employer must keep these for a period of 2 years from the end of the agreed reference period.

In brief, the employer must:

1. Inform the mobile worker of their rights under the Regulations
2. Provide them with a system of recording working time
3. Provide them with access to any 'workforce agreement' prior to commencing work for them
4. Inform the mobile worker that they require in writing details of any other work done for another employer. This will include an account of **all** working time

The employee must:

1. Keep a record of working time and other time. such as any POA and time spent on breaks
2. Communicate in writing to their employer(s) any time spent working for another employer

A reference period is a period of seventeen weeks, unless a longer period of up to twenty-six weeks is agreed with the workforce. Agreements with the workforce can be made by entering into what is known as a 'workforce agreement' (or 'collective agreement' if it is organised in conjunction with a union). Such agreements can also be used to extend the time permitted for night working.

Record keeping is an important feature of these Regulations and it is important that both the driver and the employer keep appropriate records of the hours that count towards a mobile worker's weekly working time.

2. Who is affected by the Regulations?

Those affected

The Regulations affect mobile workers who are involved in road transport activities subject to EU Drivers' Hours Rules (EC 561). Mobile workers are defined as drivers and other members of the vehicle crew such as driver's mates, porters etc. Vehicles covered by EU Drivers' Hours Rules are vehicles in which a tachograph is (or is required to be) fitted.

Unlike the Working Time Regulations (WTR), mobile workers covered by these Regulations are unable to opt out.

Mobile workers who work via an employment agency or employment business are captured by the Regulations. In this situation both the driver and employment business or agency are required to maintain records in accordance with the Regulations.

Exclusions

Some people are excluded from the Regulations. They include:

1. Mobile workers involved in road transport activities not covered by EU Drivers' Hours Rules (EC 561) such as van and taxi drivers.
2. Self-employed drivers (the self-employed were due to fall into scope in 2009, however, this has been delayed). The definition of 'self-employed' for the purpose of these Regulations is specific, for example:

- Are they able to work for themselves and not tied to an employer by a contract or by any other type of working relationship i.e. sole trader?
 - Are they free to organise their own working activities?
 - Their income depends directly on the profits made
3. 'Occasional mobile workers' who work within the road transport industry but are not subject to the Regulations providing they work:
- No more than 10 days over a reference period that is less than 26 weeks, or
 - no more than 15 days over a reference period that is 26 weeks or more

Examples of occasional mobile workers might include a mechanic who takes a vehicle to an MOT testing station, or a warehouse worker who loads & unloads vehicles and may occasionally be expected to drive a vehicle fitted with a tachograph.

3. What counts as working time?

The Road Transport (Working Time) Regulations say that working time is the time spent carrying out all road transport activities and is specifically not just the time spent driving.

Examples of working time include:

1. Driving
2. Loading & unloading (including supervision)
3. Training that is part of the normal work and is relevant to an employer's business
4. Helping passengers to board and disembark a vehicle
5. Cleaning and maintenance of a vehicle
6. Daily safety checks

6. EU Drivers Hours (EC 561) - rests and breaks

Drivers' Hours Rules still apply in relation to **minimum rest and break periods** when driving. They take precedence over the Road Transport (Working Time) Regulations.

The relevant points are:

1. **Daily rest** - 11 consecutive hours of rest in each 24-hour period, with the ability to reduce this to 9 consecutive hours up to 3 times per week.
No compensation required
2. Alternatively, daily rest may be split into two period. Where this is done, the first period must be at least 3 hours, and the second a minimum of nine hours, so that total daily rest is at least 12 hours in these circumstances
3. **Weekly rest** requires the driver to take 45 consecutive hours' weekly rest. This can be reduced down to 24 hours provided that any reduction is made up for within three weeks

The current Drivers' Hours Rules (EC 561) also specify break periods. These are:

1. After 4.5 hours of continuous driving, the driver must take an uninterrupted break of not less than 45 minutes
2. This break may be replaced by a break of at least 15 minutes followed later by one of 30 minutes. The 15-minute break must come first.

The introduction of EC 561 in April 2007 did not significantly alter the rest and break periods for drivers but they did affect travelling 'mobile workers' (e.g. the person who is accompanying the vehicle), whether they are a driver's mate, conductor or doing a mixture of driving and non-driving work.

The Road Transport (Working Time) Regulations now deal with overall working time and not just driving time. So it is possible that a mobile worker might be required to take a break under RT(WT)R as a result of total time worked (e.g. loading) before they were required to take a break under the Drivers' Hours Rules.

The Road Transport (Working Time) Regulations require:

1. That the mobile worker should not work more than 6 consecutive hours

However, it is possible to extend this 17 week reference period to a period of up to 26 weeks. To do this there will need to be a relevant agreement in place, which is either a **'collective agreement'** where the mobile workers are represented by a union, or a **'workforce agreement'** where a collective agreement is not in place.

Should the employer ask the workforce to enter into a 'collective' or 'workforce agreement' then they will have two options open to them, these are:

1. A **'fixed reference period by agreement'**. This means they can have different start and finish dates for the reference period and a longer reference period of up to 26 weeks
2. A **'rolling reference period'**. The period cannot be any less than 17 weeks but no more than 26 weeks. As opposed to the fixed reference period, the rolling reference period calculates the average hours by adding the most recent week and removing the oldest week

In addition to varying the length and nature of a reference period, the workforce or collective agreement will allow the night working provisions of the agreement to be waived. However, any night work is still governed by EU Drivers' Hours Rules (EC 561) i.e. the amount of time that can be spent driving.

5. Working at night

Night time work is classed as any period of time worked between:

- Midnight and 04:00 for goods vehicles and
- 01:00 and 05:00 for passenger carrying vehicles

The nightly working time must **not exceed 10 hours** in any 24-hour period. If they do any work between these hours they will be subject to these rules. The night work limits can only be exceeded where there is a workforce or collective agreement in place.

Remember that working time excludes any breaks, rests and POA, but overall the amount of work that can be done is still restricted by the minimum rest requirements under the EU Drivers' Hours Rules (EC 561). These are covered in Section 6.

7. Any time spent where the driver is required to be ready to resume duties
8. Periods of waiting time that are not known about in advance e.g. waiting to be unloaded
9. Annual statutory leave. This should be added in as 48 hours per week or taken as 8 hours for occasional days.

Where statutory leave is taken, then 48 hours per week of working time should be added in for the purposes of calculating average working time. Occasional days of leave should be added in as 8 hours per day, as should any days taken due to sickness.

Working time does not include:

1. Routine travel between your normal place of work and home
2. Rest and breaks when no work is done
3. 'Periods of availability' (POA) (see below)
4. Evening classes or day release courses
5. Voluntary work and activities e.g. retained fire fighters or a member of the reserve forces

Periods of Availability (POAs)

POAs are an important part of the Regulations for both the mobile worker and employers, as they provide a means to optimise working time for the purposes of these Regulations. A POA is waiting time - the duration of which is known about in advance. For a waiting period to be classified as a POA it must meet the following criteria:

1. The mobile worker should not be required to remain at their work station (typically the vehicle)
2. The mobile worker must remain available to answer calls and resume work on request
3. The duration of the POA must be known about in advance - either before

departure or just prior to the start of the period in question

A 'period of availability' is defined as waiting time, the duration of which the driver is aware and where the driver does not have to remain with their vehicle but may do so for safety/security reasons, providing they can reasonably relax. The mobile worker may visit the canteen or rest room, however they must remain on call and be ready to resume their duties.

Examples of Periods of Availability (POAs) include:

1. Arriving at a customer's site and experiencing a delay. Provided the driver is aware of the delay at the start of the period and is advised by the customer of the duration, this would be a POA. Alternatively, having arrived early, or a regular delay that has been agreed between the customer and the employer, this would be deemed a POA. If the mobile worker arrived at a customer location and is forced to wait but does not seek an estimate of the waiting time, then this would not be a POA
2. If the initial estimate of the delay is exceeded, provided the extra period is advised in advance of the commencement of the delay, this extra period is a POA. If the initial POA is exceeded and the mobile worker is not informed of the time delay, then the extra delay would not be a POA
3. If the mobile worker arrives at work and is advised that they will not be required to commence work for a specific period (say one hour) this one hour would be a POA. If they are not advised of the delay but simply wait, then this time would not be a POA
4. If the vehicle breaks down and the mobile worker is advised of the waiting time for recovery, then this waiting time is a POA. If the recovery is not completed in line with the initial time estimated, any further waiting time that is advised in advance shall be a further POA. However, if no estimate of waiting time is made then all the time that is spent waiting shall not be deemed a POA. It is therefore critical that an estimate of waiting time is made
5. Mobile workers not engaged in work while travelling (i.e. not driving or involved in other work activities such as navigation) can count this time as a POA

It is therefore critical that mobile workers manage delays so that they can estimate their duration in advance (this can be immediately in advance) and therefore turn a delay into a POA

Delays that are not a POA

1. Delays where the mobile worker has to continue working i.e. delays due to a road closure and/or diversion; delays due to congestion as they are technically still driving
2. Delays that the mobile worker was not aware of in advance and did not seek advice of once they became aware of it

4. Weekly working time limits & reference periods

The average weekly working hours for **mobile workers** must not exceed:

- **48 hours** over a reference period
- **60 hours** in any single week (i.e. starting/finishing at 00:00 on a Monday morning)
- **10 hours** in any 24-hour period, if they are working at night

A mobile worker is deemed to have worked at night if the shift spans 00:00 and 04:00 for goods vehicles and 01:00 and 05:00 for passenger vehicles. For the avoidance of doubt, if they work for any time during these periods the whole shift is then subject to the night working restriction of 10 hours' work time.

It is possible to exclude the ten-hour night working restriction if the workers agree to such variation via a collective or workforce agreement.

A '**reference period**' is a period used to calculate the average weekly working hours. Normally, the number of weeks used to calculate this is a fixed 17-week period. However, during the course of the year one of these periods would be 18 weeks so as to produce a total of 52 weeks e.g. 17+17+18=52 weeks.

The dates of these reference periods have been set and run from the 28th March 2005. This is known as the '**default method**' or '**fixed calendar option**'.