

Working Time Regulations

Part 2

Night Work and Annual Leave

The following are some of the most commonly asked questions about working time in the police service, particularly in relation to night work and annual leave. The relevant provisions, the Working Time Regulations 1998, implement the European Working Time Directive. This Directive is based on the need to ensure a better level of protection of the safety and health of workers. This factsheet should be viewed in conjunction with Working Time Regulations Part 1 which includes a general overview and rest periods and daily/weekly rest.

Am I a night worker?

The determination for Regulation 22 Police Regulations 2003 now provides that any member who regularly works for at least three hours of daily working time between 11pm and 6am, irrespective of the pattern of duty worked is to be treated as a night worker.

As a night worker what special provisions apply to me?

The most important provisions are the right to a health assessment and the limitation on the length of night work. An officer should not be assigned to night work without the opportunity of a free health assessment before taking up the assignment.

A force must also ensure that no night worker whose work involves "special hazards or heavy physical or mental strain" works for more than eight hours in any twenty-four hour period during which night work is performed. Work will involve "special hazards or heavy physical or mental strain" if it is identified as such in a workforce agreement which takes account of the specific effects and hazards of night work or it is recognised as such in a risk assessment. It is strongly arguable that much police work should fall within this definition. Where the restriction applies any officer who performs duty between 11.00 p.m. and 6.00 a.m. (or such other definition of night work as is agreed in a workforce agreement) must not work for more than eight hours in total in any twenty-four hour period during which night work is performed. Thus, if such an officer were required to work from 7.00 p.m. to 3.00 a.m. then any further work before 7.00 p.m. the following day would be a breach of the Regulations (unless an exception applies). An employer who fails to comply with this provision commits a criminal offence.

What is night work?

Night work is any work during night time which means the period between 11.00 p.m. and 6.00 a.m. or such other period as is agreed in a workforce agreement but which must include the period between midnight and 5.00 a.m. and be at least seven hours.

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My GP has advised that I am suffering from health problems which he considers are connected with working nights. What can I do?

In these circumstances if it is possible for the force to transfer you to work to which you are suited and which is to be undertaken during periods so that you will cease to be a night worker then you should be transferred.

Can I be paid in lieu of annual leave?

The Working Time Regulations provide for an entitlement to pay in lieu of annual leave but only in the year in which service is terminated. The PNB has agreed that this entitlement should extend to all the officer's remaining annual leave entitlement under the Police Regulations and not just the (lower) entitlement under the WTR.

Can I choose when to take my annual leave?

You may serve a notice on the force indicating when you wish to take your leave under the Working Time Regulations. The force may however serve a counter notice.

Continue overleaf >

I am currently performing the duties of the rank above my own, and being paid at the higher rate. I have been told that any annual leave I take during this period will not be paid at the higher rate. Is this correct?

No, if you are performing the duties of a higher rank and being paid accordingly, any annual leave under the WTR should be paid at the same rate.

What can I do if my rights under the Working Time Regulations are breached?

This depends on the nature of the breach. A claim can be brought to an Employment Tribunal in the event of a refusal to allow rights to daily rest, weekly rest, rest breaks, annual leave or compensatory rest or for failure to pay for or in lieu of annual leave where appropriate. A Tribunal which finds that there has been a breach will make a declaration and may make an award of compensation having regard to the force's default and any loss sustained. Failure to comply with other obligations under the Regulations is a criminal offence enforceable by the Health and Safety Executive.

What time limits apply?

Any Tribunal claim will need to be lodged at an Employment Tribunal before the end of the period of three months beginning with the date on which it is alleged the right should have been permitted (or payment made).

What records must be kept by the force?

The force must keep records which are adequate to show whether the maximum weekly working time of forty-eight hours, the normal hours of work of a night worker and the limitation upon the amount of work performed in any twenty-four hour period during which a night worker whose work involves special hazards or heavy physical or mental strain works are breached. There is also an obligation to keep records showing that members are not assigned to duties which would result in them becoming a night worker without an appropriate health assessment. These records must be maintained for two years from the date on which they were made. Failure to maintain these records is a criminal offence enforceable by the HSE.



Mandatory ACAS Early Conciliation

If you are thinking about making an employment tribunal claim, you will first need to notify details of your claim to ACAS, who will then offer early conciliation to try to resolve the dispute. The conciliation period can be up to one month. If the claim does not settle, ACAS will issue a certificate confirming that the mandatory conciliation process has concluded.

There are changes to time periods within which to lodge claims to allow for the period during which a claim is with ACAS. The period within which a claim is with ACAS will not count for calculation of time limits; and if the time limit would usually expire during that period, or within the month after the certificate is issued, then you will have up to one month following receipt of the conciliation certificate in which to lodge a claim.

The process makes the calculation of time limits in employment tribunal cases more complicated. Claimants are advised to be aware of limitation issues and seek legal advice promptly. For further information on the ACAS early conciliation process visit: www.acas.org.uk

Employment Tribunal Fees

You have to pay a fee when you file your claim in the employment tribunal. Fees are payable when you issue your claim and prior to a final hearing. A fee remission scheme is in place- see the employment tribunal website at www.employmenttribunals.service.gov.uk for further details. The booklet on the website "EX160A Court and Tribunal fees – do I have to pay them?" Provides details for claiming a remission of fees.

If you need further assistance, in the first instance please contact your local Joint Branch Board.

W: www.slatergordon.co.uk/policelaw

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