

January 1999

Working Time Regulations

Harry Jakeman welcomed the speaker and the 39 delegates and painted the background to this legislation, before asking Mrs Chris Rogers, ACAS Senior Conciliator/ Advisor to present her briefing.

Chris started by briefly describing its council structure with representation from employers, employees and independent bodies. She said that their early experience in Industrial Relations, to do with collective bargaining and conciliation was now minimal and they were now concentrating on problem solving **beforehand!** She cautioned the delegates that she could not interpret the application of the new regulations in advance of the existence of case law at this time and that the regulations were written so loosely that they were difficult to interpret! She advised anyone with a question to contact the local ACAS advice line on **0121 456 5856** - it was open 5days per week.

Peter Evans of CGU Insurance asked if individuals could use ACAS and Chris replied that they could.

Chris went on to say that one of the novel points introduced by this legislation was the concept of paid annual leave- for the first time in the UK. It applied only to persons under contract of employment or agency workers, but did not apply to genuinely self-employed persons. It also included a definition of Adult workers as those who were older than school leaving age.

Excluded Sectors were to get their own legislation in due course and here it was important to note that large transport distribution departments in big firms like supermarkets could be exempt.

Also excluded were persons with **unmeasured working hours** like Executives, Family Workers and workers in Religious Ceremonies. Mark Hoare asked if lecturers were exempt and Chris Rogers replied that it was difficult to generalise. Peter Evans asked for a definition of 'Family' and Chris said it included husband/wife/sons/daughters.

There could be variations to the working hour times introduced as a result of:-

- **Collective Agreements** with Unions
- **Workforce Agreements** with employees who were non-unionised. Here the employer decides on the number of representatives who were party to the agreement on behalf of the workforce. The employer also has to devise and run a suitable form of secret ballot. The agreement has to be signed by ALL representatives, except where there are less than 20

persons employed and the MAJORITY of workers have to sign.

Peter Evans asked what happens if there is a mix of Union and non-union labour and Chris replied that the **Collective Agreement** would take precedence.

- **Relevant Agreement** between an Employer and Employee on an individual basis and could take the form of part of a Written Contract of Employment. It is an important feature that this an **agreement**, is not **imposed** and is signed by the employee.

As far as compliance with the Working Time Agreement is concerned, the employer must take reasonable steps and the reference period for monitoring this is 17 weeks. For exceptional types of worker this period may be extended to 26 weeks. For employees on Workforce or Relevant Agreements, the reference may be agreed to be extended up to 52 weeks. Individuals can opt out of the 48 hours maximum, with a review in 5 years.

It is important to keep accurate records, on a two-year rolling basis, for workers on all of the types of agreement and situation, even though some may not be covered specifically by this requirement. For instance, a list of Workers Opting Out and their hours worked must be "adequate to show.....compliance.....". Working time abroad are also included. **Ian Bollans of Birmingham City Council** made the point that it was not necessary to keep individual records if a group of workers were on standard hours which never varied. **Harry Jakeman** said that whilst this may be the strict interpretation of the Regulations it was, nevertheless, important to have accurate records to present to a Tribunal if ever there was a dispute.

Where **Night Work** was concerned, this was defined as any period \geq seven hours, usually between 11.00 pm and 6.00 am. Limits can only be modified by a Collective or Workforce Agreement, NOT by individuals.

David Elliott of Metal Treatments Birmingham asked for guidance on whether employees could claim for compensatory rest. Chris said she thought there was some flexibility built into this right, but that definitive guidance was needed from case law. It is important to take note of the limits included in a Collective Agreement and any special hazards identified and evaluated in any Risk Assessment.

Free Health Assessments for night workers should be carried out by means of a questionnaire devised and assessed by competent professionals. After that a Medical Assessment may be required. **Dennis Walley of South Staffordshire Water** said that it was vital to observe medical confidentiality and that an employer was obliged to inform workers of any special risk to them **as an individual**. Chris Rogers said there was no derogation for adolescents and if there was a problem workers may have to be transferred to other duties. Dennis Walley asked "what if

there was no other option?" Chris said that it would have to go to Tribunal and Harry Jakeman added that any case would have to satisfy the five steps in the criteria for dismissal.

Rest Periods were 11 hours for Adults and 12 for Adolescents. Weekly rest periods should not include Daily Rest Allowances.

The requirements for **Paid Annual Leave** were likely to have most effect on many people, said Chris. There might be many problems to solve, such as the conflict between temporary teachers (supply) on a high hourly rate and their full-time counterparts who were paid a lower hourly rate. The time itself had to taken off, no payments in lieu and no opt-outs! Holidays included Bank Holidays.

Chris then presented a summary of Rights and Derogations

Description	Application
Weekly Working Time Limit	Individual workers,(Special Circumstances Collective and Workforce Agreements - Reference Period only)
Night Working Limit	Special circumstances, collective and Workforce Agreements
Health Assessments for Night Workers	None
Daily Rest for Adult Workers	Special circumstances, collective and Workforce Agreements, Shift Working
Weekly rest for Adult workers	As Above
Daily Rest for Adolescents	Activities split up over the day, Exceptional Circumstances
Weekly Rest for Adolescents	Can be reduced to 36 Hours
In-Work Rest Breaks for Adult Workers	Special circumstances, collective and Workforce Agreements
In-Work Rest Breaks for Adolescents	In exceptional Circumstances.
Paid Annual Leave	None

Chris Concluded her presentation with brief details of how the new Regulations would be enforced.

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| HSE & Environmental Health Offices | <ul style="list-style-type: none"> ● Weekly Working Time Limits. ● Night Work Limits. ● Health Assessments. |
| Employment Tribunals | <ul style="list-style-type: none"> ● Daily and Weekly Rest for Adult Workers and Adolescents. ● In-work Rest Breaks for Adult Workers and Adolescents. |

- Paid Annual Leave.

Harry Jakeman then presented a resumé of the regulations containing the main requirements for compliance by employers and concluded with a summary of the remedies available to employees by means of complaint to an Employment Tribunal.

As there were no further questions the Secretary thanked Chris Rogers for her very interesting and informative and the briefing closed with the delegates giving the traditional round of applause.