

**WORKING TIME REGULATIONS**

| Date  | Version                     |  |
|---|-----------------------------|--|
| August 2014   | 5.1                         |  |
| <b>Purpose</b>  |                             |  |
| To outline the Trusts and individuals rights and responsibilities in accordance with Working Time regulations.  |                             |  |
| <b>Who should read this document?</b>   |                             |  |
| Individuals who hold a contract of employment with Plymouth Hospitals (NHS) Trust are covered by this Policy and Working Time Regulations. This includes bank and agency workers who may undertake work elsewhere which must also be considered where calculating an individual's working time. Senior Medical and Dental Staff should also refer to the Implementation of Working Time Regulations to Senior Medical Staff policy. |                             |  |
| <b>Key messages</b>   |                             |  |
| WORKING TIME IS:<br>Defined as any period when the employee is carrying out their duties and is at the employer's disposal. This may include one or more employers and also paid or unpaid work.  |                             |  |
| <b>Accountabilities</b>   |                             |  |
| <b>Production</b>   | HR Business Partner         |  |
| <b>Review and approval</b>  | JSNC                        |  |
| <b>Ratification</b>   | Heinz Scheffer, HR Director |  |
| <b>Dissemination</b>  | HR Business Partner         |  |
| <b>Compliance</b>   | HR Business Partner         |  |
| <b>Links to other policies and procedures</b>   |                             |  |
| TRW.HUM.POL.184.3 Implementation of the Working Time Regulations to Senior Medical Staff  |                             |  |
| <b>Version History</b>  |                             |  |
| <b>1</b>  | April 2007                  | JSNC   |
| <b>2</b>  | November 2008               | JSNC   |
| <b>3</b>  | March 2009                  | Amended in line with WTR junior doctors weekly hours   |
| <b>4.1</b>  | March 2011                  | Trust Commitment to Valuing People amended in line with the Equality Act 2010<br>Electronic policy paths updated |
| <b>4.2</b>  | June 2011                   | Review Date Extended   |
| <b>4.3</b>  | June 2012                   | Review Date Extended   |
| <b>4.3</b>  | July 2014                   | Document Extension Agreed  |
| <b>5</b>  | August 2014                 | JSNC   |
| <b>5.1</b>  | October 2019                | Extended to February 2020 by Lisa White  |
| <b>Last Approval</b>  |                             | <b>Due for Review</b>  |
| August 2014   |                             | Extended to February 2020  |

*The Trust is committed to creating a fully inclusive and accessible service. By making equality and diversity an integral part of the business, it will enable us to enhance the services we deliver and better meet the needs of patients and staff. We will treat people with dignity and respect, promote equality and diversity and eliminate all forms of discrimination, regardless of (but not limited to) age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage/civil partnership and pregnancy/maternity.*

**An electronic version of this document is available on the Trust Documents. Larger text, Braille and Audio versions can be made available upon request.**

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## **1 Introduction**

The Working Time Regulations, effective from October 1998, specify certain limits and provisions regarding working hours and patterns for all employees. These regulations are to protect employees' health and safety at work by limiting the number of hours worked and providing sufficient rest breaks. The Trust is committed to, and strongly supports the Regulations and its guidelines relate to all employees of Plymouth Hospitals NHS Trust (PHNT).

## **2 Purpose, including legal or regulatory background**

To enable the Trust to provide a safe, effective and efficient healthcare service to patients, all employees are required to abide by and have a responsibility to work within the guidelines in these regulations. PHNT has a duty of care to patients, colleagues and the public to ensure staff who undertakes work are fit to do so. All employees are required to attend work in a fit state to enable them to deliver the full remit of their role for the required period of time. Where staff work extra hours for the Trust or undertake paid or unpaid employment elsewhere, they are required to include this within their working time and to ensure their manager is made aware where potential breaches of these regulations may occur.

## **3 Definitions**

WORKING TIME IS:

Defined as any period when the employee is carrying out their duties and is at the employer's disposal. This may include one or more employers and also paid or unpaid work.

What is included?

- Normal daily working hours.
- Time spent travelling on official business.
- Time when people on call are actually called upon to work.
- Time spent on training courses.
- Overtime.
- Authorised working from home (where individuals request to work from home on an ad hoc basis, management will be required to undertake a risk assessment and refer to the HR Department).
- Paid or unpaid work for different employers.
- On call where individuals are required to physically remain on Trust premises/business including a 'sleeping on call'.

What is not included?

- Lunch breaks and any other rest periods (except junior doctors who lunch/rest breaks are paid).
- Travel time to and from work.
- Periods 'on call' but not actually working.

- Leisure time when working away from home e.g. time spent in hotels.
- Annual leave, sick leave, maternity, paternity or special leave.

## **4 Duties**

### **ROLES AND RESPONSIBILITIES**

The Trust Board is responsible for endorsing and fully supporting this policy in its application.

The Human Resources Department is responsible for providing guidance to managers and staff on the application of this policy.

The Human Resources Department is responsible for updating this policy in line with legislative changes.

Line Managers are responsible for ensuring that this policy is adhered to within their own area, and should take consideration of it when producing staffing rotas.

Line Managers should ensure that employees are made aware of this policy and understand their responsibilities in relation to it.

Line Managers must make sure that the working hours of their staff are monitored to ensure that they are not in breach of the policy.

Employees must ensure that they take appropriate breaks in agreement with their Line Managers and in line with this policy.

Employees must inform their Line Manager of any additional employment with any other employer, and the hours that they work including any bank work.

Employees must make their manager aware if they believe that their working pattern is in breach of this policy.

## **5 Key elements (determined from guidance, templates, exemplars etc)**

### **48 HOUR WORKING WEEK**

Working time is calculated as an average of hours worked over a 17 week reference period (26 week reference period for doctors in training). Therefore, if you only work over 48 hours for one or two weeks, it is unlikely that it will affect your average working time.

The reference period is continual i.e. a rolling 17 or 26 week period, when the first week moves forward every week.

If you are working longer hours for a limited period – to meet a particular deadline for example it is unlikely that the Working Time Regulations will affect you. For those individuals asked to work an average of more than 48 hours during their 17 or 26 week reference period, if they are willing to be excluded from the regulations they can sign a waiver which is detailed at Annex A. Managers must be certain that there is a need to work such long hours before a waiver is signed and that there is not an alternative way of reducing work, through adjusting priorities, delegation, time management, reallocation of work etc.

Working time will be calculated exclusive (inclusive for doctors in training) of meal breaks except where individuals are required to work during meals in which case such time should be counted as working time. In such circumstances refer Compensatory Rest on page 4. Where an individual has two separate contracts with the Trust, these two contracts, when taken together, must not exceed a total of 48 hours per week. Employment whether paid or unpaid, with the Trust or elsewhere will also need to be included (with the exception of

private practice which is excluded from the calculation of hours worked by Senior Medical and Dental Staff).

## **NIGHT WORK**

A Night Worker is defined as someone who works at least 3 hours of their daily working time between midnight and 5.00 am as a normal course. These requirements will NOT therefore include staff on alternating or rotating shifts.

There is a requirement to ensure that the “normal” working hours of a night worker do not exceed the limit of an average of 8 hours in any 24 hour period over a 12 week reference period. The average is calculated over a period of any 17 weeks, and includes voluntary overtime. The following example demonstrates how this might work in practice:

Night Porter works 12 hours per night, 3 nights per week

There are 119 24 hour periods in the 17 weeks, minus the 17 compulsory 24 hour rest periods.

Therefore average hours worked in any 24 hour period = 6 and this is therefore working within the requirements of the regulations, provided there is no overtime worked.

Where overtime is worked, the calculation must be adjusted to take account of this.

Where the night workers are involved in special hazards or heavy physical or mental strain they must not exceed 8 hours work in any 24 hour period. “Special hazards” or “heavy physical or mental strain” is defined as being such only if it is recognised within a collective agreement or under a risk assessment made by the employer.

Staff under 18 years should not be assigned to work during the period between 10.00 pm and 6.00 am regarded as the ‘restricted period’ unless the individual has been assessed by Occupational Health specifically in relation to night working which is reviewed on a regular basis.

Night workers have an entitlement to regular health assessments, and you should contact the Human Resources Department or Occupational Health to discuss this.

If you have any night workers who are likely to exceed any of the above limits please contact Human Resources Department.

Staffs are entitled to a rest period of not less than 11 consecutive hours in each period of 24 hours during which they work.

Please note: doctors in training working night shift are not classed as ‘night workers’.

## **DAILY REST ENTITLEMENTS**

Staffs are also entitled to a rest break of 20 minutes when daily working time is more than six hours.

Rest breaks must be taken during the period of work and should not be taken either at the start or the end of a period of working time.

Employees should be able to their rest break away from their work station.

Where, due to exceptional circumstances, an individual is unable to take a rest break the unused entitlement should be claimed as a period of equivalent compensatory rest.

In circumstances where work is repetitive, continuous or requiring exceptional concentration employers must ensure the provision of adequate rest breaks as an integral part of their duty to protect health and safety of their employee.

Staff aged under 18 years are entitled to a rest break of 30 minutes when daily working time is more than four and a half hours. A young worker is entitled to a rest period of not less than twelve consecutive hours in each 24-hour period.

## **WEEKLY REST ENTITLMENTS**

In addition to the daily rest period of 11 consecutive hours, and any paid annual leave, staffs is also entitled to an uninterrupted rest period of not less than 24 hours in each 7 day period.

Daily rest and weekly rest are separate entitlements which should normally be taken consecutively (i.e. there should be 1 period per week, or 2 per fortnight, of 11+24=35 hours continuous rest).

The daily rest may be incorporated into the weekly rest period if this is justifiable by “objective or technical reasons or reasons concerning the organisation of work” – these will be rare.

Individuals under 18 are entitled to 2 days off each week which cannot be averaged over a 2 week period and should normally be 2 consecutive days. This must not be less than 38 consecutive hours.

## **SMOKING BREAKS**

The Trust is committed to a smoke free environment. Smoking during working time will not be permitted other than as part of planned Rest Breaks and then only away from our Smoke Free Sites.

## **RISK ASSESSMENTS**

Where pressures of work do not permit access to suitable rest periods, daily or weekly, a risk assessment should be undertaken to identify the impact that such a failure may have on individuals and delivery of service. Where this identifies a risk factor, suitable alternative arrangements must be made and the risks managed.

Consideration should be given to the allocation of duties in recognition of the length of working time. As an example an individual who is required to undertake constant physical activity may as a result of a risk assessment be moved on to duties of a more sedentary nature such as administration work, towards the end of their shift. Please refer to the Policy on Risk Assessments.

## **PAID ANNUAL LEAVE ENTITLEMENT**

Existing agreements for staff under NHS terms and conditions specify annual leave entitlements, which exceed the requirements of the Working Time Regulations. However, the Regulations specify a statutory entitlement of 5.6 weeks which is pro rata for part time employees. This will include all hourly paid or casual staff such as those employed via NHS Professionals. Payment in lieu of leave not taken is not permitted, except where an individual leaves the organisation and the terms and conditions of employment provide for payment in lieu.

As a general principle, all employees should be permitted to take their full leave entitlement in any given year, and limited carry-over of leave is only permitted in exceptional circumstances. Departmental records must be kept to demonstrate that annual leave entitlements are granted and taken, in line with terms and conditions of employment (and hence the regulations).

Individuals are able to carry forward a working week into the next financial year under exceptional circumstances as detailed in the Leave Policy. Hours contained within a working week will be dependent on the individual’s contractual hours.

Where issues arise around inability to allow an individual to take their leave in the required period reference should be made to the Human Resources Department.

## **SHIFT WORKERS**

Shift workers are subject to limited protection in respect of rest periods in that the usual entitlements do not apply where a worker changes shift and cannot take the usual daily or weekly rest period between the end of one shift and the start of another. See Compensatory Rest on page 4.

## **YOUNG WORKERS UNDER 18**

There are special regulations for young workers, which restrict their working hours to eight hours per day and 40 hours per week. The rest break is 30 minutes if their work last more than four and a half hours. They are also entitled to two days off each week.

## **COMPENSATORY REST**

The total rest entitlement for a week is 90 hours a week on average (excluding rest breaks of 20 minutes when daily working time is more than six hours)

Compensatory rest must be given when the daily/weekly rest requirements cannot be met. In most cases compensatory rest will be necessary when staffs are either:-

- working a shift pattern and the shift extends beyond thirteen hours due to an unforeseen situation or emergency, or
- working on call from home and are called upon to work during this period of duty, or
- Where staff are rostered to be resident on call for more than 13 hours continuously.

In each case the rest provided should make up for the rest missed and should be taken immediately after the end of the working period.

There may be occasions where it is not possible to take compensatory rest at the end of the working period and in these circumstances the rest period will be determined locally. This should only occur in exceptional circumstances where it will impact negatively on patient care due to difficulty in finding additional health care professionals particularly with specialist skills or where major incidents arise. Where compensatory rest cannot be given immediately it should be taken within a 2 week period. Compensatory rest is unpaid.

An employee required to work whilst being on call should receive compensatory rest that is equivalent to the time they have worked and not the entire rest period.

## **EXCLUSIONS AND WAIVERS**

The Regulations allow for staff over 18 to sign a waiver where they wish to work longer hours than permitted under the regulations. PHNT do not encourage its staff to work long hours and the waiver should be used as a last resort, when all other ways of alleviating a heavy workload has been exhausted, and risk assessed to fully consider staff and patient safety.

Managers and staff are required to consider the following before deciding to sign a waiver:-

- Can work be delegated or re-distributed.
- Can priorities or deadlines be re-arranged to relieve pressure.
- Can non urgent meetings be cancelled or can another representative be sent.
- Do people really need to work long hours or are they building up flexi time in order to have a day's flexi leave?

This should be discouraged as it compounds the problem when annual leave is not taken and others have to work long hours to provide cover.

In some cases it may be necessary for staff to work long hours for short periods, during peaks of work, for example payroll closedown. In these instances it is acceptable for them to work longer hours to increase capacity in relation to demand. However, a system of

flexitime may be more appropriate and individuals may take time owing when the workload is reduced.

A waiver can be for a defined or indefinite period of time, although both managers and individuals should be aware that anybody has the right to opt back into the regulations at any time, giving at least one month's notice (the notice period can be changed by agreement in advance between the individual and line manager). A copy of the waiver form is at Annex A.

The Human Resources Department must be informed of any instances where a waiver has been signed and a copy of the waiver form should be forwarded to them.

## **RIGHT NOT TO SUFFER ANY DETRIMENT**

All employees are covered by the Working Time Regulations and have the right not to suffer any detriment if they choose not to 'opt out' of the regulations.

## **FAILURE TO COMPLY**

Failure to comply with the contents of this policy may result in disciplinary action. Please refer to the Disciplinary Policy for further details.

### **6 Overall Responsibility for the Document**

The HR Director is responsible for ratifying this document. The HR Business Partner has the responsibility for the dissemination, implementation and review of this policy.

### **7 Consultation and Ratification**

The design and process of review and revision of this policy will comply with The Development and Management of Trust Wide Documents.

The review period for this document is set as default of five years from the date it was last ratified, or earlier if developments within or external to the Trust indicate the need for a significant revision to the procedures described.

This document will be approved by the JSNC and ratified by the Director of HR &OD.

Non-significant amendments to this document may be made, under delegated authority from the Director of HR & OD, by the nominated author. These must be ratified by the Director of HR & OD and should be reported, retrospectively, to the approving JSNC.

Significant reviews and revisions to this document will include a consultation with named groups, or grades across the Trust. For non-significant amendments, informal consultation will be restricted to named groups, or grades who are directly affected by the proposed changes

### **8 Dissemination and Implementation**

Following approval and ratification, this policy will be published in the Trust's formal documents library and all staff will be notified through the Trust's normal notification process, currently the 'Vital Signs' electronic newsletter.

Document control arrangements will be in accordance with The Development and Management of Trust Wide Documents.

The document author(s) will be responsible for agreeing the training requirements associated with the newly ratified document with the named Heinz Scheffer and for working with the Trust's training function, if required, to arrange for the required training to be delivered.

## **9 Monitoring Compliance and Effectiveness**

Compliance will be monitored via the MAPS team and its associated systems. Where a team or department is not on MAPS, managers are responsible for monitoring compliance.

## **10 References and Associated Documentation**

Working Time Directive (2003/88/EC).

| <b>Core Information</b>               |             |            |                       |                        |
|---------------------------------------|-------------|------------|-----------------------|------------------------|
| <b>Document Title</b>                 |             |            |                       |                        |
| <b>Date Finalised</b>                 |             |            |                       |                        |
| <b>Dissemination Lead</b>             |             |            |                       |                        |
| <b>Previous Documents</b>             |             |            |                       |                        |
| <b>Previous document in use?</b>      |             |            |                       |                        |
| <b>Action to retrieve old copies.</b> |             |            |                       |                        |
| <b>Dissemination Plan</b>             |             |            |                       |                        |
| <b>Recipient(s)</b>                   | <b>When</b> | <b>How</b> | <b>Responsibility</b> | <b>Progress update</b> |
| All staff                             |             | Email      | Document Control      |                        |
|                                       |             |            |                       |                        |
|                                       |             |            |                       |                        |

| Review   |  |  |
|--|--|--|
| <b>Title</b>                                     | Is the title clear and unambiguous?  |  |
|  | Is it clear whether the document is a policy, procedure, protocol, framework, APN or SOP?                              |  |
|  | Does the style & format comply?  |  |
| <b>Rationale</b>                                 | Are reasons for development of the document stated?  |  |
| <b>Development Process</b>                       | Is the method described in brief?  |  |
|  | Are people involved in the development identified?   |  |
|  | Has a reasonable attempt has been made to ensure relevant expertise has been used?                                     |  |
|  | Is there evidence of consultation with stakeholders and users?   |  |
| <b>Content</b>                                   | Is the objective of the document clear?  |  |
|  | Is the target population clear and unambiguous?  |  |
|  | Are the intended outcomes described?   |  |
|  | Are the statements clear and unambiguous?  |  |
| <b>Evidence Base</b>                             | Is the type of evidence to support the document identified explicitly?   |  |
|  | Are key references cited and in full?  |  |
|  | Are supporting documents referenced?   |  |
| <b>Approval</b>                                  | Does the document identify which committee/group will review it?   |  |
|  | If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?              |  |
|  | Does the document identify which Executive Director will ratify it?  |  |
| <b>Dissemination &amp; Implementation</b>        | Is there an outline/plan to identify how this will be done?  |  |
|  | Does the plan include the necessary training/support to ensure compliance?   |  |
| <b>Document Control</b>                          | Does the document identify where it will be held?  |  |
|  | Have archiving arrangements for superseded documents been addressed?   |  |
| <b>Monitoring Compliance &amp; Effectiveness</b> | Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document? |  |
|  | Is there a plan to review or audit compliance with the document?   |  |
| <b>Review Date</b>                               | Is the review date identified?   |  |
|  | Is the frequency of review identified? If so is it acceptable?   |  |
| <b>Overall Responsibility</b>                    | Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document?    |  |

As this is Legal Guidance an EIA is not required.

### Individual Agreement to Waive Limits on working time

Name: .....

Grade/Job Title: .....

Department/Ward: .....

I hereby agree that the 48 hour weekly limit specified in the Working Time regulations 1998 shall not apply in my case.

I understand that this agreement will apply from \_\_\_\_\_ (*insert date*)

**I confirm I have made reference to guidance on Working Time Regulations via the Department of Trade & Industry website ([www.dti.gov.uk](http://www.dti.gov.uk)) and ACAS website ([www.acas.org.uk](http://www.acas.org.uk)).**

I confirm that I have received an explanation of my legal rights relation to the limit on weekly working time specified in regulation 4(1) of the Working Time Regulations 1998.

I agree that this limit on weekly working time shall not apply in my case.

I agree that if I wish to terminate this agreement I will give my manager written notice of at least one month, or other agreed notice period

I understand that this agreement is to be read alongside any hours of work clause in my contract of employment and forms part of my overall terms and conditions of employment.

Alternative Notice Period (if agreement with Line manager).....

Signed: .....(Individual)

Signed: .....(Line Manager)

Date: .....

***A copy of this form is to be kept by both parties and also sent to the Human Resources Department.***