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THE ORGANISATION OF WORKING TIME ACT 1997

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Executive Summary

This document attempts to set out the salient provisions of the Working Time Act, 1997 as it relates to health service employment. It must be emphasised that the document is not a definitive interpretation of the legislation, nor it is intended to be fully comprehensive. Codes of Practice which will provide some practical guidance on compliance with certain provisions of the Act will issue from the Labour Relations Commission and the Labour Court.

In summary, the Act sets out entitlements in respect of annual leave and public holidays and provides for minimum rest periods, maximum weekly working hours and other matters relating to working time. The key provisions of the Act are as follows:

Rest Periods

An employee is entitled to rest periods as follows:

- * 15 minute break after working 4½ hours
- * 30 minute break after 6 hours (inclusive of the 15 minute break)
- * 11 consecutive hours rest in each 24 hour period
- * 24 hours consecutive rest per week, preceded by the daily 11 hours rest.

Sunday Work

If an employee is required to work on Sunday, he or she must be compensated by a premium payment or paid time off in lieu or a combination of both.

Maximum Weekly Working Hours

The Act provides for a maximum average working week of 48 hours in a seven day period. The 48 hour week can be averaged over 4 months for employees generally.

Night Work

Night workers are not permitted to work more than an average of 8 hours in a 24 hour period. The 8 hour limit may be averaged over 2 months. Where night work involves special hazards or heavy physical or mental strain, the working period shall not in any 24 hour period exceed 8 hours.

Information on Working Time

Employees whose working hours vary or employees who are required to work additional hours are normally entitled to advance notice of hours to be worked.

Zero Hours Practices

Employees who are rostered to be available to work but subsequently are not required to work these hours are entitled to 25% of the hours for which they were rostered to be available or 15 hours, whichever is the lesser.

Annual Leave

Annual leave entitlement will be increased to 20 days. This increase will be incremental, i.e. 16 days by April 1997, 18 days by April 1998 and 20 days by 1999. All part-time employees will be entitled to accrue annual leave on a pro-rata basis from the commencement date of their employment.

Enforcement Procedures

Disputes over entitlements under the Act may be referred to a Rights Commissioner with a right of appeal to the Labour Court.

Double Employment

Employers are obliged to ensure that the total number of hours worked by a person who also works for another employer will not exceed the maximum number of hours an employee is permitted to work in any period of 24 hours, 7 days or 12 months.

Introduction

The Organisation of Working Time Act, 1997 provides for the implementation of the EU Council's Directive on the Organisation of Working Time (93/104/EC). Its purpose is to provide in all sectors of activity, both public and private, minimum health and safety requirements for the organisation of working time. The Act sets out statutory entitlements for employees in respect of rest, maximum working time and holidays. It also deals with the issues of payment in respect of Sunday working and minimum payments for those employed under 'zero hours' contracts.

Part 1 Preliminary and General

Part I of the Act sets out the purpose of the new legislation and outlines the categories of employees to whom the various provisions apply. In particular, the Act provides for a number of exemptions from the rest provisions set out in Part II. It also contains definitions of the principal terms used throughout the Act.

Part II Minimum Rest Periods and Other Matters Relating to Working Time

Part II of the Act deals with minimum rest periods and other matters relating to working time as follows:

- Section 11** Daily rest period
- Section 12** Rests and intervals at work
- Section 13** Weekly rest periods
- Section 14** Sunday work: supplemental provisions
- Section 15** Weekly working hours

- Section 16** Nightly working hours
Section 17 Provision of information in relation to working time
Section 18 Provision in relation to zero hours working practices

Part III Holidays

Part III of the Act sets out entitlements in respect of annual leave and public holidays. In particular, it provides that all employees begin to accrue an entitlement to annual leave *on commencement of employment*.

Part IV Miscellaneous

Part IV of the Act deals with a number of miscellaneous provisions. The main provisions are as follows: approval of collective agreements by the Labour Court; records; referring complaints to a Rights Commissioner; and the prohibition on double employment.

The following provisions of the Act came into effect on 1st October, 1997:

- annual leave and public holiday entitlements;
- information in relation to working time;
- zero hours working practices.

The rest and maximum working time provisions will come into effect on 1st March, 1998.

PART 1

Scope and Definitions

1. The annual leave and public holiday provisions of the Act apply to all health service employees.
2. Junior hospital doctors are excluded from the provisions dealing with minimum rest periods and other matters relating to working time.
3. The following exemptions apply in respect of the rest provisions:
 - i) Employees who are directly involved in ensuring continuity of service, particularly employees in hospitals and other health service residential institutions and also the ambulance service are exempt from the following rest provisions by reason of the *Organisation of Working Time (Exemption) Regulations*:
 - daily rest period¹;
 - rests and intervals at work;
 - weekly rest periods¹;
 - nightly working hours².
 - ii) Shift workers (when they change shift) and workers on split shifts are exempt from the following provisions:
 - daily rest period¹;
 - weekly rest periods¹.

iii) Other employees may be made exempt from the following rest provisions by way of a collective agreement between the employer and union representatives, subject to approval from the Labour Court:

daily rest period¹;
rests and intervals at work;
weekly rest periods¹.

The Labour Court has issued a “Guide to the Labour Court’s Functions and Procedures”, which contains guidelines on submitting collective agreements to the Court for approval.

iv) In the event of exceptional or unforeseeable circumstances, an employee may be exempt from one or more of the following provisions (*depending on the circumstances*):

daily rest period¹;
rests and intervals at work;
weekly rest periods¹;
nightly working hours²;
provision of information in relation to working time.

¹ These exemptions are conditional on the employer making alternative rest arrangements for the employees concerned (*see section on Compensatory Rest Periods*)

² This exemption does not apply to “Special Category Night Workers”. The Safety, Health and Welfare at Work Act, 1989 imposes an obligation on employers to carry out an assessment of the specific risks attached to night work. Any night worker whose work is found to involve special hazards or a heavy physical or mental strain is defined as a “Special Category Night Worker”.

Working Time

Working time is defined as any time an employee is:

- a) at his or her place of work or at his or her employer's disposal, and
- b) carrying on or performing the activities or duties of his or her work.

Thus, working time means *net working time* (i.e. exclusive of breaks, rest periods and periods of on-call/standby).

Rest Period

Rest period means any time that is not working time as defined above.

Week

A week is defined as a period of seven consecutive days.

Night Time and Night Work

Night time refers to the period between midnight and 7a.m. Night work means any work carried out during these hours.

