

WORKING HOURS, BREAKS & REST PERIODS

All workers are entitled to have breaks while they are at work and rest periods between working days or nights.

The Organisation of Working Time Act 1997 sets out the statutory minimum entitlement for employees as regards working hours, annual leave, night work, breaks and rest periods for employees.

LEGISLATION:

- Organisation of Working Time Act, 1997
- Workplace Relations Act, 2015
- Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations 2001
- S.I. No. 57/1998 - Organisation of Working Time (Breaks At Work For Shop Employees) Regulations, 1998.

EXEMPTIONS:

The Act does not apply to the following employees:

- Gardaí
- Defence Forces
- Employees who control their own working hours
- Family employees on farms or in private homes

RECORDS:

Under the Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations 2001, the employer is required to keep detailed records of all employee working hours including breaks taken and annual leave.

Many use clock in systems. Others use weekly rosters which are signed with break times written in each day by the employee and signed by both management and the employee at the end of the week.

THE WORKING WEEK:

The Organisation of Working Time Act 1997 states that the maximum average working week for many employees cannot exceed 48 hours.

HOURS OF WORK:

All contracts should outline the opening hours of the business.

The operating hours of the business are from Monday to Sunday. Your hours of work will vary depending on the operational requirements of the Company and will include weekends and Public Holidays as part of your normal roster.

Contracts should also outline the minimum and maximum hours issued to an employee. This is required by legislation and is necessary so that the employee can determine expenditures etc.

Your hours of work will be communicated to you by your Manager on a weekly basis but will average 15-25 hours a week. The Employee may be required to work such further hours as may be necessary to fulfil his/her duties or the needs of the business.

- *For example:* I am a HR Consultant in The HR Suite my contract says under the 'Hours of Work' section that my hours are 40 a week.
- *For example:* I am a sales assistant in a store and I work part time – my contract says under the 'Hours of Work' section that my hours will average 8-12 hours per week. As an employee, my employer must give me at least 8 hours in the week to comply with my contract.

ROSTERING SCHEDULE:

If the contract or collective agreement does not state the working hours of the employee then the employer is obliged to notify the employee at *least 24 hours* before the first day of the work beginning.

For example: I am a sales assistant in a store and I am rostered Monday 9am. I must be notified of my roster at Sunday 9am or earlier.

This is for the majority of cases and in exceptional circumstances only can a shorter notice period be given i.e. trying to cover last minute sick leave – ringing an employee to come in last minute to cover a shift as another employee called in sick at 9am.

DAILY REST PERIOD I.E. BREAKS IN WORK:

The definition of a rest period is any time that is not working time. The rest periods set out in the Act are as follows:

- Employees are entitled to a break of 15 minutes after a 4 ½ hour work period.
- After a 6-hour work period employees are entitled to a break of 30 minutes, which can include the first 15-minute break.

For example: If I work from 9am to 5.30pm within an office setting – this is a shift of 8 hours 30 minutes. As per the above I work over 6 hours therefore I am entitled to ½ hour unpaid break. Therefore I would normally take my break after 4 ½ hours of working at approximately 1.15pm to 1.45pm. As my break is ½ hour – my working day is an 8 hour day as my rest break is not included in the working time.

The contract of employment needs to include the rest breaks section:

Your rest arrangements will be given in line with the Organisation of Working Time Act, 1997. No worker shall be required to work continuously for more than 4½ hours without a break of at least 15 minutes. All breaks are unpaid. In relation to workers under the age of 18, the provision of the Protection of Young Persons (Employment) Act, 1996 shall apply.

PAID BREAKS:

There is no entitlement to be paid during breaks under the legislation and the breaks are not considered part of working time.

Please note that if you have agreed to pay employees during breaks – either in their contract / by practice / or via handbook/policies this is now custom and practice and must be honored.

For example: I work 9am to 5.30pm – this is a shift of 8 hours 30 minutes. However, I am entitled to a break of a ½ hour. This means I have worked a shift of 8 hours as my break is not counted as working

time nor is it used for calculating my annual leave. Therefore over the course of 5 days I work 40 hours as my breaks are not included in calculating my weekly hours.

If rest breaks are paid this needs to be included within the terms of employment i.e. the contract and the policies manual/company handbook.

S.I. NO. 57/1998 - ORGANISATION OF WORKING TIME (BREAKS AT WORK FOR SHOP EMPLOYEES) REGULATIONS, 1998.

Those individuals that are employed in the retail industry are generally entitled to a longer rest break than that which is set out in the current Organisation of Working Time Act provisions.

The term retail is seen to include the following types of business:

- Barber or hairdresser;
- Hiring goods otherwise than for use in a trade or business;
- A pawnbroker;
- Retail sales by auction (but not the sale of programs or catalogues at theatres or other places of entertainment).

The term shop is seen to include the following types of business:

- Any premises in which any retail trade or business is carried on;
- Any premises in which goods are received direct from customers for cleaning, repairing, altering or launching;
- Any wholesale shop;
- Any warehouse occupied for the purpose of trade or business or by a wholesale dealer or merchant for the purpose of the business carried on in a whole shop.

A shop does not include any premises used for or used for the purpose of:

- a hotel;
- preparation of food/catering; or
- any business carried on pursuant to an intoxicating liquor licence.

As a general principle, if an employee works for 6 hours or more they are entitled to a 30 minute rest break - as per explained above.

However, S.I No. 57/1998 Organisation Of Working Time (Breaks At Work For Shop Employees) Regulations, provides that where an employee who works in or about a retail shop works a shift of more than 6 hours and that shift includes the hours between 11.30am and 2.30pm then that retail employee is entitled to a break of at least one hour which must occur during those hours.

REST BREAKS BETWEEN SHIFTS:

Employees are entitled to 11 consecutive hours rest in any period of 24 hours.

For example: a store employee who works to close on a Monday at 11pm, does not get the 11 hour rest period required under legislation if she/he is rostered to work the early shift the next morning at 7am. This is only a rest period of 8 hours and is a breach of legislation.

In addition, employees are entitled to get 24 consecutive hours rest in any period of 7 days. This normally follows on from one of the 11-hour rest periods already mentioned, or as an alternative the

employer can give you two 24-hour rest periods in the week that follows one in which you did not get the entitlement described in (a) above.

This is part of the rules on 'compensatory rest'.

For example: this would be your Saturday and Sunday rostered off if you work in an office.

There are relatively few exemptions for a breach of this rest break between shifts. These exemptions are allowed provided the employee is given equivalent compensatory rest. This means that if a rest period is postponed the employee must be allowed to take it within a reasonable period of time. The Workplace Relations Commission has a Code of Practice on Compensatory Rest Periods available at this link: https://www.workplacerelations.ie/en/Good_Workplace_Relations/codes_practice/COP8/

If you, as an employer, are not compliant with the above please contact the office immediately to discuss your current situation.

YOUNG PERSONS AT WORK:

(i) **Workers under 16 years of age must have the following rest breaks:**

After Each 4 Hours	½ Hour
In Each Period Of 24 Hours	14 Consecutive Hours
In Any Period Of 7 Days	2 Days Off

(ii) **Workers over 16 and under 18 years of age must have the following rest breaks:**

After 4 And A Half Hours	Half-Hour
In Each Period Of 24 Hours	12 Consecutive Hours
In Any Period Of 7 Days	2 Days Off

NIGHT WORK:

Night Work: work carried out during the night time

Night Time: between midnight and 7am the following day

Night Worker:

- an employee who works at least 3 hours of his/her daily working time during the night time
- The number of hours worked during night time, in each year, equals or exceeds 50% of the total number of hours worked

The maximum working hours for a night worker is an average 48 hours in a 7 day period, where the average is calculated over a 2 month period.

Where night work involves special hazards or physical or mental strain, there is an absolute limit of 8 hours work in a 24 hour period.

If the night work involves special hazards or physical or mental strain, then working hours cannot exceed 8 hours in a 24-hour period. The employer is required to carry out a risk assessment in order to determine whether the night work involves special hazards, or physical or mental strain.

Pay rates and leave for night workers are not covered by the Organisation of Working Time Act. These depend on the terms of the night worker's contract of employment.

In general the law regulating the working hours of young people does not permit young people to do night work.

RECORDS:

- Employer is obliged to keep records at the place of work.
- Records to be retained for 3 years.
- Failure to keep records is an offense.

TAKING A CASE:

There is a common time limit for initiating all complaints	6 months extendable to 12 months for reasonable cause
A common time limit for appeals	42 days
Respondent has to be notified	5 days
Target to schedule hearings	3 months of lodgement of the complaint

- The employee can take a case while in employment and this is important for all employers to remember.

CASE LAW:

**FAILURE TO PROVIDE DAILY REST BREAKS
DWT15139 - TESCO v TEISUTIS KAZILAS**

- In this case the Complainant stated that he did not receive a daily rest period as provided for in Section 12 of the Act.
- He commenced employment with Tesco Ireland Ltd (the Company) as a night retail security officer on 21st March 2005.
- The Complainant in evidence told the Court that the night shift was staffed by one or two Duty Managers.
- When two managers were on duty he received his breaks. However, when only one manager was on duty he was regularly called back from his break to assist with various duties and did not receive the statutory breaks set out in section 12 of the Act.
- He was required to clock out for his break and to clock back in at the end of the break. When called back from his break he clocked back in to work.
- However when the task for which he had been called back was completed he could not clock out again as the system did not permit him to do so.
- He stated that it was a regular occurrence for him not to get the statutory break on those nights.
- He further stated that he was not allowed leave the premises during his break and remained constantly on-call.
- The Respondent called three managers to give evidence. Two of them were not present in the store during the relevant statutory reference period and as a consequence were not in a position to give any relevant evidence to the Court. The Court adjourned to allow the relevant manager give evidence.
- He stated that he had a good working relationship with the Complainant.

- He acknowledged that the Complainant was occasionally called back from his break when the need arose.
- He disputed the frequency stating that he estimated that it occurred at the rate of one night per week.
- He told the Court that he did not check whether the Complainant received the statutory break to which he was entitled.
- He said he assumed that he had resumed his break and completed it.
- He stated that the Complainant had never raised the matter with him.
- As a consequence he said he did not give the resumed breaks any consideration.
- The Court found that the Complainant's and the Manager's evidence was broadly consistent.
- The Manager did not intervene in the Complainant's management of his breaks.
- He noted that the Complainant had not brought any difficulties to his attention.
- Had he done so he would have addressed them and enable the Complainant resume and complete his lawful breaks.
- In the circumstances the court accepts the Complainant's evidence and found that the complaint is well founded and ordered the Respondent to pay the Complainant compensation in the amount of €1,500.

DWT1589 - KEPAK ATHLEAGUE v ARTHUR ZASKALASKI NOT PROVIDED WITH NOTIFICATION OF OVERTIME

- The Complainant worked in the Lamb Boning Hall of the Respondent, a food processing Company.
- He was employed by the Respondent from 29th September 2009 to 9th October 2013.
- The Complainant submitted that the Respondent was in breach of Section 17 of the Act as he was not provided with appropriate notification of the requirement to work overtime.
- The Complainant worked overtime on four occasions within the cognisable period. He stated that the Respondent was in breach of the Act as no start and finish times were included in the contract of employment and he contended that a notice stating that there will be a coffee break at 4.30pm was not sufficient to indicate a finishing time.
- The Respondent stated that Employee's contract provides for overtime as part of the terms and conditions of employment.
- During the course of his employment the Complainant carried out reasonable overtime without issue and did so until a Piece Rate Agreement was introduced in November 2011, in agreement with the employee forum.
- The Respondent stated that production in the factory is subject to the cyclical nature of the industry and it is well known and accepted that there are peaks and troughs in production activity.
- In addition orders can arrive at the last minute which could not reasonably be foreseen. The Piece Rate system was introduced in order to improve competitiveness and efficiency in a very difficult economic climate.
- It was stated that each Monday morning a roster was placed on the planning notice board for that week located in the hall for all Employees to see which sets out, to the best of the Respondent's ability, the requirement for overtime for that week which would be scheduled for late afternoon on Tuesday or Thursday thereby giving employees in excess of 24 hours' notice.
- The requirement to work overtime is indicated by the following "coffee break- 4.15 pm" on the relevant days which signifies that rather than finishing at 4.30/4.45 pm, overtime would continue until 6.00/6.30pm.

- In issuing its conclusion the Court found that by requiring the Complainant to work a reasonable amount of overtime and not to leave the workplace without being granted permission, that the Respondent was not seeking the Complainant to co-operate in breaching the Act.
- The Court noted that no issue was raised by the Complainant with the Respondent concerning the non-provision of the statutory notice of additional hours, rather the Complainant was seeking to set a pattern of work he was prepared to do in order to suit his personal requirements.
- The Respondent indicated that it was not possible to facilitate him and accordingly his request was not feasible due to the nature if the business.
- For this reason the Court found that the Complainant’s complaints alleging a contravention of Section 17 is well founded and awarded the Complainant compensation of €1,000.

OVERALL CHECKLIST:

Legislation	✓/X
Contract:	
The business opening hours are included in the contract of employment	
The employees average hours are included in the contract of employment	
Any change to the employees hours are signed off within the employee file	
Rest breaks are defined in the contract of employment	
Rest breaks are outlined in the contract as either paid or unpaid	
If an employee misses their rest break – how they bring it to the attention of the employer is included in the contract/policies & procedures	
Roster:	
If an employee misses their rest break – how they bring it to the attention of the employer is included on the roster	
The roster is issued at least 24 hours in advance of the Company’s working week	
Breaks:	
All employees are under the max. average net weekly working time of 48 hours	
All employees receive a daily rest break of 11 consecutive hours	
All employees get their entitled rest breaks while at work	
All employees receive a weekly rest break of 24 consecutive hours	
All employees clock in/clock out – or record their breaks each day	
Young Persons:	
All under 16’s receive a break of ½ hour after every 4 hours working	
All under 16’s receive 14 consecutive hours break in each period of 24 hours	
All under 16’s receive 2 days off in any period of 7 days	
All workers between the ages of 16 to 18 receive a break of ½ hour after every 4 and a half hours working	
All workers between the ages of 16 to 18 receive 12 consecutive hours break in each period of 24 hours	
All workers between the ages of 16 to 18 receive 2 days off in any period of 7 days	
Night Working:	

THE SUITE

FOR PEOPLE AND BUSINESS

All night workers work a maximum average of 8 hours	
All night workers who are engaged in work involving special hazards or a heavy physical or mental strain work an absolute limit of 8 hours in a 24 hour period	
Records:	
I have records of all staff start and finish times	
I have records of all staff breaks	
I can access these records easily in the event that NERA call and ask for copies	

CONTACT THE HR SUITE:

If you have any queries please do not hesitate to contact our office on 066-7102887 and we would be happy to deal with your query.

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