

# Working Time Regulations Policy and Procedure

## Ratification Process

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Ratified on and by:	tbc C&P CCG Remuneration & HR Sub Committee
Version Number:	3
Latest revision date:	July 2017
Review date:	July 2019

**Cambridgeshire & Peterborough CCG  
Working Time Regulations Policy and Procedure**

**Document Control Sheet**

<b>Development and Consultation</b>	This policy was developed by the CCG HR team and consulted upon with senior managers and staff representatives. This policy has been approved through the Joint Consultation and Negotiating Partnership (JCNP).
<b>Dissemination</b>	All new and updated policies and procedures are notified to senior managers via email for dissemination to their staff. Notification is also sent to all staff via the monthly staff newsletters.
<b>Implementation</b>	All staff and managers. Line managers have an additional duty to authorise in accordance with the policy.
<b>Training</b>	The CCG HR team will organise to inform managers of this policy. Training on equality and diversity is mandatory for all employees.
<b>Audit</b>	The CCG HR Team will hold a database of all policies and a reminder will be sent when a policy is due for renewal.
<b>Review</b>	This policy will be reviewed by the CCG HR Team and JCNP every two years, unless an earlier review is required e.g. due to changes in legislation or in NHS direction.
<b>Links with other documents</b>	This policy should be read in conjunction with:  CCG Stress at Work Policy and Procedure CCG Annual Leave Policy and Procedure CCG Conflicts of Interest Policy

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**Revisions**

<b>Version</b>	<b>Page/Para No</b>	<b>Description of Change</b>	<b>Date Approved</b>
1	Page 6, section 5.4	Removal of Night Workers guidance	07/02/2014
1	Page 7, section 8	Removal of NHS Professional/Bank Workers	07/02/2014
1	Page 5, section 4	Inclusion of a definition of 'Working Time'	07/02/2014
1	Page 9, section 10	Inclusion of 'Duties and Responsibilities'	07/02/2014
3	Page 5, section 1(a)	Clarity of Workers Rights	
3	Page 6, section 4	Inclusion and clarity around ECJ ruling September 2015 concerning working time of mobile workers	
3	Page 6, section 4	Working Time Regulation date amended	
3	Page 7, section 5	Inclusion of amount of compensatory rest	
3	Page 10, section 9	Inclusion of Conflict of Interest	

## Cambridgeshire & Peterborough CCG Working Time Regulations Policy and Procedure

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## **Cambridgeshire & Peterborough CCG Working Time Regulations Policy and Procedure**

### **1. Introduction**

The Working Time Regulations 1998 lay down minimum conditions relating to weekly working time, rest entitlements, annual leave and makes special provision for working hours and health assessments in relation to night workers.

The 1998 Regulations impose responsibilities on both managers and staff to ensure working time conditions, and safe working arrangements, are observed. The Regulations are complex and this policy is only an overview of some of the main subjects to help managers and employees with the implementation of the Regulations.

The Regulations also implement provisions of the Young Workers Directive, which relate to the working time of adolescents.

The Regulations apply to all employment sectors. A summary of the rights given to workers are:

- a. Maximum weekly working time - average 48 hours in each 7 day period (reference period 17 weeks), though individuals may choose to work longer by "opting out";
- b. Rest breaks - after every 6 hours;
- c. Daily rest - 11 hours consecutive rest in every 24 hour period
- d. Weekly rest period - 24 hours in every 7 days (reference period 14 days) in addition to their daily rest;
- e. Annual leave – 5.6 weeks annual leave;
- f. Night work - average 8 hours in any 24 hour period (reference period 17 weeks);
- g. Health assessments for night workers.

These are detailed further within Section 6 below.

Managers will not discriminate in the application of this policy and procedure in respect of age, disability, gender identity and gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation or trade union membership.

### **2. Health & Safety**

There is a general responsibility for the CCG under health and safety law to protect, as far as is practicable, the health and safety at work of all our employees. NHS employers also have a responsibility to protect the health and safety of patients and others receiving health care, and the general public.

Specific responsibilities in relation to the Working Time Regulations are:

- a. working time in general - monitor the hours of work of staff to identify and address any practices or patterns of work, which may be a risk to employees, patients or the public;

- b. opt out to the 48 hour limit - ensure that no employees who have agreed to disapply the 48 hour limit work excessively long hours where this may be a risk to the health and safety of themselves, their colleagues, patients or the public.

### 3. Coverage

A “worker” is defined as an individual who works under a contract of employment, or any other contract where s/he is providing services to the CCG. All “workers” are covered by the Working Time Regulations. These include:

- a. CCG employees
- b. Agency and temporary workers, including locums
- c. Work experience trainees

An adolescent worker (or young worker) is a worker above the minimum school leaving age but under 18 years old.

The HR team can provide further advice on individual entitlements.

### 4. Working time

“Any period ‘during which a worker is working at his or her employer’s disposal and carrying out his or her activity or duties” (Working Time Regulations, S2, 1, 1998).

In September 2015 the European Court of Justice ruled that time spent travelling to and from first and last appointments by workers without a designated base and who are classed as truly mobile workers (i.e. they are at the employer’s disposal for the time spent on the journey; they are acting under instructions to make that particular journey and may be subject to redirection during the journey) therefore they are entitled to travel to their first appointment in work time. Similarly their travel home time can also be undertaken in work time.

However the CCG does not employ any truly mobile workers.

For time to be ‘working time’ all three elements of this description must be satisfied. For example, working time **does** include periods of:

- a. Travelling time between CCG sites once at work;
- b. Stand by or on call once the worker has been contacted;
- c. Contractual overtime;
- d. Working lunches;
- e. Job-related training that is directly related to the job.

This list is not exhaustive, but is given as an example.

Working time **does not** include:

- a. Routine travel between home and work;
- b. Rest breaks and meal breaks when no work is done;
- c. Stand by or on call, but otherwise free to pursue own activities and not interrupted (i.e. staff on call at home);

- d. Training such as non-job-related evening classes or day release courses.

This list is not exhaustive, but is given as an example.

## 5. Derogations

Derogations are provisions which may be applied flexibly or watered down, or in some cases, excluded altogether. The main provision where a derogation may apply to the CCG is;

Provided workers are afforded equivalent periods of compensatory rest or appropriate protection, derogations may be adopted by law or collective agreement for all provisions, except weekly working hours and annual leave for:

*activities involving the need for continuity of service or production, particularly services relating to reception, treatment and care provided by hospitals or similar establishments.*

For shift workers, derogations can apply for the daily and weekly rest periods.

The CCG requires staff to be flexible at times of unforeseen circumstance, for instance a major incident, or foreseeable surges in activity. Under these circumstances, where rest breaks may not be practical, compensatory rest will be given at a later time and this will be the same length of time as the break or part of the break that the worker has missed.

## 6. Workers' Rights Under the Regulations

### 6.1. Working Time Limits

Working Time is defined as '*when a worker is working at their employer's disposal and carrying out their activities or duties*'.

The time when a worker is required to be 'on-call' will not be regarded as working time except for the time when they are required to undertake any work related activity. Once the worker has received the call and starts their journey in, this is classed as working time.

The Regulations set a working limit of an average of 48 hours per week. The standard averaging period is 17 weeks. For employees that fall under the category of 'special case workers' (this is where the worker's activities involve the need for continuity of service or production, particularly services relating to reception, treatment and care provided by hospitals or similar establishments), it has been agreed with the Trade Unions that the reference period will be extended to 26 weeks.

For reasons of health, safety and the welfare of staff, the position of the CCG is that we will discourage any individual from working above the maximum weekly working limit. The CCG is required to take all reasonable steps to ensure that employees do not work more than an average of 48 hours per week over a 17 week period, (or 26 week period if applicable). This should also take into account time worked in

additional posts or for another employer (please see Section 8 for further information).

Individuals may *choose* to work more than the 48 hours average weekly limit. A decision to exercise this option is an individual, voluntary one and no pressure should be placed on the individual to take this option. If any of the CCG's employee's are working above 48 hours voluntarily and wish to continue to do so, they will need to complete a written consent form, which can be found in appendix 1 of this policy). The employee can withdraw this agreement by giving 7 days notice in writing.

New starters will be informed about the need to sign a consent form if they wish to voluntarily agree to work in excess of an average of 48 hours per week. However, they must be discouraged from doing so during the first four weeks of employment. It is important that staff sign a consent form in case they think that they may wish to work in excess of an average of 48 hour limit. The CCG must record all hours worked in excess of 48 hours when a worker signs an opt out consent form, and the worker must keep weekly records of their hours worked for the CCG and any other employer (please see Section 9 & 10 for further information).

## 6.2. Rest Entitlements

### 6.2.1. Rest Breaks

All workers are entitled to have a 20 minute unpaid rest break for each 6 hours they work. A young worker is entitled to have a 30 minute unpaid rest break where the daily working time is more than 4½ hours. This break should be taken during the course of the period of working and, if possible, away from their workstation. Therefore, adding 20 minutes to the beginning or end of the work period is not sufficient. This could be accommodated by:

- a. Existing lunch or other break arrangements for staff provided the break is at least 20 minutes. The CCG encourages a lunch break of at least 30 minutes;
- b. Where in exceptional circumstances a break after 6 hours is not possible, 20 minutes should be provided as soon as possible and should not be at the beginning or end of the working day;
- c. In exceptional circumstances, where a break cannot be taken at any time in the day, with the individual's agreement, equivalent compensatory rest must be given, (please see section 8 for further information).

Workers who have completed a full day or night's work who are asked to attend an evening or day meeting, or to work overtime, should be requested to take a further 30 minute (unpaid) break before starting the evening or day work.

### 6.2.2. Daily Rest

Workers are entitled to an 11 hour consecutive rest break in every 24 hour

period. A young worker is entitled to a break of 12 consecutive hours. Rotas should be structured to accommodate this. If this is not practicable due to the contingencies of the service, e.g. the need to provide 24 hour continuous care, managers should ensure that a period of equivalent compensatory rest is provided and records are kept, (please see section 8 for further information).

Daily rest cannot be part of the weekly rest or include rest breaks.

### 6.2.3. Weekly Rest

Workers are entitled to an uninterrupted rest period of not less than 24 hours in each 7 day period, or 48 hours over a 14 day period. If due to rotas or service needs, this is not possible, the employee must be provided with equivalent compensatory rest, (please see Section 8 for further information). A young worker is entitled to 48 hours rest in each 7 day period. This cannot be averaged over a 14 day period.

## 7. Annual Leave

This statute entitles workers to a minimum of 4 weeks paid annual leave.

Annual Leave should be taken in accordance with CCG Annual Leave Policy and Procedure and the worker's terms and conditions of employment. Employees should not do extra work, such as bank work, during 4 weeks of their annual leave entitlement, when they have taken annual leave. The Regulations state that bank holidays count towards the 4 week period. Annual leave cannot be replaced by payment in lieu unless the employment relationship is terminated.

## 8. Compensatory Rest

As identified in Section 5, some derogations to the Regulations may apply and this is when compensatory rest can be granted. Compensatory rest is an equivalent period of rest, which is as long as that to which they were entitled, but were not able to take.

Where the application of any provision of these Regulations is excluded or modified, eg. an employee does not receive the minimum daily rest break after a late shift which is followed by an early shift, the CCG shall provide compensatory rest.

Compensatory rest for a *daily rest break* should be given within two weeks wherever possible, and compensatory rest for a *weekly rest break* should be given within two months wherever possible.

## 9. Multiple Contracts and Other Employment

The CCG has a responsibility to ensure that workers do not work on average more than 48 hours per week. The CCG expects their managers to know which workers have more than one contract of employment with the CCG and monitor the total hours being worked by those workers each week.

The CCG also has a duty of care, in respect of working hours, to safeguard the health and safety of any of its workers who may have other work outside the CCG. In order to meet its responsibilities, the CCG will inform all workers of the limitation on working hours and their responsibility to inform their manager if they take up an additional job, (paid or unpaid), within the CCG or an outside organisation, (please also see Section 10 below for further information). In addition, it is important that all staff complete a Conflict of Interest Declaration form which should identify any potential conflicts from secondary working. Refer to the Conflicts of Interest Policy.

## 10. Record Keeping

Both the CCG and the worker have responsibilities under the Regulations to keep accurate records that are adequate to show that weekly working time limits have been complied with.

All workers shall be required to keep weekly records of their working hours and provide their line manager with copies of these records every four weeks. These records are open to inspection from the Health & Safety Executive.

The CCG shall monitor all working hours, including the hours of workers with multiple contracts, and calculate the average working hours at the end of each reference period.

The CCG shall also keep a copy of

- a. a written agreement to work in excess of the average 48 hour limit (if applicable), which can be found in appendix 1 of this policy;
- b. compensatory rest accrued (if applicable).

The Regulations state that all the records detailed above must be kept for two years from the date on which they were made.

## 11. Duties and Responsibilities

11.1. Employees are responsible for:

- a. Informing their line manager if they have more than one job, if the cumulative hours add up to more than 48 hours per week and for completing an opt-out agreement, as found in appendix 1 of this policy, if appropriate;

- b. Informing their line manager if they believe they are exceeding the working hours outlined in the Regulations;
- c. Informing their line manager if there are difficulties preventing them from taking rest breaks, daily or weekly rest periods, or from taking compensatory rest;
- d. respecting their colleagues' right to take a break without interruption from phone calls and bleeps, unless an emergency arises, and where possible arrangements should be made to handover such devices for the duration of the break.

11.2. Line Managers are responsible for:

- a. Monitoring hours and patterns of work and keeping records of opt-out agreements, rest breaks, daily and weekly rest periods, compensatory rest and night work.

11.3. The HR Team is responsible for:

- a. Maintaining records of opt-out agreements;
- b. Providing advice to managers and workers on the interpretation and application of the Regulations relating to them.

**Cambridgeshire & Peterborough CCG  
Working Time Regulations Policy and Procedure**

**Appendix 1 – Working Time Regulations Policy and Procedure Consent Form**

Further to the implementation of the Working Time Regulations on 1 October 1998, employees will not be expected to work more than an average of 48 hours per week, over a 17 week\* reference period. The CCG discourage any individual from working above the maximum weekly working limit. By discouraging staff from working excessive hours, the CCG is promoting the health, safety and welfare of its employees and patients. However, the Regulations allow an individual to agree to the option to work above the 48 hour limit, subject to service requirements, provided that a written agreement is made. This is not encouraged during the first four weeks of employment.

This form provides for you to enter into an agreement with the CCG to disapply the 48 hour limit in respect of the total weekly average hours required in your case. Your minimum weekly hours of work will continue to be specified in your contract of employment with the CCG.

If you decide to disapply the 48 hour limit the CCG will ensure that no employees work excessively long hours where this may be a risk to the health and safety of themselves, their colleagues, patients or the public.

*\* 26 week reference period where 'the workers activities involving the need for continuity of service or production, particularly services relating to reception, treatment and care provided by hospitals or similar establishments'*

**Employee name:**.....

**Directorate:**.....

**Position:**.....

**Band:**.....

**Full Time/ Part Time (If part time, please specify hours):**.....

- I agree that the 48-hour average weekly limit specified in the Working Time Regulations 1998, Regulation 4(1), shall not apply in my case.

- Despite agreeing to disapply the limit, I am fully aware that I have a responsibility not to work hours so long that they may impair my efficiency or expose colleagues, the public or property to risk.
- I agree to keep accurate records of my working hours for the CCG, plus any additional hours worked for another employer.
- I agree to give at least 7 days written notice to the CCG if I wish to bring this agreement to an end.
- I understand that this agreement will apply from [please enter start date here] and will continue indefinitely. I am aware that I am under no obligation to sign this agreement and this it is illegal for me to be subjected to any detriment if I decline to sign.
- I understand I have a legal obligation to inform the CCG if I currently work for, or subsequently plan to work for, a second employer.
- I understand that if I work for a second employer and wish to continue working over a total of 48 hours per week, I must sign a waiver for my second employer as well as for the CCG.

**Employee signature:**.....

**Date:**.....

**Manager signature on behalf of the CCG:**.....

**Manager Name:**.....

**Manager Position:**.....

**Date:**.....

**This form should be returned to the HR team, Cambridgeshire & Peterborough CCG, Lockton House, Clarendon Road, Cambridge, CB2 8FH.**