

Livewell Southwest

## **Working Time Regulations Policy**

Version No.2

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**Notice to staff using a paper copy of this guidance:**

**The policies and procedures page of Livewell Southwest intranet holds the most recent version of this document and staff must ensure that they are using the most recent guidance.**

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## Reader Information

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## Document review history

Version No.	Type of change	Date	Originator of change	Description of change
1	New Policy	February 2016	HR Policy Group	New Policy Development
1.1	Minor	March 17	Deputy Head of HR	Include secondary or engagement in another business form
1.2	Extended	July 2018	Head of HR & Staff Wellbeing	Extended
1.3	Minor	August 2019	HR Policy Group	Remove Appendix A Declaration of secondary employment form and refer to Declarations of Interest Policy
1.4	Minor Amend	October 2019	HR Admin	Amendments to formatting errors
1.5	Extended	March 2020	Associate Director of HR and Engagement	Extended
1.6	Minor	November 2020	HR Admin	Include email address for return of individual agreement
1.7	Extended	January 2021	HR Admin	Extended
1.8	Extended	April 2021	HR Admin	Extended
2	Reviewed	July 2022	HR Department	Reviewed and updated. References section updated. Section 4 updated

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# Working Time Regulations

## 1. Introduction

- 1.1 The Working Time Regulations 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. Livewell Southwest is committed to, and strongly supports, the Regulations and its guidelines relate to all employees of Livewell Southwest. This policy should be read in conjunction with the Roster Policy.

## 2. Purpose

- 2.1 To enable Livewell Southwest to provide a safe, effective and efficient healthcare service to people who use our services, all employees are required to abide by and have a responsibility to work within the guidelines in these regulations. Livewell Southwest has a duty of care to people who use our services, colleagues and the public to ensure employees who undertake 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 Livewell Southwest 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

- 3.1 **Working Time** – is defined as any period when the employee is carrying out their duties, or activities on behalf of the organisation, or is at the employer's disposal. This may include one or more employers and also paid or unpaid work.
- 3.2 This may include:
- Job-related training.
  - Time spent travelling if you travel as part of your job.
  - Paid overtime.
  - Unpaid overtime you're asked to do.
  - Time spent on call at the workplace.
  - Any time that is treated as 'working time' under a contract.
- 3.3 Working time does not normally include travel from the employee's home to their place of work. If the employee has no usual place of work, time spent travelling from and to home for the first and last appointments of the day does count.
- 3.4 The following are not considered working time:
- Breaks when no work is done e.g. lunch/rest breaks, except for Junior Doctors where this is a paid entitlement.
  - Unpaid overtime you have volunteered for e.g. staying late to finish tasks off.
  - Travel to and from work (if you have a fixed place of work).

- 3.5 Working time will include time where an employee is required to travel from site to site for meetings, to attend training or to perform his/her functions at different locations.
- 3.6 The policy applies to employees only and does not apply to contractors, specialist consultants or any self-employed individuals working for the organisation.
- 3.7 **Reference period** – the reference period is a rolling timeframe for the assessment of average working time. The period is rolling from the current date and reflects back upon the last reference period, this is usually over a 17 week period (however is the last 26 weeks for doctors in training). Within this reference period the hours per week of actual working time is added up and the total divided by the number of weeks. This is to establish the average working time in relation to the working time directive which states employees should not work more than 48 hours per week on average – with the exception of where an employee has signed an opt-out agreement.

## 4. Duties and Responsibilities

### 4.1 Line Managers are responsible for:

- Ensuring that this policy is adhered to within their specified area, and should take consideration of it when producing staffing rotas.
- Ensuring employees are aware of Declarations of Interest policy and requirement to declare any additional employment.
- Making sure that the working hours of their employees are monitored to ensure that they are not in breach of the policy.
- Ensuring staff are aware of the Company's sickness policy and staff expectations when staff on sickness absence (section 8.8 Working during sickness).

### 4.2 Employees must:

- Ensure that they take appropriate breaks in agreement with their Line Managers and in line with this policy.
- Inform their Line Manager of any additional employment (paid/unpaid) with any other employer, and the hours that they work including any bank work and complete the Secondary Employment and Clinical Private Practice – Self Declaration Form (See Declarations of Interest Policy) and submit to their line manager for review.
- Make their manager aware if they believe that their working pattern is in breach of this policy.
- Be aware of the Company's Sickness policy and staff responsibilities when on sickness absence (section 8.8)

## **5. Key Elements**

### **5.1 48 Hour Working Week**

- 5.1.1 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 an employee only works over 48 hours for one or two weeks, it is unlikely that it will affect their average working time, however hours worked should always be monitored to ensure this is the case.
- 5.1.2 The reference period is continual i.e. a rolling 17 or 26 week period, where the first week moves forward every week. If an employee is working longer hours for a limited period – to meet a particular deadline for example - it is unlikely that the Working Time Regulations will affect them, however hours worked should always be monitored to ensure this is the case.
- 5.1.3 Individual employees may agree to work more than 48 hours however they must voluntarily sign a waiver which is detailed in Appendix B. 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.
- 5.1.4 When considering the hours worked per week, all employment contracts of the individual must be taken into consideration. Should the employee have secondary employment, be that a paid or unpaid arrangement, they should ensure their line manager is aware and that their total hours worked across all employers do not regularly exceed 48 hours per week. Employees should consider the potential risk of conflict of interest and implications for their health and performance when considering secondary employment opportunities. Employees are responsible for ensuring they have declared their secondary employment by informing their line manager in the first instance and updating their Declaration of Interests form in accordance with the parameters of the Acceptance of Gifts/Hospitality Policy (incorporating Declarations of Interest).
- 5.1.5 Employment with private practice on a self-employed basis is excluded from the calculation of hours worked by Senior Medical and Dental Staff.

### **5.2 Night Work**

- 5.2.1 A Night Worker is defined as someone who works at least 3 hours of their daily working time between 11pm and 6am as a normal course.
- 5.2.2 The working hours of a night worker should not exceed the limit of an average of 8 hours in a 24 hour period. The average is calculated over a rolling period of 17 weeks, and includes obligatory, guaranteed and regularly worked overtime.

- 5.2.3 Employees are entitled to a free health assessment before they commence night working and on a regular basis while night duties form a part of their standard working pattern. Employees should discuss with their line manager to request an Occupational Health referral. The health assessment is an optional entitlement and employees may choose to opt out.
- 5.2.4 Please note: doctors in training working night shifts are not classed as 'night workers'.
- 5.2.5 To ensure the appropriate provision of rest breaks during the night shift local arrangements shall be made in specific environments which will be agreed by the unit manager in respect to maintaining the minimum staffing levels for safe working i.e. paid breaks if staff are required to remain within the work environment (ward or unit area) for the period of their break. For further details please refer to the Roster Policy.

### **5.3 Daily Rest Entitlements**

- 5.3.1 Employees are entitled to the following rest breaks, which are in accordance with the parameters of the organisations Roster Policy arrangements and thus above the minimum requirements of the Working Time Regulations.
- All shifts over 6 hours (up to 12 hours) must include a minimum of 30 minutes unpaid break (20 of which should be taken consecutively).
  - All shifts over 12 hours must include a minimum of 60 minutes unpaid break (45 of which should be taken consecutively).
  - Night shifts, regardless of duration, should include a minimum of 60 minutes break.
- 5.3.2 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.
- 5.3.3 Where, due to exceptional circumstances such as unforeseen clinical need, an employee is unable to take a rest break the unused entitlement should be claimed as a period of equivalent compensatory rest.
- 5.3.4 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.
- 5.3.5 Smoking during working time will not be permitted other than as part of planned rest breaks and in accordance with the smoking policy parameters across the organisation (including the Tobacco Policy within Livewell Southwest, the Smokefree Policy within the Adult Social Care contract, and the Smokefree Policy within South Hams and West Devon). The Wellbeing Service offer a Stop Smoking Service and they can be contacted on 01752 437177.

5.3.6 Additional details on rest breaks are available in the Roster Policy.

## **5.4 Weekly Rest Entitlements**

5.4.1 Employees are entitled to 11 consecutive hours rest in each 24 hour period. In addition to which employees are also entitled to an uninterrupted rest period of not less than 24 hours in each 7 day period.

5.4.2 The usual entitlement to daily and weekly rest periods 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, however these workers must, wherever possible, be given an equivalent period of compensatory rest at another time.

5.4.3 Additional details on weekly rest breaks are available in the Roster Policy. This includes specific recommendations for number of consecutive duties.

## **5.5 Risk Assessments**

5.5.1 Where pressures of work do not permit access to suitable rest periods, a risk assessment should be undertaken to identify the impact that such a failure may have on employees and delivery of service, along with suitable alternative arrangements and plans to manage the risks and ensure that the rest breaks can be provided.

5.5.2 Consideration should be given to the allocation of duties in recognition of the length of working time e.g. an employee 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, towards the end of their shift. Details are available in the Risk Management Strategy.

## **5.6 Paid Annual Leave Entitlement**

5.6.1 Existing agreements for annual leave entitlements are detailed in the Leave Policy. The Regulations specify a statutory entitlement of 5.6 weeks which is pro rata for part time employees.

5.6.2 Line managers should ensure departmental records are kept to demonstrate that annual leave entitlements are granted and taken, in line with terms and conditions of employment and policy parameters.

## **5.7 Young Workers Under 18**

5.7.1 The regulations define young workers as those over compulsory school age but under the age of 18 years. There are special regulations for young workers, which restrict their working hours to 8 hours per day and 40 hours per week in any week (there is no average reference period for young workers).

5.7.2 Young workers are entitled to a rest break of 30 minutes when daily



working time is more than 4.5 hours which shall be consecutive wherever possible. A young worker is entitled to a rest period of not less than 12 consecutive hours in each 24-hour period. A young worker is also entitled to a rest period of not less than 48 hours in each working week.

- 5.7.3 Where, due to exceptional circumstances such as unforeseen clinical need, a young worker is unable to take a rest break the unused entitlement should be claimed as a period of equivalent compensatory rest within the following three weeks.
- 5.7.4 Young workers cannot usually work between 10pm and 6am. If a young worker is scheduled to work after 10pm, they must stop work at 11pm and not commence work before 7am the following day. Young workers cannot work between midnight and 4am, except in the most exceptional circumstances. Young workers who work at night are also entitled to access health assessments as detailed in Section 5.2.3.
- 5.7.5 There are some exceptions to night working for young people who work in specific environments, such as hospitals. The restrictions on young people carrying out night working do not apply when:
- The organisation needs the young worker to work in order to maintain continuity of service, or to respond to a sudden rush in demand; and
  - Doing the work would not affect the young workers education or training; and
  - No adult is available to do the work; and
  - The young worker is supervised by an adult (if this is necessary for their protection) and the young worker is allowed a period of rest as compensation.
- 5.7.6 Young workers cannot opt-out of the regulations and thus cannot sign a waiver of their rights.

## **5.8 Exclusions and Waivers**

- 5.8.1 The Regulations allow for employees to sign a waiver where they wish to work longer hours than permitted under the regulations. Livewell Southwest do not encourage its employees to work long hours and the waiver should be used as a last resort, when all other ways of alleviating a heavy workload have been exhausted. A risk assessment should be carried out to fully consider employee and patient safety.
- 5.8.2 Line Managers and employees are required to consider the following before considering 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.

- 5.8.3 In some cases it may be necessary for employees to work long hours for short periods, during peaks of work. 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.
- 5.8.4 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 Appendix B.
- 5.8.5 A copy of the signed waiver should be stored on the management file with the line manager so that the circumstance can be reviewed in line management meetings on an annual basis or more frequently as required.
- 5.8.6 The senior HR managers must be informed of any instances where a waiver has been signed and a copy of the waiver form should be forwarded to them.
- 5.8.7 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.

## **6. Training Implications**

Training will be provided to Managers, as required, on their duties in relation to this Policy.

## **7. Monitoring Compliance**

Failure to comply with the contents of this policy may result in disciplinary action. Please refer to the Disciplinary Policy for further details. The effectiveness of this policy will be monitored through the HR Policy Group.

**All policies are required to be electronically signed by the Lead Director. Proof of the electronic signature is stored in the policies database.**

**The Lead Director approves this document and any attached appendices. For operational policies this will be the Head of Service.**

**The Executive signature is subject to the understanding that the policy owner has followed the organisation process for policy Ratification.**

**Signed: Director of People and Professionalism**

**Date: 21<sup>st</sup> September 2022**

## Appendix A

### Individual Agreement to Waive Limits on Working Time

Employee Details			
Name			
Job Title		Grade	
Locality/Department		Work base	
Line Manager			
Start Date			
I hereby choose to opt-out of the 48 hour weekly limit specified in the Working Time Regulations in accordance with the following terms.			
Date Arrangement Shall Commence	DD/MM/YYY		
Duration of Arrangement	Temporary / Permanent		
Anticipated End Date of Arrangement	DD/MM/YYYY		
<p>I confirm I have been provided with the Working Time Regulations Policy and am aware of my legal rights in relation to the limit on weekly working time specified in the regulations.</p> <p>I agree that this limit on weekly working time shall not apply in my case and my average working time may therefore exceed 48 hours a week.</p> <p>I agree that if I wish to terminate this agreement I will give my manager written notice of at least one month.</p> <p>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.</p>			
Authorisation	Manager	Employee	
Name (block capitals)			
Signed			
Date			

**A copy of this form is to be kept by both parties and also emailed to the Human Resources Department - [Livewell.HR-Livewell@nhs.net](mailto:Livewell.HR-Livewell@nhs.net) This arrangement shall be reviewed by line management on an annual basis or more frequently as required.**