

Lead Employer Trust

Working Time Regulations

POLICY INFORMATION SHEET

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Summary of Changes

| Date of Change | Changes made | Location of changes | Changes approved | Version Control |
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| 11 th March 2014 | Remove all references to Northern Deanery. Change to Health Education North East (HENE) | Pages: 7 | 17 th January 2014 | Now version 2 |
| April 2015 | Amended to include GP trainees | Pages: | May 2015 | Now version 3 |
| April 2016 | Document update | All pages | May 2016 | Now version 4 |
| March 2017 | Amended to include new 2016 T&Cs | All Pages | March 2017 | Now Version 5 |
| February 2021 | 3 year Review | | | Version 6 |
| May 2023 | Equality Impact Assessment | Page 17 | 30 th May 2023 | Version 6 |
| December 2023 | 3 year review | Page 7, 8, 10 | | Version 7 |

BACKGROUND AND INTRODUCTION

- 1.1 The Working Time Regulations came into force on 1 October 1998 and provide rights for workers ensuring they do not have to work excessive hours. They make specific provision for a maximum 48 hour average working week, night work limits, daily rest periods, weekly rest periods, rest breaks, paid annual leave, and young workers.
- 1.2 The purpose of this document is to set out further details of how the Working Time Regulations are applied within the Lead Employer Trust (LET). This includes, as appropriate, extracts from Section 27 of Agenda for Change NHS Terms and Conditions of Service, as well as locally agreed arrangements including local agreement appertaining to the method of payment for statutory leave.
- 1.3 The entitlements apply to all staff employed by the LET.
- 1.4 No employee should suffer detriment when exercising their rights under the Regulations and this agreement details the actions the LET, host training organisations, and trade unions, and employees are expected to take in implementing the regulations and taking account of the general principle of adapting work to the worker wherever possible. The terms of this agreement are binding on the LET, all employees of the LET, and recognised trade unions.
- 1.5 In the main the LET provides terms and conditions of employment much better than those within the regulations. However, there are some aspects of the regulations that will affect working practices within the LET and these are described below together with the full Collective Agreement for the LET.
- 1.6 *In implementing this agreement, managers and employees must ensure that employees are treated equitably and fairly and that no arrangements are reached which discriminate against members of staff with family or other carer responsibilities.*
- 1.7 This document sets out very clear limits and standards. It is recognised, however, that the host trusts need to maintain a round-the-clock service. This agreement therefore acknowledges that there may be a need for flexible implementation on rare occasions where there are unforeseen circumstances which may reasonably prevent the normal application of the agreement
- 1.8 This Agreement will be subject to review as further guidance or amendments are issued by the government, and further case law develops.

2 HEALTH AND SAFETY RESPONSIBILITIES

As working time is a health and safety-related issue this agreement shall complement the host training organisations Health & Safety Policies. Control on working hours should be regarded as an integral element of managing health and safety at work and promoting health at work.

There is a general responsibility under health and safety law for the LET, host training organisations and its employees, to protect as far as is practicable the health and safety at work of all employees. All employees have a legal obligation to take reasonable care for the health and safety of themselves and others at work and to adhere to the provisions of this agreement.

3 DEFINITIONS

3.1 Working Time

Working time means any period during which an employee is working, at his employer's disposal and carrying out activities or duties'. All three elements of this definition must be satisfied in order that time may be classed as working time. For the purposes of this agreement working time does not equate to paid time.

Where employees travel to different sites during the working day, then this is classed as working time.

Travel to and from work at the start and end of the day is NOT classed as working time.

3.2 On Call

On call is defined as being immediately available for work but not present on the work site. Those employees who are required to be on-call shall be regarded as working from the time that they are contacted to attend work until the time that they return home directly from work or begin another activity at the end of the work related call.

Those instances whereby employees who are on-call are contacted at home by telephone regarding work-related matters, but where there is no requirement to attend work, shall be classed as working time for the duration of the telephone call(s).

Where employees are on-call but otherwise free to pursue time as their own, this will not count towards working time.

Compensatory rest should be provided for the actual period of working. Where, in exceptional cases, providing compensatory rest is not possible and a rest period is required to protect the employee's health and safety then time off should be given without prejudice to any financial benefits or payments to which the employee is entitled, notwithstanding that the normal working weekly hours paid at the normal rates have not been completed. Compensatory rest should be taken the following day.

3.3 Standby

An employee who is required to be at their place of work and sleeping in for a specified period shall be regarded as working for the purposes of this agreement.

Stand by is working time and is counted towards the average 48 hour per week.

3.4 Home Working

If an employee takes work home or spends time at home carrying out work that would otherwise be performed in the workplace, this will be regarded as working time provided the employee has previously agreed such an arrangement with their manager.

3.5 Unmeasured Working Time

Where an employee has an element of their working time predetermined, e.g. by employment contract, but chooses to work longer of their own volition this additional time is unmeasured working time and is not included in the calculation of the working time limit.

3.6 Training

Working time includes time taken for training purposes as part of approved study leave directly relating to a worker's job. Training that Health Education North East may contribute towards outside a work situation (e.g. paying for evening classes) does not count as working time. Where the training is part of approved study leave, the following will count towards working time:

- time spent on a non-residential training event. This will include travelling time **less** the amount of travelling time normally spent by the individual in travelling to and from work.
- time spent on a residential training event. This will include time spent actually attending lectures, seminars etc., but will exclude other periods. Travelling time will apply as above.

3.7 Civic/Public Duties

Working time includes time taken to undertake civic and public duties. Details of the arrangements for granting time off and the amount of time off allowed for staff to undertake these duties are set out in the LET's Policy on Leave for Civic and Public Duties.

3.8 Meal Breaks

Working time will be calculated exclusive of meal breaks. Where individuals are **required** to work during meals (e.g. lunch-time meetings) such time will be counted as working time.

3.9 'Reference Period'

For the purposes of this agreement, the averaging reference period is defined as being the length of the rota cycle, the length of the placement or 26 weeks, whichever is the shorter.

4 MAXIMUM WEEKLY WORKING TIME

- 4.1 Employees will normally not be expected to work more than 48 hours per week calculated over an averaging reference period (Determined by their Terms and Conditions of Service).
- 4.2 The average weekly working time is calculated by dividing the total number of hours of working time worked by the individual in the reference period). If, during the reference period, the employee has taken leave (either annual leave, sick leave or maternity leave), then the number of days equivalent to that leave will be added to the total hours worked to compensate for the absence. To do this, add the number of hours worked in the first working days after the reference period to the total of working hours. The number of working days taken into account should be the same as the number of days missed from the reference period.

4.3 Trainees on the 2016 Terms and Conditions of Service should have work schedules that adhere to Schedule 03. Trainees should be encouraged to raise exception reports where necessary to highlight where breaches to the work schedule have occurred. Exception reports will be dealt with by the appropriate Guardian of Safe Working.

4.4 The average weekly hours can be calculated by using the equation:

$$\frac{A + B}{C}$$

Where :

- A** is the total number of hours worked during the reference period.
B is the total number of hours worked, immediately after the reference period, during the number of working days equal to the number of days missed due to annual leave entitlement, sick leave and maternity leave; and
C is the number of weeks in the reference period.

Trainees on the 2016 Terms and Conditions of Service are restricted to a maximum of 72 hours work in any consecutive 7 day period.

The Opt Out Agreement

- 4.5 The LET would prefer staff not to work over 48 hours per week on a regular basis, but does not wish to stop staff working additional hours if they so wish.
- 4.6 Individuals may choose to agree to work more than the 48 hour average weekly limit. A decision to exercise this option is an individual, voluntary one and no pressure should be placed on an employee to take this option.

- 4.7 Where an individual wishes to opt out of the 48 hour maximum, he/she signs the Opt Out clause on the additional duty hours forms on submission to the LET payroll. An employee can elect to end an Opt-out agreement at any time.
- 4.8 The LET and/or host training organisations reserves the right to restrict the number of hours an individual is permitted to work, trainees on the 2016 Terms and Conditions of Service who have chosen to opt out are restricted to a maximum average of 56 hours per week.

Employees with more than one job

- 4.9 All working time with all employers is relevant for the purposes of the Working Time Regulations and this agreement. In circumstances where an employee has more than one employer, it is the responsibility of the employee to ensure that the LET is aware of hours worked in other employment(s) as per the Secondary Employment Policy, which includes agency locums, and additional duty hours over and above contracted hours. Failure to declare other employment(s) may result in disciplinary action in accordance with the LET's Disciplinary Procedure. Please see the Secondary Employment Policy for further guidance.

4.10 For trainees on the 2016 Terms and Conditions of Service, where a trainee intends to undertake hours of paid work as a locum outside of the work schedule, they must initially offer additional hours of work exclusively to the NHS.

5 REST BREAKS, DAILY AND WEEKLY REST PERIODS

Rest Breaks

- 5.1 Where the working day is longer than 6 hours, all employees are entitled to take a break of at least 20 minutes away from the 'workstation.' A lunch break constitutes such a rest break.
- 5.2 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 The LET encourages all employees to take their rest breaks. Employees should not routinely work through their rest breaks unless there are exceptional circumstances which have been agreed with their line manager.

Minimum Daily Rest Periods

- 5.4 Employees should normally have a rest period of not less than 11 hours in each 24 hour period.
- 5.5 This 11 hour rest period is dis-applied for shift workers subject to appropriate compensatory rest being provided.
- 5.6 In exceptional circumstances due to the contingencies of the service, daily rest may be less than 11 hours for other staff subject to appropriate compensatory rest being provided.

Weekly Rest Periods

5.11

No doctor should be rostered for more than an average of 48 hours of actual work per week, as calculated over the reference period defined in the Regulations.

No more than 72 hours' actual work should be rostered for or undertaken by any doctor, working on any working pattern, in any period of seven consecutive calendar days.

Further information on limits to hours under the 2016 Terms and Conditions of Service is referred to in Schedule 3 Paragraphs 9-20.

Compensatory Rest

5.13 Compensatory rest is granted in lieu where the prescribed rest breaks are encroached upon and is an equivalent period to the hours lost.

5.14 No more than five long shifts (where a long shift is defined as being a shift rostered to last longer than 10 hours) shall be rostered or worked on consecutive days. Where five long shifts are rostered on consecutive days, there must be a minimum 48-hour rest period rostered immediately following the conclusion of the fifth long shift.

15.15. Where long shifts (as defined in paragraph 10 above) finish after 23.00, no more than four such shifts shall be rostered or worked on consecutive days. Where four such shifts are rostered on consecutive days, there must be a minimum 48-hour rest period rostered immediately following the conclusion of the fourth such shift.

5.15iii. Other than as set out in paragraphs 7-18 of Schedule 3 of the Terms & Conditions of Service where longer minimum rest periods may apply, under the Regulations there should normally be at least 11 hours' continuous rest between rostered shifts, other than on-call duty periods.

5.15iv. Any breaches of 11 hours' rest in a 24-hour period will be subject to time off in lieu, which must be within 24 hours. In exceptional circumstances where, due to service needs as required by the employer, the rest period is reduced to fewer than eight hours, the doctor will be paid for the additional hours worked that resulted in the shortening of the rest period, at a penalty rate, as set out in Schedule 2, paragraph 68 of these TCS. Where this occurs, the doctor will not be expected to work more than five hours on the day following the day on which the breach occurred and pay will not be deducted for the time off.

5.16 Control of working hours and the provision of compensatory rest is an integral element of managing health and safety and promoting health at work. Wherever possible, therefore, any compensatory rest accrued should be taken in accordance with this agreement. There is no provision within this agreement for payment in lieu of compensatory rest.

Entitlement under Other Provisions

5.17 Where an employee is entitled to a rest period, rest break or annual leave both under the Working Time Regulations and under a separate provision (e.g. their contract of

employment), they may exercise the two rights separately, but may, in taking a rest period, rest break or annual leave, take advantage of whichever right is the more favourable.

6 NIGHT WORK

- 6.1 Specialty Training Doctors are not defined as Night Workers, their night work is defined as not exceeding an average of 8 hours per each 24 hours over the 17 week averaging reference period.

For the purposes of this agreement night time hours are defined as the period between 11pm and 6am, though host training trusts can choose a different period. If they do, it must be at least seven hours long and include the period from midnight to 5am.

- 6.2 A night worker is someone who is required, as a regular part of their work, to work for at least 3 hours between the hours of midnight and 5 am inclusive. This will include employees who are rostered to night work for 3 weeks or more per annum. Where employees are not anticipated to be rostered to work three weeks or more per annum, but work this period on an infrequent or ad hoc basis they are not categorised as night workers.
- 6.3 The host training organisation will take all reasonable steps to ensure that the normal hours of night staff do not exceed an average of 8 hours per each 24 hours over the 17 week averaging reference period.
- 6.4 Normal hours are those which are regularly worked and/or fixed by a contract of employment. Calculation of average normal hours is not affected by absence from work, as a worker's normal hours of work would remain the same regardless of the actual hours worked. Time worked as overtime is not normal work unless an employee's contract fixes a minimum number of overtime hours.

Average Night Work Time Calculation

- 6.5 The average hours worked as night work is calculated by dividing the number of an employee's normal hours of working time in the reference period by the total number of days in the period, less the number of rest days to which the work is entitled under these regulations. Average night hours are calculated using this equation:

$$\frac{A}{B - C}$$

where **A** is the number of hours during the reference period which are normal working hours for the worker

and **B** is the number of days during the reference period

and **C** is the number of hours of weekly rest to which the worker is entitled under the regulations (i.e. 24 hours for each 7 days) divided by 24.

(Examples of how to calculate night work hours are given in Appendix 3).

Special Hazards

- 6.6 Any special hazards faced by night workers will be identified by risk assessments in accordance with the Management of Health and Safety at Work Regulations 1999. Where a night workers work involves special hazards or heavy physical or mental

strain, as defined under the Health and Safety at Work Regulations 1999, there is a limit of eight hours in any 24 hour period on the workers actual work at night time.

Health Assessments for Night Workers

- 6.7 Night workers are entitled to a health assessment. In addition when a work related problem is identified guidance can be sought from the occupational health department to determine whether the worker is fit to undertake the night work to which he/she is assigned.

Process for Health Assessments

- 6.8 On appointment the Trainee Support Service will carry out the health assessment, which will initially be via a questionnaire. During employment the assessment will be undertaken at the request of the employee.
- 6.9 Although there are few, if any, health factors which absolutely rule out night work there are a number of medical conditions which may, in some cases, be made worse by night work usually on a temporary basis, e.g. diabetes, cardiovascular disease, gastro-intestinal disorders, sleep disorders, asthma.
- 6.10 It is for night workers to decide whether they take up the offer of a health assessment. However, the LET reserves the right to require workers to attend the Trainee Support Service for an assessment where it is considered that the health of the worker or others (e.g. patients/ colleagues) might be at risk.
- 6.11 If an employee is not suitable for night work due to a permanent disability the principles of the Equality Act 2010 would apply.

7 STATUTORY ANNUAL LEAVE

- 7.1 The Working Time Regulations allow for 28 days statutory annual leave. Statutory annual leave forms part of contractual leave. Employees will continue to be entitled to the balance of their full contractual leave over and above 28 days in accordance with their terms and conditions of service.
- 7.2 For the purposes of this agreement public holidays count as leave days.
- 7.3 The leave year will run from 1 April to 31 March or incremental date to incremental date for medical employees.
- 7.4 Part-time workers are entitled to statutory paid leave pro-rata to the hours worked.
- 7.5 There is no provision within this agreement for payment in lieu of statutory leave, other than as a result of termination of employment.
- 7.6 It is agreed that existing arrangements for notifying leave should continue to apply.

Calculation of Paid Statutory Annual Leave

- 7.7 All paid leave in excess of 28 days (or pro-rata for part-time staff) statutory leave taken in each leave year will be paid in accordance with the employee's contract of employment.

For the purposes of statutory leave, payment will be made as follows:

7.8 In the case of a employee who has normal working hours, and whose remuneration does not vary according to the amount of work done during those hours, a week's paid leave is the amount payable under the contract in force (i.e. what they would earn for a normal working week). Pay for overtime hours are not included unless it is compulsory overtime (i.e. required by the contract of employment).

7.9 In the case of a worker who is contracted to work set hours, but at different times which attract shift premia or enhancements, so the pay for a week varies and the hours worked in a given week vary because of the shift pattern, a week's pay is pay for the average number of normal weekly hours at the average hourly rate. In determining the average number of normal weekly working hours, the total number of normal working hours during the previous 12 weeks is divided by 12. Pay for overtime hours are not included unless it is compulsory overtime (i.e. required by the contract of employment).

7.10 In the case of an employee who is entitled to statutory leave payments as set out in paragraph 7.9 above it is hereby agreed that payment based on contractual entitlements only will be made at the time of statutory leave being taken.

However, the employee will receive a statutory leave payment representing four week's entitlement in respect of shift premia or enhancements as described in paragraph 7.9.

These statutory leave payments in respect of shift premia and enhancements only will be made on a monthly basis and will be paid at the rate of one third of one full week (pro-rata for part-time staff). The payments will be calculated on the basis of the previous months, by reference to shift premia/enhancements only and not total average pay. These payments will be identified separately on the pay slip as a statutory leave enhancement payment.

Requirement to Take and Request Annual Leave

7.11 Where an employer requires an employee to take annual leave the minimum period of notice given will be 8 weeks will be given by the employer wherever possible.

Where an employee requests annual leave this will be subject to the usual request procedures within that department/area and approval would be at the discretion of the line manager.

Carry over of Annual Leave

7.12 The LET expects that within the annual leave year staff should be provided with the opportunity to take all their annual leave. In exceptional circumstances e.g. where employees have exceptionally been prevented from taking their leave due to service demands up to one week of basic contracted hours may be carried over to the following year, with the agreement of the Training Programme Director. (Ref: Annual Leave and Public Holiday Policy).

For carry over of leave following long term sickness absence please refer to the LET's Management of Attendance Procedure.

8 RECORD KEEPING

8.1

There is no requirement to keep a running total of employees average working hours or average nighttime hours. However, records must be retained which can be used to illustrate compliance with the regulations where necessary.

N.B. All employees and line managers are still required to complete the usual off duty/time sheet attendance records as per policy requirements.

8.2

It is agreed that current arrangements for recording hours (e.g. timesheets or records of attendance) are adequate for the purpose of this agreement. **In the main this will involve retaining time sheet and roster information as follows:**

- Copies of time sheets will be retained for a minimum period of two years
- Copies of flexi time sheets recording actual working will be retained for a minimum period of two years
- Copies of rosters for night workers will be retained for a minimum period of two years
- An annual record will be kept of all employees who are categorised as 'night workers'.
- Records of health assessments will be retained in the employees Occupational Health record

8.3

Managers must ensure such documents are legible and clear, and Managers should positively record hours to enable them to effectively monitor whether employees are likely to exceed the 48 hour average maximum and compliance with the night working time limits.

8.4

Managers are required to record the hours actually worked by any individual who has opted to exceed the 48 hour weekly maximum

8.5

Records are to be available for inspection by relevant local union representatives.

9 MONITORING AND ENFORCEMENT

Health and Safety bodies and Local Authorities will enforce the limits in the Regulations, e.g. weekly working time and night work limits. Entitlements, such as rest periods, breaks, and annual leave will be enforced by Employment Tribunals on receipt of a complaint.

9.1 Internal monitoring and enforcement

The implementation and operation of the Working Time Regulations and this Collective Agreement will be monitored by departmental managers, the host training organisation Health and Safety Committees, the host training organisation HR Departments and Trade Union Representatives.

Compliance with the Agreement will be included within the host trust workplace Health and Safety Audits.

It is the responsibility of Host Training Organisations to ensure rota's are monitored a minimum of twice per year, for a recommended minimum period of two weeks. It is a contractual obligation of trainees to comply with monitoring requests.

Should any employee believe that their working arrangements are not in accordance with this Agreement they must raise the issue with their manager in the first instance. Should they not consider that the matter has been resolved they should raise this with the LET.

10 REVIEW

The Lead Employer Trust Head of Human Resources is responsible for ensuring that this Local Agreement is reviewed no later than three years from the date of issue. The document may be amended at any time by joint agreement

11 EQUALITY AND DIVERSITY STATEMENT

The LET is committed to providing equality of opportunity, not only in its employment practices but also in all the services for which it is responsible. As such, an Equality Impact Assessment has been carried out on this policy to identify any potential discriminatory impact. The LET also values and respects the diversity of its employees and the wider community it serves. In applying this policy, representatives of the LET will have due regard for the need to:

- Eliminate unlawful discrimination
- Promote equality of opportunity
- Provide for good relations between people of diverse groups

For further information, please refer to the LET's Equality Diversity and Human Rights Policy

12 REFERENCES/LEGISLATION

Working Time Regulations 1998
LET Secondary Employment Policy
LET Disciplinary Procedure
LET Flexible Working Policy
LET Annual Leave and Public Holiday Policy
The host trusts Health & Safety Policies

Equality Impact Assessment

Preliminary Assessment Form

v1/2009

The preliminary impact assessment is a quick and easy screening process.

It should:

- Identify those policies, procedures, services, functions and strategies which require a full EIA by looking at:
 - negative, positive or no impact on any of the equality groups
 - opportunity to promote equality for the equality groups
 - data / feedback
- prioritise if and when a full EIA should be completed
- justify reasons for why a full EIA is not going to be completed

Division/Department

LET HR Department

Title of policy, procedure, function or service

Working Time Regulations

Type of policy, procedure, function or service

- Existing
- New/proposed
- Changed



Q1 - What is the aim of your policy, procedure, project or service?

To demonstrate the commitment of the LET to the statutory provisions of the Working Time Regulations 1998.

Q2 - Who is the policy, procedure, project or service going to benefit?

LET Employees, Host Trusts, Patients

Q3 - Thinking about each group below, does, or could the policy, procedure, project or service have a negative impact on members of the equality groups below?

| Group | Yes | No | Unclear |
|------------|-----|----|---------|
| Age | | N | |
| Disability | | N | |
| Race | | N | |

| | | | |
|--------------------------------|--|---|--|
| Gender | | N | |
| Transgender | | N | |
| Sexual Orientation | | N | |
| Religion or belief | | N | |
| Marriage & Civil Partnership | | N | |
| Pregnancy & Maternity Leave | | N | |
| Relationships between groups | | N | |
| Other socially excluded groups | | N | |

If the answer is “Yes” or “Unclear” complete a full EIA

Q4 – Does, or could, the policy, procedure, project or service help to promote equality for members of the equality groups?

| Group | Yes | No | Unclear |
|--------------------------------|-----|----|---------|
| Age | Y | | |
| Disability | Y | | |
| Race | Y | | |
| Gender | Y | | |
| Transgender | Y | | |
| Sexual Orientation | Y | | |
| Religion or belief | Y | | |
| Marriage & Civil Partnership | Y | | |
| Pregnancy & Maternity Leave | Y | | |
| Relationships between groups | Y | | |
| Other socially excluded groups | Y | | |

Q5 – Do you have any feedback data from equality groups that indicate how this policy, procedure, project or service may impact upon these groups?

| Group | Yes No Impact | Yes Impact | No | Unclear |
|------------------------------|------------------|---------------|----|---------|
| Age | | | N | |
| Disability | | | N | |
| Race | | | N | |
| Gender | | | N | |
| Transgender | | | N | |
| Sexual Orientation | | | N | |
| Religion or belief | | | N | |
| Marriage & Civil Partnership | | | N | |
| Pregnancy & Maternity Leave | | | N | |

| | | | | |
|--------------------------------|--|--|---|--|
| Relationships between groups | | | N | |
| Other socially excluded groups | | | N | |

If the answer is “Yes Impact”, “No”, “Unclear” or opinion is divided complete a full EIA

Q6 – Using the assessments in questions 3, 4 and 5 should a full assessment be carried out on this policy, procedure, project or service?

| | | | |
|-----|--|----|---|
| Yes | | No | X |
|-----|--|----|---|

If you have answered “Yes” now follow the EIA toolkit and complete a full EIA form

Q7 – How have you come to this decision?

No indication that equality groups would be adversely affected by this policy.

Q8 – What is your priority for doing the full EIA

| | | |
|------|--------|-----|
| High | Medium | Low |
| | | X |

Q9 – Who was involved in the EIA?

LET HR Department

This EIA has been approved by:

Head of Human Resources, Lead Employer Trust

Date: 27.12.2023

Contact number:

0191 275 4769

Please ensure that this assessment is attached to the policy document to which it relates.

