

TRUST-WIDE NON-CLINICAL POLICY DOCUMENT

European Working Time Directive Policy

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2018 – Version 1

*Striving for Perfect Care for the
People We Serve*

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European Working Time Directive Policy

Further information about this document:

Document name	European Working Time Directive Policy HR39
Document summary	The policy is to inform managers and staff of their responsibilities in regards to protecting the health and safety of staff from the risks of working excessive hours by applying the requirements of the Working Time Regulations 1998.
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To be read in conjunction with	HR23 Management and Production of staff Rosters
This document can be made available in a range of alternative formats including various languages, large print and braille etc	
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Version Control:

		Version History:
Version 1 - Draft	Amanda Clough presented to HR policy group	May 2018

SUPPORTING STATEMENTS – this document should be read in conjunction with the following statements:

SAFEGUARDING IS EVERYBODY’S BUSINESS

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and adults, including:

- being alert to the possibility of child/adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/ adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust’s safeguarding team;
- participating in multi-agency working to safeguard the child or vulnerable adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

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1 PURPOSE AND RATIONALE

- 1.1 Purpose** – The purpose of this policy is to protect the health and safety of staff from the risks of working excessive hours ensure by applying the requirements of the Working Time Regulations 1998.
- 1.2 Rationale** – The Regulations lay down minimum conditions relating to weekly working time, rest entitlements, annual leave and make special provision for working hours and health assessments for night workers. The regulations also cover the provisions of the Young Workers Directive that relates to working time for adolescents between school leaving age and the age of 18

2 SCOPE

- 2.1** The policy applies to all trust staff including temporary and bank staff; additional arrangements apply to doctors in training.

3 DEFINITIONS

- 3.1** The relevant terms and their definitions (within the context of this policy document) are outlined below:

Table 1: Definitions

Term	Definition
Hours of work	Agreed hours of work, either weekly, monthly or annually
Working time	<p>Any periods when staff are working, at the employer's disposal and carrying out their duties, in accordance with national law and/or practice. It includes time taken for training purposes, civic and public duties, health and safety and trades union duties.</p> <p>Working time does not include travel between home and place of work; or rest and lunch breaks when no work is done. Time spent 'on-call' when away from the workplace and not carrying out work related duties.</p>
Rest period	Any period that is not working time
Night time	Any period of not less than seven hours, and which must include the period between midnight and 5am.
Night worker	Any staff, who, during night time, work at least three hours of their daily working time as a normal practice.
Shift work	Any method of organising work in shifts whereby staff succeed each other at the same work stations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks.

Term	Definition
On-call	Any staff who is available on call to provide flexible cover as needed during a given time period above their normal hours of work.
Unsociable hours	Hours of work which attract an unsociable hours premium as they are in the evening, night time, Saturday, Sunday and Bank Holidays.
Overtime	Any hours worked over and above the whole time equivalent (WTE) e.g. 37.5 per week.
Additional hours	Any hours worked over and above the hours of work up to their WTE e.g. 37.5 hours per week.
48-hour week	<p>The average of 48 hours per week that a member of staff is allowed to work over a rolling reference period of 17-weeks.</p> <p>For doctors, this is set nationally as a rolling reference period of 26 weeks.</p>
Opt-out of 48-hour week	Where a member of staff agree to opt-out of the 48-hour limit in writing.
Reference period	<p>The period over which average working hours are calculated is a rolling period of 17-weeks.</p> <p>For doctors, this is set nationally as a rolling reference period of 26-weeks.</p> <p>If a member of staff has worked for the trust for less than 17-weeks, the reference period is the period worked to that date</p> <p>In recognition of the nature of certain work, staff may, in exceptional circumstances agree to extend the reference period to a maximum of 52-weeks.</p> <p>To calculate average hours over a reference period see appendix A.</p>
Night time	Night-time is the period between 11.00pm and 6.00am and staff will be subject to the provisions relating to working during night-time if they regularly work at least three hours during the night-time period on most of the days they work or often enough for it to be regarded as a regular basis.
Adult worker	Any staff aged 18 or over.

Term	Definition
Young worker	Any staff aged 16 or 17.
Doctor in training	<p>Are those doctors who:</p> <ul style="list-style-type: none"> • Are in foundation year two. • Are in a GMC approved LETB/deanery training programme or post. • Have a fixed term specialty training appointment (FTSTA) • Have a locum appointment for training (LAT).
Special daily and weekly working time limits - doctors in training	All doctors in training are subject to the 48-hours per week limit as all other trust staff. However doctors in training are still contracted to their 'New Deal' hourly limits in respect of rest and duty periods.
Special daily and weekly working time limits - young workers	<p>Young workers may not ordinarily work more than:</p> <ul style="list-style-type: none"> • 8-hours a day • 40-hours a week. <p>These hours worked cannot be averaged out over a reference period and there is no opt-out available.</p> <p>They may work longer hours where it is necessary to either:</p> <ul style="list-style-type: none"> • Maintain continuity of service or production, or respond to a surge in demand for a service and provided that there is no adult available to perform the task • The training needs of the young worker are not adversely affected. <p>Young workers should not ordinarily work at night unless:</p> <ul style="list-style-type: none"> • They are employed in hospitals or similar establishments and; • there is no adult available to perform the task and; • they are allowed an equivalent period of compensatory rest, and; • they are adequately supervised where necessary for their protection.

4 DUTIES

4.1 Board of Directors – Commitment through endorsement of this policy. Identification and allocation of any resources required for the policy.

4.2 Chief Executive – Ensuring the proper allocation of the policy.

4.3 Policy Lead – The Executive Director of Workforce has strategic responsibility for ensuring there is compliance with this Policy and that it is applied in a fair

and consistent manner. The Director will cascade and communicate to all Executive Directors, Directors, Managers, Human Resources staff, Staff Side representatives and staff so that they are fully aware of the Policy and are aware of their responsibilities.

- 4.4 Line Manager** – Ensuring they are conversant with the policy and that their staff are fully acquainted with it.

Ensuring all trust staff are working in accordance with the policy and the Regulations using the quick reference the guide at appendix D and flow chart at appendix E.

- 4.5 Staff** – Ensuring they are fully acquainted with the policy and the Regulations and that they adhere to these.

- 4.6 Human Resources** - Monitoring the policy and advising staff and managers on the application of the policy and the Regulations.

5 PROCESS / PROCEDURE

5.1 Staff With More Than One Job/Employer

5.1.1 Where staff wish to undertake additional paid employment or bank work with another employer, or in a self-employed capacity, they must inform the trust via their line manager especially if this is likely to result in them regularly working over 48-hours a week.

5.1.2 Where staff have more than one job their combined hours should not exceed an average of 48-hours per week the reference period of 17-weeks.

5.1.3 Individual members of staff have a responsibility to ensure that any work undertaken outside their main employment with the trust does not adversely affect their ability to satisfactorily perform their work for the trust.

5.1.4 Specific provisions apply in respect of private practice for medical staff in accordance with Schedule 9 of their national terms and conditions.

5.2 Opting-Out Of The 48-Hour Week

5.2.1 In normal circumstances the trust does not require any member of staff to work in excess of an average of 48-hours per week. However, there may be circumstances where an individual member of staff might be requested to work more than this average, or has advised their line manager that they will exceed the average 48-hour week limit, in which case they must agree in writing that the weekly 48-hour limit does not apply by completing the opt-out form.

5.2.2 The opt-out form is attached as appendix C.

5.3 Staff Who May Exceed The 48-Hour Limit In Any Working Week

5.3.1 Those staff who work irregular hours for the trust and/or through other paid employment or bank work shall confirm this with their line manager if their total working hours will exceed the average 48-hour limit for that week.

5.3.2 Where this occurs the line manager shall review the allocation of work for the next week(s) to ensure the limit is not exceeded over the reference period of 17-weeks.

5.3.3 If this cannot be ensured, the staff member shall be asked to agree in writing to exceed the weekly 48-hour limit by completing the opt-out form in appendix C.

5.3.4 The trust, through the relevant line manager, will need to be satisfied that the health and safety of the individual member of staff and the safe delivery of the service will not be adversely affected when making such individual agreements.

5.3.5 It is important that managers and staff do not presume that working beyond the average weekly limit of 48-hours should be the norm.

5.4 Records Of Weekly Hours Worked

5.4.1 Where staff have opted-out of the 48-hour working week, it is the responsibility of each line manager to monitor the number of weekly hours worked by each member of staff and ensure a copy of the opt-out form is saved on the roster system.

5.5 Working During Night Time

5.5.1 8-hour limit

5.5.1.1 The normal hours of staff who regularly work during night-time shall not exceed an average of 8-hours per 24-hour period calculated over the reference period.

5.5.1.2 The reference period for averaging normal hours is 17-weeks with the exception of doctors in training who have 26-weeks.

5.5.1.3 The calculation shall be made using the formula in Appendix B.

5.5.1.4 Staff who regularly work during the night-time are not necessarily undertaking work which involves special hazards or heavy physical or mental strain. However line managers need to assess the risks associated with night time working and keep these under review.

5.5.1.5 If areas of work during night-time are found to involve such special hazards, the normal hours of staff regularly working during night-time shall not exceed 8-hours on any occasion that they work at night.

5.5.1.6 The line manager and member of staff should complete the Night Worker Health Assessment form (HR-G1) at least annually and send this to Occupational Health.

5.5.2 Night worker health assessment

5.5.2.1 Before a staff member begins night-time work they and their line manager should determine whether they are fit to carry out the night work to which they are assigned. This will be done through the completion of the Night Worker Health Assessment form (HR-G1).

- 5.5.2.2 The line manager and member of staff should complete the Night Worker Health Assessment form (HR-G1) at least annually and send this to the Occupational Health.
- 5.5.2.3 If appropriate a full assessment by Occupational Health will be carried out at the request of the line manager or if a need is identified in the Night Worker Health Assessment.
- 5.5.2.4 If Occupational Health advice is that a member of staff is suffering from health problems connected with the fact that they work during night-time, the trust will, whenever reasonably practicable and subject to service delivery requirements, offer the option to transfer to suitable alternative day work, with pay and conditions applicable to day work.

5.5.3 Records for regular night workers

- 5.5.3.1 It is the responsibility of each line manager to keep a record, for two years, of the working hours of those staff who regularly work during night-time, including the occasions that they have worked at night.
- 5.5.3.2 The line manager and Occupational Health will maintain an annual record of those staff that have undertaken the Night Worker Health Assessment and will retain copies for two years.

5.6 REST PERIODS

5.6.1 Daily rest period

- 5.6.1.1 A member of staff shall be entitled to a rest period of at least 11-consecutive hours between each working day (12-consecutive hours for staff aged under 18), unless any exceptions occur as detailed in the section below on exceptions and compensatory rest periods.

5.6.2 Weekly rest period

- 5.6.2.1 A member of staff shall be entitled to an uninterrupted rest period of at least 24-hours in each 7-day period, averaged over two weeks (each week starting at midnight between Sunday and Monday).
- 5.6.2.2 The weekly period is in addition to each daily rest period (i.e. one period of 35-hours consecutive rest per 7-day period).
- 5.6.2.3 For young workers the entitlement is 2-days rest in each week.

5.6.3 Exceptions and compensatory rest periods

- 5.6.3.1 The trust recognises that there will be occasions when the full entitlements to daily and weekly rest periods cannot practically be achieved, for instance:
- Where the staff member changes shifts (e.g. from a late shift to early shift).
 - Where the staff member works split shifts (e.g. a morning shift and an evening shift).
 - Where there is the need for continuity of care in areas where staff work in direct contact with patients in "round the clock" services.

- Where staff have undertaken work during an on-call period which is preceded and/ or followed by a period of duty.
- Where staff are required to work due to emergency or unforeseeable circumstances.

5.6.3.2 In these instances the member of staff shall be allowed to take equivalent periods (i.e. the same number of hours lost) of compensatory rest. This should be taken within 2-weeks for daily rest and 8-weeks for weekly rest.

5.6.3.3 For young workers the only exceptions allowed to rest periods is when they work split shifts.

5.6.4 In-work rest breaks

5.6.4.1 A member of staff shall be required to take an uninterrupted break of at least 20-minutes when working time is more than 6-hours

5.6.4.2 This is an unpaid break and should not be taken, either at the start or the end of a period of working time. This entitlement shall be modified where the exceptions detailed below apply.

5.6.4.3 The trust recognises that in exceptional circumstances there are some service areas and occasions when the entitlement to an in-work rest break cannot be achieved, for instance:

- Where there is a need for continuity of care in areas where staff work in direct contact with patients.
- Where staff are required to work due to emergency or unforeseeable circumstances which would be a rare occasion and should not become custom and practice.

5.6.4.4 In the case of such exceptions applying the member of staff shall be allowed to take equivalent periods of compensatory rest during another period of duty, as soon as reasonably practicable, usually within 2-weeks. This should not be taken, either at the start or the end of a period of working time.

5.6.4.5 For young workers an uninterrupted break of at least 30-minutes should be taken when working time is more than 4 1/2 hours.

5.7 APPEALS

5.7.1 Any member of staff who is not satisfied with any management decisions regarding the Working Time Regulations or feel that they have suffered any detriment, should use the trust's grievance procedure.

6 CONSULTATION

6.1 The following staff / groups were consulted with in the development of this policy document:

- HR Policy Group
- Senior Managers and Staff Side Representatives

7 MONITORING

- 7.1 Monitoring of hours of work will be undertaken using the Electronic Staff Record (ESR) interface into payroll and through the electronic roster systems. This will be undertaken annually by the roster and temporary staffing team.

8 SUPPORTING DOCUMENTS

Policy No	Name	Links
	The NHS Agenda for Change Handbook (Section 27).	http://www.nhsemployers.org/employershandbook/
	NHS Litigation Authority (2008). NHSLA Risk Management Standards for MHA & LD Trusts.	www.nhsla.com
	Working Time Regulation 1998	http://www.hse.gov.uk/contact/faqs/workingtimedirective.htm
	Management of Health & Safety at Work Regulations 1999	http://www.hse.gov.uk/pubns/hsc13.pdf
HR23	Management and production of staff rosters	

9 GLOSSARY OF TERMS

Term	Description
GMC	General Medical Council
LETB	Local Education and Training Board

CALCULATING AVERAGE WEEKLY WORKING TIME

The average weekly working time is calculated using the following formula: $\frac{(A+B)}{C}$

Where;

- A is the total number of hours worked in 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, maternity leave, etc.
- C is the number of weeks in the reference period.

Example 1:

A worker has a standard working week of 40-hours and does overtime of 12-hours a week for the first 10-weeks of the 17-week reference period. No leave is taken during the reference period.

The total hours worked are:

- 17-weeks of 40-hours and 10 weeks of 12-hours of overtime.
- $(17 \times 40) + (10 \times 12) = 800$.

Therefore their average (total hours divided by number of weeks):

- 800 divided by 17-weeks = 47.1 hours a week.

The average limit of 48-hours has been complied with.

Example 2:

A worker has a standard working week of 40-hours (8-hours a day) and does overtime of 8-hours a week for the first 12-weeks of the 17-week reference period. 4-days' leave are also taken during the reference period. On return to work, only normal hours are worked for the first week.

The total hours worked in the reference period are:

16-weeks and 1-day (40-hours a week and 8-hours a day) and 12-weeks of 8-hours of overtime.

- $(16 \times 40) + (1 \times 8) + (12 \times 8) = 744$.

Add the time worked to compensate for the 4-day leave, taken from the first 4-working days after the reference period. The worker does no overtime, so 4-days of 8-hours ($4 \times 8 = 32$) should be added to the total.

Therefore their average is (total hours divided by number of weeks):

- $744 + 32 = 776$
- 776 divided by 17 = 45.6 hours per week.

The average limit of 48-hours has been complied with.

CALCULATING AVERAGE HOURS WORKED AT NIGHT

The average hours worked at night are calculated using the following formula: $\frac{A}{B - C}$

Where:

A is the number of hours during the applicable reference period which are normal working hours for that worker:

B is the days within the applicable reference periods.

C is the number of hours weekly rest to which a worker is entitled under the Regulations (i.e. 24 hours for seven days) divided by 24. (It should be noted that this is not the total number of hours that the worker is at rest each week. Only the hours that make up the weekly rest period that the worker is entitled to under the Regulations are counted).

Normal hours of night work include overtime where it is part of a night worker's normal hours of work.

Example 1:

A night worker normally works four 12-hour shifts each week.

The total number of normal hours of work for a 17-week reference period are:

- 17-weeks of 4-shifts of 12 hours.
- $17 \times (4 \times 12) = 816$.

There are 119-days (17-weeks) and the worker takes 17-weekly rest periods, as entitled to under the Regulations. Therefore the number of days the worker could be asked to work is:

- $119 - 17 = 102$.

To calculate the daily average working time, the total of hours is divided by the number of days a worker could be required to work:

- $816 \text{ divided by } 102 = 8$.

This equals an average of 8-hours a day.

Example 2:

A night worker normally works 5-days of 10-hours followed by 3-days of rest. The cycle starts at the beginning of the reference period (so there are 15-cycles of work). The worker takes 2-weeks' leave and works 6-hours overtime every 5-weeks. During this reference period, the overtime is worked in the fifth, tenth, and fifteenth weeks.

The leave does not affect the calculation of normal hours, but the overtime does:

- 15-cycles of 5-shifts of 10-hours = $15 \times (5 \times 10) = 750$ -hours.
- 6-hours overtime $\times 3 = 18 = 768$ -hours (including overtime).

There are 119-days (17-weeks) and the worker takes 17-weekly rest periods, as entitled to under the Regulations. Therefore the number of days the worker could be asked to work is:

- $119 - 17 = 102$.

To calculate the daily average working time, the total of hours is divided by the number of days a worker could be required to work.

- 768 divided by 102 = 7.53.

This equals an average of 7.53 hours a day

AGREEMENT TO 'OPT OUT' FORM

NURSE BANK WORKING TIME REGULATIONS DECLARATION

1. Name:..... Assignment No:
(from Payslip)
2. Department: NI No:
3. Weekly Contract Hours:
4. Do you regularly work on-call: No Yes If yes state rota.....
Do you regularly work 'sleep ins': No Yes If yes state rota.....
5. Do you wish to exercise the right to work more than 48 hours per week, up to a maximum of 60 hours
(Including any substantive hours worked within the Trust or hours worked as a student nurse)
(tick box).
Yes
No
6. If no,
Do you hold employment other than your post above: (tick box)
No
Yes
Bank Average Hours per week
Agency Average Hours per week
Other substantive contract hours per week.
If yes what is the name and address of your other employer(s).....
.....
7. Any comments you wish to make.....
8. Signed:Date:
Print name:

If the above details change at any time, you must notify your Manager in writing immediately.

Any member of staff who wished to opt out/opt back in to the 48 hour exemption, must **give one months' notice** in writing to your Manager.

**Please return this form to your Manager
Manager – please send a copy to the additional staffing team**

QUICK REFERENCE GUIDE – FOR LINE MANAGERS

For quick reference the guide below is a summary of actions required by line managers. This does not negate the need to be aware of and follow the detail of this policy.

1. Identify staff that regularly work in excess of their contracted hours, including senior managers, and investigate the reasons for this.
2. Where staff are identified as exceeding the 48-hour week limit, review their workload and practice and consider adjusting working hours or redesigning the job.
3. Where it is not possible to comply with the Regulations, due to the nature of the work, seek advice from Human Resources and determine whether individual opt-out agreements of the 48-hour working week should be agreed and signed.
4. Respond to staff that have stated they believe they are exceeding the working hours outlined in the Regulations (this will include all hours staff work, including those that an employee works for another employer) and seek advice from Human Resources and determine whether individual opt-out agreements of the 48-hour working week should be agreed and signed.
5. Where staff have opted-out of the 48-hour working week, keep a record of the number of weekly hours worked by each member of staff for a minimum of two years.
6. Where staff have opted-out of the 48-hour working week, keep a record of the opt-out form for a minimum of two years.
7. Complete the Night Worker Health Assessment form (HR-G1) at least annually with every member of staff classed as a Night Worker and keep a copy of this for two years.
8. Keep a record of the working hours of those staff who are classed as a Night Workers, including the occasions that they have worked at night for two years.

Note: The only part of the Regulations that allow an opt-out is the 48-hour working week. All other parts of the Regulations must be complied with.

Appendix E

Managers Flow chart

Managers responsibility

