



Labour Relations Commission Compensatory Rest Periods

Compensatory Rest Periods

1. LABOUR RELATIONS COMMISSION

1. The Labour Relations Commission has prepared this Code of Practice on Compensatory Rest in accordance with the provisions of section 35 of the Organisation of Working Time Act 1997. When preparing the Code of Practice the Commission held meetings and consultations with the Irish Business and Employers Confederation, the Irish Congress of Trade Unions, the Labour Court, the Department of Enterprise, Trade and Employment and the Irish Co-Operative Organisation Society.
2. In accordance with section 35(3) of the Act the Commission has also consulted the National Authority of Occupational Safety and Health in the preparation of this Code.
3. The Commission has taken account of the views expressed by these organisations to the fullest extent possible in preparing this Code.
4. The Code is designed to assist employers, employees and their representatives in observing the 1997 Act generally as regards compensatory rest. It gives guidance, in particular, on arrangements that may be put in place to comply with the compensatory rest provisions which apply where, because of exemptions or collective agreements or emergencies or unforeseeable circumstances, employees cannot avail themselves of the rest or break periods provided for in sections 11, 12 or 13 of the Act.
5. While failure on the part of any person to observe the Code will not, in itself, render that person liable to civil or criminal proceedings, the Code shall be admissible in evidence before a Court, the Labour Court or a Rights Commissioner in proceedings under the Organisation of Working Time Act 1997.

2. INTRODUCTION

NOTE

This section of the Code gives a general description of some of the provisions of the Organisation of Working Time Act 1997 and is not a legal interpretation.

The Organisation of Working Time Act 1997

1. The terms of the EU Directive on Working Time, (Council Directive 93/104/EC of 23 November, 1993), have been transposed into Irish law by means of the Organisation of Working Time Act 1997 and Regulations made under the Safety, Health and Welfare at Work Act 1989.
2. The Organisation of Working Time Act 1997 became law on 7 May, 1997. Section 35 of that Act provides for a Code of Practice that provides practical guidance as to the steps that may be taken for the purposes of complying with any section of the Act. The Commencement Order bringing the Act into operation, on a phased basis, was signed on 24 September, 1997. Under the Commencement Order, section 35 of the Act, inter alia, came into operation on 30 September, 1997. The provisions on rest and working hours are effective from 1 March, 1998.

3. The Minister for Labour, Trade and Consumer Affairs, under section 35 of the 1997 Act, asked the Labour Relations Commission to prepare a Code of Practice for the purposes of section 6 of the Act. As section 35(3) of the Act provides that the Commission, after consultation with the National Authority for Occupational Safety and Health, shall prepare a Code of Practice for the purposes of section 6(2), this Code is prepared under section 35(2) for the purposes of section 6(1) and under section 35(3) for the purposes of section 6(2). Under the Commencement Order section 6 of the Act came into operation on 30 September, 1997.
4. The Organisation of Working Time Act 1997, sets out statutory rights for employees in respect of rest, maximum working time and holidays. In summary, the key provisions of the Act on minimum rest and maximum working time are as follows:
 - maximum average net weekly working time of 48 hours
 - a daily rest break of 11 consecutive hours
 - rest breaks while at work
 - a weekly rest break of 24 consecutive hours
 - maximum average night working of 8 hours
 - maximum hours of work for night workers engaged in work involving special hazards or a heavy physical or mental strain – an absolute limit of 8 hours in a 24 hour period.
5. The 48 hour working week comes into effect, generally, on 1 March, 1998. However, the Act contains transitional provisions. These provide that employees may work up to 60 hours per week from 1 March, 1998 to 28 February, 1999 and up to 55 hours per week from 1 March, 1999 to 29 February, 2000. The 48 hour week comes into effect in respect of all employees covered by the Act on 1 March, 2000. To work the maximum permitted hours during 1998 and 1999 an agreement must be reached between the parties which is approved of by the Labour Court. The Fifth Schedule to the Act details the procedures to be observed in implementing the transitional provisions (see also Guide to the Labour Court's Functions and Procedures for the purposes of the Act).
6. The specific provisions of the Act relating to rest times may be varied in certain circumstances -
 - by Regulations
 - through legally binding collective agreements made under the Act and approved by the Labour Court
 - through registered employment agreements
 - through employment regulation ordersor
 - as otherwise provided under the Act (e.g. emergencies, unforeseeable circumstances, certain shift changes, split shifts).

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7. The circumstances in which the rest times and averaging periods for weekly working hours may be varied are as follows:

(I) SECTION 6(1) OF THE ACT PROVIDES FOR CIRCUMSTANCES:

- Where Regulations* exempt certain activities from the rest breaks, daily and weekly rest periods set out in sections 11, 12 and 13 of the 1997 Act.
- Where collective agreements providing for a similar exemption have been concluded by the parties and approved by the Labour Court. (Registered Employment Agreements and Employment Regulation Orders may also provide for the variation of rest periods, but not of working time provisions).

In every case at (I) above where statutory rest times are varied the employer concerned must ensure that equivalent compensatory rest is made available to the employee.

** See Annex to this code – General Exemptions Regulations (S.I. No 21 of 1998)*

(II) SECTION 6(2) OF THE ACT PROVIDES FOR CIRCUMSTANCES:

- Where shift workers who change shift and cannot avail themselves of the rest period are exempted (in respect of the daily and weekly rest periods).
- Where persons employed in activities consisting of periods of work spread out over the day are exempted (in respect of the daily and weekly rest periods).
- Where employers are exempted from the obligation to provide daily and weekly rest periods and rest breaks as provided for in sections 11, 12 and 13 of the Act due to exceptional circumstances or an emergency, including an accident or the imminent risk of an accident, or otherwise the occurrence of unusual and unforeseeable circumstances beyond the employer's control.

Where statutory rest times are varied in any of the circumstances mentioned at (II) above the employer must ensure that the employee has available to himself or herself

i) equivalent compensatory rest

or

ii) where this is not possible for objective reasons, appropriate protection.

NOTE

While circumstances relating to shift changeover come within the scope of the exemption included in the legislation, shift working is subject to the provisions in the Act providing for rest and maximum working time.

3. GENERAL PRINCIPLES OF AND ARRANGEMENTS FOR EQUIVALENT COMPENSATORY REST AND APPROPRIATE PROTECTION

General

1. Appropriate rest breaks from work are vital to the health and safety of workers and are of importance in the efficient and effective operation of the workplace. While the Organisation of Working Time Act 1997 specifies minimum rest breaks employers may provide longer breaks.

Compensatory Rest Timescale (Section 6(1) and 6(2) of the Act)

2. Exempted employees who miss out on their statutory rest entitlements should receive equivalent compensatory rest as soon as possible after the statutory rest has been missed out on. It is most important for employers to make rest time available to employees to allow them to recuperate from long periods of work without adequate rest. The Organisation of Working Time Act 1997 and the EU Directive on Working Time do not specify any timeframes within which compensatory rest must be made available. However, when determining when compensatory rest is to be given, an employer should always have regard to the circumstances pertaining in the individual place of employment and to the health and safety requirements for adequate rest. In this context, it is important that the compensatory rest for rest breaks at work and for daily rest breaks, in particular, be provided as soon as possible and, generally, in an adjacent time frame.
3. While it is not possible to provide extensive examples of the various situations that may arise in the many diverse employments, the following four examples may typify some work situations which may give rise to a need to grant compensatory rest.

Example 1

An exempted employee works Monday to Friday 9a.m. to 5.30p.m. He/she works in an industry which cannot be interrupted on technical grounds (an exempted activity)*. For 2 weeks per month that employee is "on call" for maintenance work. On Wednesday night he/she is called out to perform emergency repair work. The call-out commences at 8.30p.m. and finishes at 11.30p.m. The employee's entitlement to 11 hours consecutive rest is interrupted. Prior to the call-out the employee had received 3 hours rest and after the call-out he/she received 9.5 hours rest. In total the employee received 12.5 hours rest, therefore no further entitlement to rest arises as an exemption applies (see sections 2(7)(I) and 2(7)(II) of this Code).

If no exemption applied then the employee is entitled to the full 11 consecutive hours rest from the end of the call-out.

** See Annex to this Code – General Exemptions Regulations (S.I. No 21 of 1998)*

Example 2

Under an exemption provided for in a collective agreement approved of by the Labour Court an employee is permitted to work 14 consecutive 8 hour days. In those circumstances the employee, in respect of that period, has a minimum entitlement of 2 periods of 24 hours compensatory rest plus 2 periods of 11 consecutive hours daily rest. The employee is given 3 consecutive periods of 24 hours off immediately

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after the 14 consecutive working days. This goes beyond the requirement to give 2 periods of 24 hours compensatory rest preceded by the relevant daily rest requirement and is, therefore, acceptable.

Example 3

An employee is entitled to a break of at least 15 minutes after working for 4½ hours. If an exemption applies the taking of the break may be delayed but compensatory rest should be provided. In this circumstance the employee is given a later break of 15 minutes or breaks totalling 15 minutes by way of compensatory rest before the end of the day. No further compensatory rest is required.

Example 4

An exempted employee works a three cycle rotating shift pattern:

Week 1 8a.m. - 4p.m.

Week 2 4p.m. - 12a.m.

Week 3 12a.m. - 8a.m.

In a 5 over 7 day roster no changeover provides for less than 48 hours rest. Therefore, no entitlement to compensatory rest arises. In a 6 over 7 day roster, however, the changeover between week 2 and week 3 provides only for 24 hours rest. In this circumstance, the exempted employee is entitled to compensatory rest of 11 consecutive hours.

General Comments On Compensatory Rest

The 11 consecutive hour interval between shifts is required for reasons of health and safety to ensure that employees have a minimum period of sleep. From a health and safety point of view, it is dangerous for employees to miss out on a minimum number of hours sleep and then report for work. Therefore, when any variation of the 11 consecutive hours statutory rest is permitted under the Act, the employer should ensure that the health and safety requirements for adequate compensatory rest are sufficient in the circumstances pertaining in that employment. This is equally applicable to the weekly rest provision. Consideration should also be given to such issues as distance from home and employment in order to ensure that adequate rest is obtained.

NOTE

Typically in industry call-out arrangements provide for 8 hours consecutive rest before returning to work. Such arrangements will, where an exemption is applicable, continue to be acceptable provided that the compensatory rest requirements are fulfilled.

Where variation of the weekly statutory rest periods is permitted under the 1997 Act the employer concerned should have regard to the circumstances pertaining in that employment and to the health and safety requirements for adequate rest for his/her employees.

Appropriate Protection

4. If for reasons that can be objectively justified, it is not possible for an employer to ensure that an employee has available to himself or herself the equivalent rest period or break set out in section 6(2) of the 1997 Act, the employer must make such arrangements as respects the employee's conditions of employment as will compensate the employee.

While neither "arrangements as respects the employee's conditions of employment as will compensate the employee" nor "appropriate protection" are defined in, respectively, the Act and the Directive the Act specifies that these concepts do not include:

- i) the granting of monetary compensation to the employee
or
- ii) the provision of any other material benefit to the employee, other than the provision of such a benefit as will improve the physical conditions under which the employee works or the amenities or services available to the employee while he or she is at work.

A common sense approach should be adopted by employers and employees in such situations which takes account of the circumstances existing in the employment and has regard to the safety, health and well being of employees. It would be desirable that employers and employees and/or their representatives agree appropriate protection measures as respects an employee's conditions of employment.

While it is not feasible to define such appropriate protection/conditions of employment measures, the concept might include measures which provide for, in addition to normal health and safety requirements:

- i) enhanced environmental conditions to accommodate regular long periods of attendance at work
- ii) refreshment facilities, recreational and reading material
- iii) appropriate facilities/amenities such as television, radio and music
- iv) alleviating monotonous work or isolation
- v) transport to and from work where appropriate.

NOTE

The measures listed are not exhaustive and are for illustrative purposes only. Employers should consider other measures which might be more relevant to their circumstances.

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4. COMPLAINTS PROCEDURE

1. The Organisation of Working Time Act 1997 sets out a complaints procedure for dealing with the various complaints that may arise under the Act. While the procedure deals with general complaints concerning various entitlements, for the purposes of this Code the procedure concerns itself with complaints about the working hours, rest periods, compensatory rest and appropriate protection issues. For example, an employee may complain that he or she had not received an equivalent rest period or that he or she is not satisfied with the compensatory (or appropriate protection) arrangements provided.

Who Can Make A Complaint?

2. An employee or any trade union of which the employee is a member, with the consent of the employee, may present a complaint. The Minister for Labour, Trade and Consumer Affairs may also present a complaint if it is apparent that an employer is not complying with a provision and where the employee/trade union has not done so and the Minister is of the opinion that the circumstances are such as to make it unreasonable to expect the employee/trade union to present such a complaint.

How Is A Complaint Presented And Processed?

3. Complaints arising under section 6 of the 1997 Act should be presented in the first instance to a Rights Commissioner. A complaint must be made within six months of the date of the alleged contravention by the employer. However, a complaint which is presented not later than twelve months after the six months time limit may be investigated if the Rights Commissioner is satisfied that the delay was due to reasonable cause. A complaint should be in writing and should contain the requisite particulars.
4. The Rights Commissioner must give the employer a copy of the complaint. The Rights Commissioner must hear the parties and allow relevant evidence to be presented. The investigation of a complaint will be held in private. The Rights Commissioner must furnish the Labour Court with a copy of each decision given under the 1997 Act.
5. The Rights Commissioner in making a decision shall do one or more of the following:
 - a) declare that the complaint was, or, as the case may be, was not well founded
 - b) require the employer to comply with the relevant provisions
 - c) require the employer to pay compensation of such amount (if any) as is just and equitable having regard to all the circumstances, up to a maximum of two years' remuneration.

NOTE

Queries relating to complaints and procedures should be forwarded in writing to the Rights Commissioner Service, Labour Relations Commission, Tom Johnson House, Haddington Road, Dublin 4, telephone 6136700 (01 area) and 1890 220227 (outside 01 area), fax (01) 6136701.

5. APPEALS

1. Either party may appeal a decision of a Rights Commissioner to the Labour Court. The appeal must be made within 6 weeks of the date on which the decision was communicated to the party. The notice of appeal should be submitted to the Labour Court on the relevant form, which is available from the Court.
2. The Labour Court must give a copy of the notice of appeal to the other party. The Labour Court shall give the parties an opportunity to be heard and to present relevant evidence to it. It will make a determination in writing affirming, varying or setting aside the decision. The Court must communicate that determination to the parties.

NOTE

The procedure on appeals is laid down by the Labour Court. Details of these procedures can be obtained from the Labour Court, Tom Johnson House, Haddington Road, Dublin 4, telephone 6136666 (01 area) and 1890 220228 (outside 01 area)

6. ENFORCEMENT OF DECISIONS OF THE RIGHTS COMMISSIONER/ DETERMINATIONS OF THE LABOUR COURT

1. An employee may bring a complaint to the Labour Court where an employer has not implemented a decision of the Rights Commissioner under the Act or has not appealed a decision within the requisite time. The Labour Court shall make a determination to the like effect as the original decision without hearing the employer concerned. The complaint must be brought by the employee not later than six weeks after the time limit for making an appeal has expired. Complaints of the non-implementation of Rights Commissioners' decisions under the Act should be submitted to the Labour Court on the relevant form, which is available from the Court. The Labour Court shall publish particulars of its determinations in such manner as it thinks fit.
2. The Minister, at the request of the Labour Court, may refer a question of law arising in proceedings before it, concerning appeals from the enforcement of recommendations of a Rights Commissioner, for determination by the High Court. The determination of the High Court shall be final and conclusive.
3. A party to proceedings may appeal to the High Court from a determination of the Labour Court on a point of law. The determination of the High Court shall be final and conclusive.
4. Where a determination of the Labour Court has not been implemented, within six weeks from the date on which the determination is communicated to the parties, the Circuit Court, on application to it by an employee, trade union or the Minister, shall, without hearing the employer or any evidence, make an order directing the employer to carry out the determination in accordance with its terms.
5. The Circuit Court, if it deems it appropriate to do so, may direct the employer to pay interest on the compensation in respect of any period commencing 6 weeks following the communication of the Labour Court's determination to the parties and ending on the date of the order.
6. The application to the Circuit Court will be in the Circuit where the employer usually resides or carries out the business.

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ANNEX

EXEMPTED ACTIVITIES

General Exemptions

The Organisation of Working Time (General Exemptions) Regulations, 1998 (S.I. No. 21 of 1998) prescribe, in accordance with Section 4(3) of the Organisation of Working Time Act 1997, that persons employed in the following activities shall be exempt from the application of sections 11, 12 and 13 of the Act which deal respectively with daily rest, rests and intervals at work and weekly rest:

1. An activity in which the employee is regularly required by the employer to travel distances of significant length, either from his or her home to the workplace or from one workplace to another workplace.
2. An activity of a security or surveillance nature the purpose of which is to protect persons or property and which requires the continuous presence of the employee at a particular place or places, and, in particular, the activities of a security guard, caretaker or security firm.
3. An activity falling within a sector of the economy or in the public service
 - a) in which it is foreseeable that the rate at which production or the provision of services, as the case may be, takes place will vary significantly from time to time
 - or
 - b) the nature of which is such that employees are directly involved in ensuring the continuity of production or the provision of services, as the case may beand, in particular, any of the following activities:
 - i) the provision of services relating to the reception, treatment or care of persons in a residential institution, hospital or similar establishment
 - ii) the provision of services at a harbour or airport
 - iii) production in the press, radio, television, cinematographic, postal or telecommunications industries
 - iv) the provision of ambulance, fire and civil protection services
 - v) the production, transmission or distribution of gas, water or electricity
 - vi) the collection of household refuse or the operation of an incineration plant
 - vii) any industrial activity in which work cannot, by reason of considerations of a technical nature, be interrupted
 - viii) research and development
 - ix) agriculture
 - x) tourism.

NOTES

Exceptions

Regulation 3 of the Regulations provides that the exemption shall not, as respects a particular employee, apply

- a) in relation to sections 11, 12 and 13 of the Act if the employee:
 - i) is not engaged wholly or mainly in carrying on or performing the duties of the activity concerned
 - ii) is exempted from the application of that section by virtue of regulations under section 3(3) of the Actor
 - iii) falls within a class of employee in relation to which a joint labour committee (within the meaning of the Industrial Relations Acts, 1946 to 1990) may perform functions under those Actsor
- b) if and for so long as the employer does not comply with Regulation 5 of the Regulations in relation to him or her.

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Regulation 4 of these Regulations provides that if an employee is not entitled, by reason of this exemption, to the rest period and break referred to in sections 11, 12 and 13 of the Act, the employer shall ensure that the employee has available to himself or herself a rest period and break that, in all the circumstances, can reasonably be regarded as equivalent to the first-mentioned rest period and break.

Duty of employer with respect to the health and safety of employee

Regulation 5 of the Regulations provides that:

- 1) an employer shall not require an employee to whom the exemption applies to work during a shift or other period of work (being a shift or other such period that is of more than 6 hours duration) without allowing him or her a break of such duration as the employer determines
- 2) in determining the duration of such a break, the employer shall have due regard to the need to protect and secure the health, safety and comfort of the employee and the general principle concerning the prevention and avoidance of risk in the workplace.

More beneficial arrangements

Regulation 6 of the Regulations provides that nothing in the Regulations shall prejudice a provision or provisions of a more beneficial kind to the employee concerned which is or are contained in:

- a) a collective agreement referred to in section 4(5) of the Act
 - b) a registered employment agreement
- or
- c) an employment regulation order.

Exemption of transport activities

The Organisation of Working Time (Exemption of Transport Activities) Regulations, 1998 (S.I. No. 20 of 1998) prescribe, in accordance with Section 3(3) of the Organisation of Working Time Act 1997, that persons employed in a transport activity as follows shall be exempt from the application, inter alia, of sections 11, 12 and 13 of the Act dealing respectively with daily rest, rests and intervals at work and weekly rest:

1. An activity consisting of, or connected with, the operation of any vehicle, train, vessel, aircraft or other means of transport (whether of goods or persons) other than any activity of a person holding a position of an administrative, managerial or clerical nature that is not directly related to the operation of such a means of transport.
2. An activity that is carried on:
 - a) for the purpose of the transport timetable, that is to say an activity that is carried on for the purpose of ensuring the continuity or regularity of any service which provides a means of transport referred to in paragraph 1 above
 - or
 - b) for the purpose of ensuring the safety of such a means of transport
 - c) other than any activity of a person holding a position of an administrative, managerial or clerical nature that is not directly related to the doing of the things required to be done for either such purpose.
3. In paragraph 1 “vessel” includes any vessel used to navigate inland waters (including any lake).

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It should be noted that an employer is not obliged to ensure that an employee engaged in these activities has available to himself or herself equivalent compensatory rest. However, Regulation 3 of these Regulations provides that the exemption shall not apply as respects a particular employee if he or she is not engaged wholly or mainly in carrying on or performing the duties of the activity concerned.

An Order (S.I. No. 44 of 1998) declaring this code to be a Code of Practice for the purposes of section 6 of the Organisation of Working Time Act 1997 was made by Tom Kitt, Minister for Labour, Trade and Consumer Affairs on 24th February 1998.