

General

The Organisation of Working Time Act sets out statutory rights for employees in respect of rest, maximum working time and holidays. These new rights apply either by law as set out in the Act, in regulations made under the Act or through legally binding collective agreements. These agreements may vary the times at which rest is taken or vary the averaging period over which weekly working time is calculated.

You are not covered by the rest and maximum working time rules if you are a member of the Defence Forces, the Garda Síochána, if you control your own working hours or if you are a family employee working on a farm or private house.

Otherwise, if you are an employee, you are generally covered by the following rest and maximum working time entitlements.

Maximum Weekly Working Time

From 1st March 1998 the new maximum average working week is 48 hours. Averaging may be balanced out over a 4, 6 or 12 month period depending on the circumstances. The provision relating to the 48 hour week operates as follows;

48 hour net maximum working week can be averaged according to the following rules:-

- For employees generally - 4 months
- For employees where work is subject to seasonality, a foreseeable surge in activity or where employees are directly involved in ensuring continuity of service or production - 6 months
- For all employees who enter into a collective agreement with their employers which is approved by the Labour Court - 12 months

Rest

From 1st March 1998 every employee has a general entitlement to:

- 11 hours daily rest per 24 hour period
- one period of 24 hours rest per week preceded by a daily rest period (11 hours)
- Rest breaks - 15 minutes where up to 4½ hours have been worked; 30 minutes where up to 6 hours have been worked which may include the first break.

- Shop Employees whose hours of work include the hours 11.30am - 2.30pm must after 6 hours work be allowed a break of one hour which must commence between the hours 11.30am - 2.30pm.

These rest breaks and intervals may be varied if there is a collective agreement in place approved by the Labour Court or if a regulation has been made for your sector. If there are variations in rest times and rest intervals under agreement or in the permitted sectors, equivalent compensatory rest must be available to the employee.

Night Workers

Night time is the period between midnight and 7 a.m. the following day.

Night workers are employees who normally work at least 3 hours of their daily working time during night time and the annual number of hours worked at night equals or exceeds 50% of annual working time

Maximum Night Working Time From 1st March 1998

- for nightworkers generally - 48 hours per week averaged over 2 months or a longer period specified in a collective agreement which must be approved by the Labour Court.
- for nightworkers whose work involved special hazards or heavy physical or mental strain - **an absolute limit of 8 hours in a 24 hour period during which they perform night work.**

Definitions, Exceptions and Other Features of the Working Time Act

Working time is net working time i.e. exclusive of breaks, on call or stand-by time.

Exceptional or Unforeseeable Circumstances: The Act permits exemption from the rest provisions if there are exceptional, unusual and unforeseeable circumstances. Equivalent compensatory rest must be taken within a reasonable period of time.

Shift and Split Shift Working: The Act provides for automatic exemption from the rest provisions for shift workers when they change shift and for workers on split shifts. Equivalent compensatory rest must be taken within a reasonable period of time.

Exemption by Regulation: Categories of employees in the sectors set out in the Organisation of Working

Time (Exemption) Regulations may, subject to receiving equivalent compensatory rest, be exempted from the rest provisions of the Act. The regulation S.I. 52 of 1998 (Exemption of Civil Protection Services) provide exemptions from the rest and maximum working week provisions of the Act without a requirement for equivalent compensatory rest.

Exemption by Collective Agreement: Any sector or business may be exempted from the statutory rest times by collective agreement, subject to equivalent compensatory rest being made available to the employee. Collective agreements to vary the rest times may be drawn up between management and a trade union or other representative staff body in any business, organisation or enterprise and must be registered with the Labour Court.

Some of the exemptions above are subject to equivalent compensatory rest being made available to the employee. This means that, although employers may operate a flexible system of working, employees must not lose out on rest. In these circumstances rest may be postponed temporarily and taken within a reasonable period of time. A list of the sectors exempted by regulation and guidelines on equivalent compensatory rest can be found in a code of practice on compensatory rest produced by the Labour Relations Commission.

Holidays

Holiday pay is earned against time worked. All employees, full-time, part-time, temporary or casual earn holiday entitlements from the time work is commenced. Depending on time worked, employees' holiday entitlements should be calculated by one of the following methods:-

- 4 working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which he or she changes employment).
- 1/3 of a working week per calendar month that the employee works at least 117 hours.
- 8% of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks).

For further information see Dept. of Enterprise, Trade and Employment explanatory booklet on Holidays and Public Holidays. Copy available on request, or on Department website at www.entemp.ie.

Public Holidays

The Organisation of Working Time Act provides the following nine public holidays:

- Christmas Day,
- St. Stephen's Day,
- St. Patrick's Day,
- Easter Monday, the first Monday in May, the first Monday in June and the first Monday in August,
- the last Monday in October,
- the 1st of January.

In respect of each public holiday, an employee is entitled to either:

- a paid day off on the holiday or
- a paid day off within a month or
- an extra day's annual leave or
- an extra day's pay as the employer may decide.

If the public holiday falls on a day on which the employee normally works, the employee is entitled to a paid day off for the day.

If the public holiday falls on a day on which the employee does not normally work, the employee is entitled to one fifth of his/her normal weekly wage for the day or to either (b) or (c) above as the employer may decide.

If the employee is asked to work on the public holiday, the employee is entitled to (b) (c) or (d) above as the employer may decide.

There is no service requirement in respect of public holidays for whole time employees. Part time employees qualify for public holidays entitlement provided they have worked at least 40 hours during the five weeks ending on the day before a public holiday.

(Note this Act refers to "public holidays" not "bank holidays". Not every official bank holiday is a public holiday though in practice most of them coincide).

Sunday Premium

If not already included in the rate of pay, employees are entitled to supplementary payment for Sunday which will be equivalent to the closest applicable collective agreement which applies to the same or similar employment and which provides for a Sunday premium.

The premium can be in the form of:

- added payment
- time off in lieu
- a portion of shift premium
- unsocial hours premium.

Zero Hours

This feature of the legislation covers situations where, for example, an employee is sent home if things are quiet or is requested to be available for work and is not, on the day asked to work. Where an employee suffers a loss by not working hours he/she was requested to work or be available to work, the zero hours provisions of the Act ensure that he/she is compensated for 25% of the time which he/she is required to be available or 15 hours whichever is the lesser.

e.g. If an employee's contract of employment operates to require the employee to be available for 48 hours in a week, he / she will be entitled to a minimum payment of 12 hours even if not required to work that week. Or if an employee is asked to be available to work 8 hours and is not called into work he/she will be entitled to a minimum payment of 2 hours.

Records

Employers are obliged to keep records of holidays and public holidays for a period of 3 years. These records must be available for inspection by Labour Inspectors of the Department of Enterprise, Trade and Employment. Records should also be maintained to show as evidence in the event of a Rights Commissioner or Labour Court investigation of an employee's complaint.

Penalties

A person found guilty of offences relating to failure to keep records, double employment, obstruction of inspectors or non-compliance with regulations outworkers may face fines of up to €1904.61 (£1,500) and an extra €634.87 (£500) a day for a continuing offence.

Employers may face compensation claims for amounts up to 2 years of an employee's salary for breaches of other provisions of the Act. Such amounts may be determined by the Rights Commissioner and the Labour Court.

List of Regulations

The following is a list of regulations made under the Organisation of Working Time Act, 1997. Copies of these regulations may be obtained from the Government Publications Office, Molesworth St., Dublin 2, Tel: (01) 679 3515

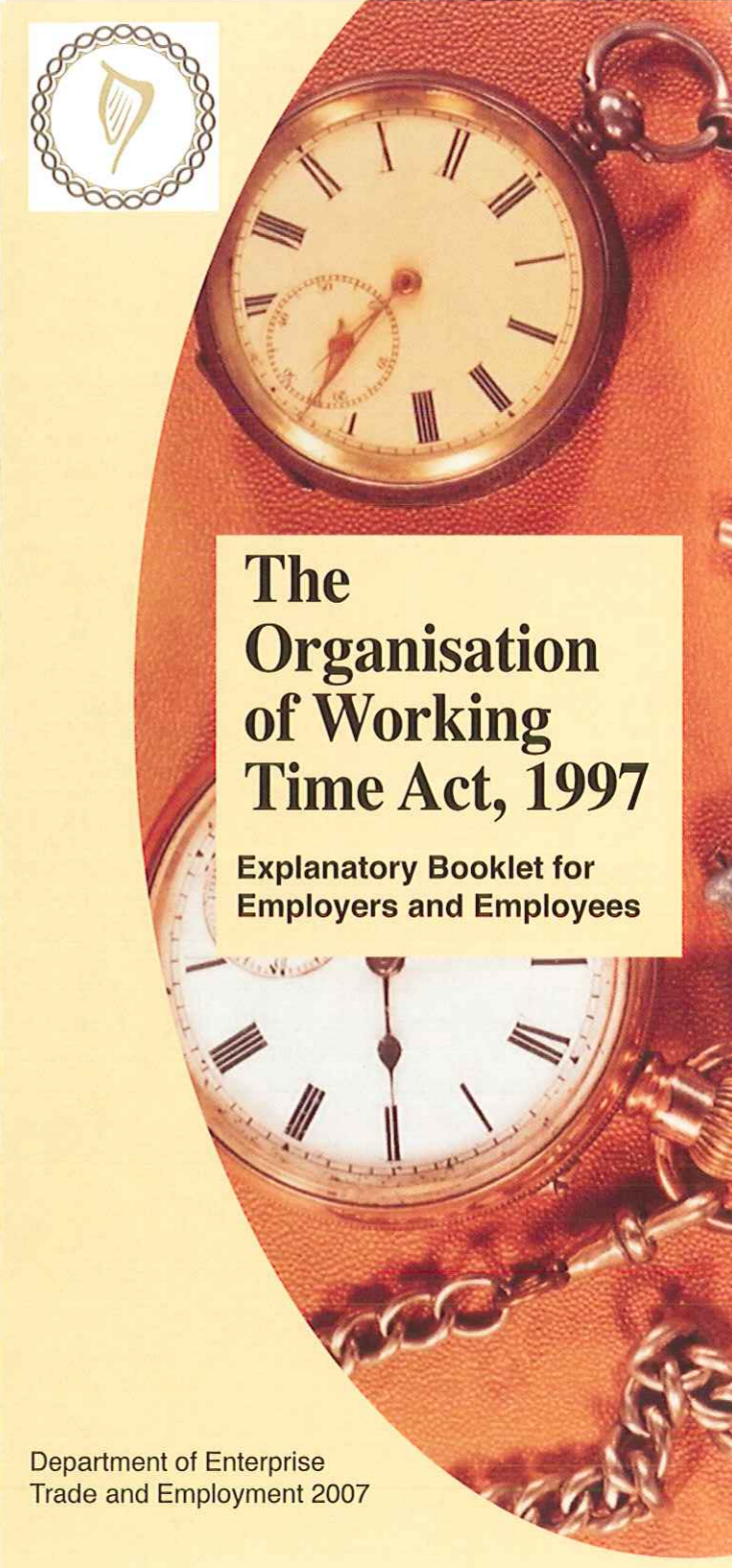
1. Organisation of Working Time Act, 1997 (Commencement) Order, 1997-S.I. No.392 of 1997.
2. Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997-S.I. No.475 of 1997.
3. Organisation of Working Time (Inclusion of Transport Activities) Regulations, 2004-S.I. No.18 of 2004
4. Organisation of Working Time (General Exemptions) Regulations, 1998 - S.I. No. 21 of 1998.
5. Organisation of Working Time (Code of Practice on Compensatory Rest and Related Matters) (Declaration) Order, 1998 - S.I. No. 44 of 1998.
6. Term of Employment (Additional Information) Order, 1998 - S.I. No. 49 of 1998 (This Order was made under the Terms of Employment (Information) Act, 1994 but is relevant to Organisation of working Time Act, 1997).
7. Organisation of Working Time (Exemption of Civil Protection Services) Regulations, 1998 - S.I. No. 52 of 1998.
8. Organisation of Working Time (Breaks at Work for Shop Employees) Regulations, 1998 - S.I. No. 57 of 1998.

9. Organisation of Working Time (Code of Practice on Sunday Working in the Retail Trade and Related Matters) (Declaration) Order, 1998 - S.I. No. 444 of 1998.
10. Organisation of Working Time (Public Holiday) (Regulations, 1999 - S.I. No. 10 of 1999.
11. Safety, Health and Welfare at Work (Night work and Shift Work) Regulations, 2000 - S.I. No. 11 of 2000. (These Regulations were made under the Safety, Health and Welfare at Work Act, 1989 but are relevant to Organisation of Working Time Act, 1997).
12. Organisation of Working Time (National Day of Mourning) Regulations 2001 - S.I. No. 419 of 2001.
13. Organisation of Working Time (Records) Prescribed Form and Exemptions) Regulations, 2001 - S.I. No. 473 of 2001.
14. Organisation of Working Time (Inclusion of offshore work) Regulation 2004- S.I. no 819 of 2004

Complaints and Enquiries

Complaints about any breaches of the Act or collective agreements made under the Act, may be referred to a Rights Commissioner, Tom Johnson House, Haddington Road, Dublin 4, tel: 01 - 6136700 or 1890 220 227 (lo call if outside 01 area), or to a Labour Inspector, Dept. of Enterprise, Trade and Employment, Davitt House, 65A Adelaide Road, Dublin 2, tel: 01 - 631 2121 or lo call 1890 220 222 (lo call if outside 01 area).

For further information or complaint forms in connection with The Organisation of Working Time Act please contact Employment Rights Information Unit at tel 01 - 631 3131 or 1890 201 615 (lo call if outside 01 area). Information is also available on our website at www.entemp.ie



The Organisation of Working Time Act, 1997

Explanatory Booklet for Employers and Employees

Department of Enterprise
Trade and Employment 2007