# Q+AWorking hours

# What does the Working Hours Act cover?

The Working Hours Act (ATW) describes how long you are allowed to work per day and per week and when you are entitled to a break or rest period. The rules have been made for the sake of your health, safety and welfare, but also to make it easier for you to combine your work, private life and care obligations. The rules apply to employees aged 18 years and older. Separate rules apply to children aged under 16 and for young people aged 16 and 17. There is also a set of special rules for women who are pregnant or who have just given birth.

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## **Exceptions and additional rules**

The Working Hours Decree (ATB) contains exceptions and additional rules to the Working Hours Act. As well as some general exceptions, there are additional rules relating to the healthcare sector, mining and a number of other sectors. In other words, these sectors are covered by the general rules of the Working Hours Act and Working Hours Decree and the separate sector-specific rules.

#### **Collective scheme**

Some of the rules in the Working Hours Act and many of the general and sector-specific rules in the Working Hours Decree can only be applied collectively, that is, after agreement has been reached following consultations involving multiple parties. A collective scheme may take the form of a collective labour agreement (CAO), the arrangements relating to the legal position of employees employed by the government, or a written agreement between an employer and employee consultative bodies, such as the Works Council or employee representative body.

# How long may you work?

You may work:

- per shift: no more than 12 hours;
- per week: no more than 60 hours;

Note: you may not work the maximum number of hours every week. Over a longer period of time, the following rules apply:

• working hours per week in any 4-week period: the maximum is an average of 55 hours per week in any 4-week period, although alternative arrangements may apply in a collective scheme (such as a collective labour agreement). However, you may never work more than 60 hours in any one week;

• working hours per week in any 16-week period: the maximum is an average of 48 hours in any 16-week period.

You should agree with your employer about your daily and weekly working hours.

## Rest period after work

- After a working day, you may not work for at least 11 consecutive hours. However, this may be reduced once every 7 days to 8 hours if the nature of the work or company circumstances make this necessary.
- After a 5-day working week you may not work for at least 36 consecutive hours.
- A longer working week is also possible, provided you have a rest period of at least 72 hours once every 14 days. This 72-hour period may be split into 2 separate periods, neither of which may be shorter than 32 hours.

# Taking a break

- If you work for more than 5.5 hours, then you should have a break of at least 30 minutes. This can be split into two 15-minute periods.
- If you work for more than 10 hours, then your break should be at least 45 minutes. This can be split into several breaks, none of which may be shorter than 15 minutes.

Collective agreements (such as collective labour agreements) may contain provisions for fewer breaks. However, if you work longer than 5.5 hours, you must take a break of at least 15 minutes.

# Are you obliged to work on Sundays?

The starting point is that you do not have to work on Sundays, unless you have agreed with your employer to do so.

However, he cannot oblige you to do so unless the type of work makes working on Sunday necessary, such as in the healthcare sector, hotels and restaurants, police and fire service, or in a manufacturing plant where a production process cannot be halted.

The company circumstances may also make it necessary for work to be carried out on Sundays. If this is the case, the employer must first gain the agreement of the Works Council. Moreover, your own consent is also required.

You are entitled to at least 13 free Sundays every year. Your collective labour agreement (CAO) may contain provisions for a lower number than 13, but again, you must give your consent to this

# What are the rules regarding night shifts?

A night shift is where you work for more than 1 hour between midnight and 06.00 hrs. The rules that apply to night shifts are stricter than those governing day shifts.

# Number of hours in a night shift

- You may not work for more than 10 hours in a night shift.
- If a night shift ends after 02.00 hrs you may not work for at least 14 hours after the shift. This may be reduced to 8 hours, but no more than once a week, and only if the type of work or company circumstances make this necessary.
- If a night shift ends before 02.00 hrs, you may not work for at least 11 consecutive hours after the end of the shift, as is also the case for day shifts.
- You may work for 12 hours in a night shift no more than 5 times every 2 weeks, and no more than 22 times a year. You may not work for at least 12 hours after completing a 12-hour night shift.
- You may not work for at least 46 hours after 3 or more successive night shifts. For example, if the final night shift ends at 06.00 hrs on Tuesday morning, you may not resume work until at least 04.00 hrs on Thursday morning.

# Number of night shifts

- You may not work more than 36 night shifts in any 16-week period.
- You may not work for more than 7 shifts in succession if one of those shifts is a night shift. This may be extended to 8 if the type of work or company circumstances make it necessary and if it has been accepted as part of a collective agreement.
- If you only work nights on an occasional basis (fewer than 16 times in a 16-week period), the situation is the same as with day shifts: an average of 48 hours' work per week.
- If you work nights on a regular basis (16 times or more in a 16-week period), you may not work more than an average of 40 hours a week within those 16 weeks.

## Increase in the number of night shifts

- Where a collective scheme applies (such as a collective labour agreement, CAO), the number of night shifts may be increased from 117 to 140 a year if the type of work or company circumstances make this necessary.
- If you work partly at night (for example, if your working day begins at 04.00 hrs), you may also use the rule that you cannot work for more than 38 hours every 2 weeks between midnight and 06.00 hrs. This should be agreed in a collective scheme.

### If you almost always work at night

Now that the new Working Hours Act has taken effect (on 1 April 2007), the transitional Permanent Night Work regulation has entered into force indefinitely. If you have been

working mostly at night since before 1 January 1996, then you may continue this pattern after 1 April. In every uninterrupted 4-week period, you may work a maximum of 20 night shifts.

# What rules apply for being on call in the event of unexpected circumstances (consignment)?

Even if you are not at your place of work, your employer may call on you to come to work if unexpected circumstances occur. This is referred to as 'on-call duty' in the Working Hours Act. A similar arrangement to on-call duty is 'stand-by duty' where employees are available to be contacted, the difference being that this is part of their normal working duties even though they are not actually at their place of work. Examples include maternity assistants. This arrangement exists only in the healthcare sector.

#### Working hours or not?

The time during which you are on on-call duty or stand-by duty is not regarded as working hours. However, if you are called up and have to start work, this does count as working hours. As soon as you are called, you are deemed to have worked 30 minutes, even if you only have to actually work for 15 minutes. If you are called again within half an hour of being called the first time, the interim period also counts as working hours.

## The rules for on-call duty in brief

- You may not work for longer than 13 hours in any 24-hour period, including hours resulting from calls.
- You may not spend more than 14 days on on-call duty in any 4-week period.
- Every 4 weeks, there should be at least 2 consecutive days on which you do not work and on which you are not on on-call duty.
- You may not be on on-call duty either immediately before or after a night shift. You may be on on-call duty up to 11 hours before and no less than 14 hours after a night shift.
- If, in a 16-week period, you are on on-call duty 16 or more times between midnight and 06.00 hrs, you may not work for more than an average of 40 hours a week in that 16-week period.
- There is an exception to this: you may work an average of 45 hours a week in that 16-week period, subject to the following conditions:
  - you have had 8 hours' continuous rest immediately after your last night shift and have not been on on-call duty;
  - o if this is not possible, then you should have had at least 8 hours' continuous rest on the same day (that is, before midnight).

## Note!

• If you are called up, this does not count as an interruption to your daily or weekly period of rest.

• If you are called up at night, this does not count as a night shift.

In addition to on-call duty and stand-by duty, the Working Hours Decree provides for another form of availability, that of 'on-site stand-by', where an employee is required to be at the place of work. On-site stand-by shifts are governed by separate rules.

# What are the rules governing on-site stand-by employees?

During an on-site stand-by shift, you are required to be present at your place of work in order to be able to respond as quickly as possible to any call-up. You may work on shifts of this kind only if the type of work makes it necessary and the work cannot be organised in any other way (examples include the healthcare sector and the fire service). The conditions governing on-site stand-by shifts must also be set down in a collective agreement.

## For on-site stand-by shifts, the following rules apply

Note: if you do not do regular on-site stand-by shifts, the normal rules apply to you.

- Immediately before or after an on-site stand-by shift, you may not work for at least 11 hours. This period of rest may be shortened once a week to 10 hours and once to 8 hours, if the nature of the work or company circumstances make this necessary and provided it has been agreed at collective level. The 2 reduced rest periods may not be applied in succession they must therefore be at separate times of the week.
- A reduced rest period between 2 shifts must be compensated in the subsequent period of rest. This means the latter period of rest should be extended by the same amount of time by which the former period was reduced.
- The minimum rest in any block of 7 24-hour days is 90 hours. The rest time should include at least one unbroken 24-hour period, as well as 4 unbroken rest periods of at least 11 hours, one of at least 10 hours, and one of at least 8 hours. These unbroken periods may be taken contiguously.
- An on-site stand-by shift may not last more than 24 hours, including times spent waiting and sleeping.
- You may not work more than 52 times on an on-site stand-by shift in 26 weeks.
- All hours in an on-site stand-by shift any work that is rostered, work that has been carried out after a call up, and the hours of compulsory presence count as working hours.
- You may not work more than an average of 48 hours per week in a 26-week period.
- In consultation with your employer, you may agree to use a tailor-made construction, or opt-out. You may agree to a scheme whereby you work up to sixty hours a week you will have to give your written consent to this.

• The written consent covers a period of 26 weeks and will be extended automatically for the same period of time, unless you expressly state that you do not agree with the automatic extension.

# What are the exceptions to the Working Hours Act?

The Working Hours Decree includes exceptions and additional rules to the Working Hours Act. There are general exceptions that apply to certain employees and to certain situations, and exceptions that apply to a particular sector, such as mining or healthcare. In other words, these sectors are covered by the general rules of the Working Hours Act and Working Hours Decree and the separate sector-specific rules.

#### **Collective scheme**

Unless stated otherwise, the exceptions given below can apply only to collective schemes.

## On-site stand-by shifts

During an on-site stand-by shift, you are required to be present at your place of work in order to be able to respond as quickly as possible to any call-up. You may work on shifts of this kind only if the type of work makes it necessary and the work cannot be organised in any other way (examples include the healthcare sector and the fire service).

# Working longer in advance of public holidays

If it is necessary due to preparations in advance of a public holiday, you may work for a maximum of 14 hours (including at nights) on 2 occasions in the 7 days prior to the public holiday in question.

The following are public holidays: New Year's Day, Easter, Queen's Day, Ascension Day, Whit, 5 December and Christmas, although the definition may extend to other public holidays. No collective agreement is required for the application of this rule.

#### Longer night shifts at weekends

Between 18.00 hrs on Friday and 08.00 hrs on Monday, you may, in addition to a night shift of 10 hours, work 2 night shifts of no more than 11 hours. You must rest for at least 12 hours after a shift like this. If you use this scheme, you must have at least 26 Sundays off every year. This scheme may not be used in combination with the general rules for longer night shifts.

## Longer night shifts outside the weekend

If as a result of unforeseen circumstances the number of staff falls below the minimum level, or because there is a public holiday, the remaining employees may work longer night shifts (more than 10 hours). The maximum number of hours that may be worked on these shifts is 12. This is allowed up to twice every 2 weeks and 8 times every 52 weeks. You must have at least 12 hours' rest after such a shift. This scheme, too, may not be used in combination with the general rules for longer night shifts.

#### Working longer hours due to inescapable work requirements

If there is work that cannot be delayed, employees may work longer hours. It is important that the work in question is absolutely unavoidable. You may work up to a maximum of 14 hours once every 2 weeks (including at night). No collective agreement is required for the application of this rule.

#### Extra quarter of an hour for handover to next shift

For the purpose of handing over to the next shift, the working hours may be extended by 15 minutes, and the daily period of rest be reduced by the same amount. An example of where this occurs is where work is carried out in separate shifts. If as a result of these extra 15 minutes an employee is working on the night shift, this does not count towards the number of night shifts worked. No collective agreement is required for the application of this rule.

## Call up during break

If the nature of the work makes it necessary, it can be agreed that an employee can be available to be called up during his breaks. These on-call breaks do not count towards the number of times that an employee can be on on-call duty. If an employee is actually unable to leave the place of work, then these break periods do count towards the number of hours worked.

#### Dispensing with breaks

If the nature of your work means you cannot leave your place of work to take a break, it is possible to dispense with taking breaks. In many cases, this covers people who work alone, such as bridgemasters. Should this apply to you, you may work no more than 44 hours on average in every 16-week period.

If you are covered by the rule on exceptional break times and the rule with regard to longer night shifts at weekends also applies to you, you may not work for more than 10 hours on a night shift.

### **Extending the period of reference to 52 weeks**

As a result of unforeseen circumstances or because of the nature of your tasks, the amount of work to be done may vary considerably during the year (as in the case of seasonal work, for example). In that case, the 16 week-period (the so-called reference period) that is used for calculating the average working time can be extended to 52 weeks. The reference period may also be extended if your tasks consist only or mainly of supervisory duties. This may be done in two ways:

• in a 52-week period you can work for a maximum of 48 hours a week on average. There must be arrangements for this in the collective labour agreement (CAO);

in the case of night shifts, in a 52-week period you can work for a maximum of 40 hours a week on average. Agreement for this extension only needs to be obtained at company level.

# Does the Working Hours Act also apply to temporary agency employees and the self-employed?

In principle, the Working Hours Act applies to anyone who works for an employer – in other words to all employees, including people on traineeships, temporary agency employees, and seconded employees. There are also cases where the Working Hours Act applies to people who are self-employed - in situations where the safety of third parties is at stake, such as in the transport sectors.

# To whom does the Working Hours Act not apply?

In some situations the Working Hours Act does not apply, either in whole or in part, such as in the case of completely unforeseen dangerous situations in which observance of the law would impede any appropriate response.

The Working Hours Act does not apply when observance would disrupt attempts at maintaining public order (this applies to government security and intelligence services and to the police).

There are also some types of work for which the Working Hours Act does not apply, either wholly or in part. For example, the rules on Sunday working do not apply to people who have a spiritual function within the church.

Other groups of employees covered by exceptions are:

- those who earn at least three times the minimum wage (unless the work involved is dangerous, at night, or in the mining industry and not carried out by supervisors or managers);
- volunteers;
- professional sportsmen and women:
- scientific researchers;
- parents in foster homes;
- stage artists;
- medical and dental specialists, doctors in nursing homes, GPs and social physicians;
- supervisors of school and holiday camps;
- military personnel on duty and during exercises.

# What if your employer does not comply with the Working Hours Act?

You should first make sure yourself that the rules regarding working hours, rest periods, breaks and night work are not being breached. Your employer has no right to force you to work outside these rules. If you believe that your employer is not complying with the rules, you should raise the issue with him.

#### **Works Council**

It is also the task of the Works Council to make sure that the law is being complied with. You can therefore inform your Works Council if you think that your employer is not observing the rules.

## The Labour Inspectorate

The Labour Inspectorate carries out regular random checks. If you think that the rules are being broken, and you are unable to resolve the issue with your employer, you can report this (anonymously) to the Labour Inspectorate.

#### **Penalty**

The Labour Inspectorate also carries out regular random checks on its own initiative. If a company is not observing the rules, a penalty may be imposed, in some cases after a warning. Should an employer continue to ignore the rules, or if a breach is such that the health of children or traffic safety is at risk, an official report may be made with a view to criminal proceedings.

#### Court

Disputes may also be put before the courts, in which case a trade union may be helpful. The courts can force employers to comply with the law.

# **More information**

If you cannot find an answer to your question on this website, you can ask the Postbus 51 Information Service by calling free number 0800 8051. The service is available on working days from 08.00 to 20.00 hrs. If you are calling from abroad, the number is +31 77 4656767 and the regular rate will apply. Your question will usually be answered immediately, though sometimes you will be referred to another government or non-government agency.