

# WORKING TIME REGULATIONS POLICY

(Including Secondary Employment)

Policy reference – HR23

SUMMARY	This document sets out the CCG standard Working Time Regulations and Secondary Employment policy and procedures. It has been drafted to comply with statutory requirements.
AUTHOR	Alison Ewart – HR Business Partner
VERSION	Version 3 - Final
EFFECTIVE DATE	30 <sup>th</sup> October 2014/ Reviewed July 2015
APPLIES TO	Employees
APPROVAL BODY	NHS Bradford City and Districts CCG Senior Management Team
RELATED DOCUMENTS	Disciplinary Policy and Procedure Managing Sickness Absence Policy Health & Safety Policy Managing Concerns with Performance Policy Flexible Working Policy
REVIEW DATE	August 2018

# THIS POLICY HAS BEEN SUBJECT TO AN INITIAL EQUALITY IMPACT ASSESSMENT

## VERSION CONTROL SHEET

Version	Date	Author	Status	Comment
Draft	13.08.2014	Alison Ewart	HR Lead	Consultation with Trade Unions via the Collaborative Social Partnership Forum (SPF)
Final	13.08.2014	Alison Ewart	HR Lead	Updated with comments from the SPF and Ratified
Final	Oct 2014	Alison Ewart	HR Lead	SMT
Final	16.02.15	Alison Ewart	HR Lead	Aligned with Flexible Working Policy (section 9) Amendment to appendices 2 and 3 to ensure the declaration of the employee and the authorising manager is within the requirements of the Working Time Directive
Revised	August 2015	Tazeem Hanif	HR Lead	Amendments made to the policy and taken to the West Yorkshire HR Policy Sub Group on 25.08.2015 to consult on changes.
Final	02.12.2015	Tazeem Hanif	HR Lead	Ratified at the Social Partnership Forum

## CONTENTS

<b>Section</b>	<b>Page</b>
1. Purpose	4
2. Scope	4
3. Equality Statement	4
4. Accountability	4
5. Implementation and Monitoring	4
6. Responsibilities	4
7. Working Time Regulations and Secondary Employment	5
8. Appeal	8
9. Link to Flexible Working Policy	8
<b>Appendix</b>	
1 Definitions of working time	9
2 Definitions of secondary employment	10
3 Declaration of secondary employment	11
4 Opt out agreement	13
5 Equality Impact Assessment	14

## **1. PURPOSE**

- 1.1 This document sets out the organisations standard Working Time Regulations and Secondary Employment policy and procedures. It has been drafted to comply with statutory requirements. This should be read together with other relevant organisational policies, procedures and local guidance.

## **2. SCOPE**

- 2.1 This policy will apply to all employees directly employed by the organisation. The Working Time Regulations also covers workers whilst they are working at the organisation, for example agency workers and some contractors. Where an employee has more than one job, both employers are responsible for enforcing the 48 hour week. The term employee will be used throughout this policy and will apply to both employees and workers.

## **3. EQUALITY STATEMENT**

- 3.1 In applying this policy, the organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation. A single Equality Impact Assessment is used for all policies and procedures.

## **4. ACCOUNTABILITY**

- 4.1 The Chief Officer is accountable for this policy.

## **5. IMPLEMENTATION AND MONITORING**

- 5.1 The Senior Management Team is responsible for formal approval and monitoring compliance with this policy. Following ratification the policy will be disseminated to staff via the intranet.
- 5.2 The policy and procedure will be reviewed periodically by the Senior Management Team in conjunction with Human Resource and Trade Union representatives where applicable. Where review is necessary due to legislative change, this will happen immediately.

## **6. RESPONSIBILITIES**

- 6.1 Good working relations are vital for the organisation to operate successfully and provide services. There is a joint responsibility for management, trade unions and employees to accept the responsibility of working together on issues in good faith and with the shared intention of facilitating good working relations. Both the organisation and staff side would wish to discourage any individual from exceeding the 48 hours per week maximum average. Staff Side is available to foster good working relations.

## **6.2 Employees**

6.2.1 It is the responsibility of employees to ensure that they:

- comply with this policy and procedure and raise any questions with their line manager or the HR team.
- adhere to the Working Time Regulations and take responsibility for the health and safety of themselves and others.
- seek permission from the organisation before undertaking secondary employment elsewhere by using the form in appendix 3 (see appendix 2 for definitions of Secondary Employment).
- sign a declaration form and an opt out form if appropriate at Appendix 3 and 4. Any individual who wishes to “opt out” because of secondary employment must seek permission from their line manager. They should also clearly state whether it is for a specific period or indefinitely.
- give 7 days’ written notice if they wish to end the agreement to opt out.
- complete a new Secondary Employment Declaration Form if the details of their secondary employment change.
- do not exceed the limit for their total working hours as set out in the Working Time Regulations unless an Opt out Form has been signed. Employees must comply with the required rest periods as set out in the Working Time Regulations and any secondary employment should not compromise this under any circumstances.

## **6.3 Line Managers**

6.3.1 It is the responsibility of line managers to ensure that they:

- manage in line with this policy to ensure the service; including patient care is not affected because someone is working above the maximum average weekly limit. If a manager is concerned it must be discussed with the employee and advice sought from the HR team, where appropriate.
- are satisfied that the safety of the individual, colleagues or patients are not put at additional risk by the individual’s request to opt out. Advice may be sought from the HR team and an appropriate risk assessment undertaken.
- monitor hours worked internally. If an employee also works in secondary employment they should only work a maximum of 48 hrs per week in both jobs.
- meet with the employee to discuss secondary employment on receipt of a Secondary Employment Declaration Form (appendix 3).
- give due consideration to operational business needs and personal circumstances before granting permission to undertake secondary employment.
- deal with any declarations in a timely manner.

## **6.4 Human Resources Team**

6.4.1 The Human Resource representative will provide advice and support on all aspects of this policy to ensure application and support.

## **7. PRINCIPLES OF THE WORKING TIME REGULATIONS AND SECONDARY EMPLOYMENT**

7.1 The Working Time Regulations came into force in the United Kingdom on 1st October 1998. They were introduced as a health and safety measure and cover rest periods, working time limits, night work, secondary employment and annual leave. They control both hours of work, and the pattern in which work can be organised (see appendix 1 for definitions of working time).

## **8. Working Time Limits**

- 8.1. Employees must not work more than an average of 48 hours per week, calculated over a 17 week reference period. The reference period will be a rolling one, for all employees. As a responsible employer the organisation does not support employees and other engaged workers working over these limits due to the adverse impact this may have on their and others health and safety.
- 8.2. In exceptional circumstances for those health professionals providing continuous care relating to reception, treatment or care of patients, the reference period may be extended to a maximum of 26 weeks with the agreement of the relevant Trade Union and management representative.
- 8.3. Young workers, those over the minimum school leaving age but under 18, may not work more than 8 hours a day or 40 hours a week. These hours cannot be averaged out, and there is no opt-out available

## **9. Rest Periods**

- 9.1. Employees are entitled to daily and weekly rest periods and in work rest breaks.
- A daily rest period of not less than 11 consecutive hours in each 24-hour period during which the employee works.
  - A weekly rest period of not less than 35 hours (including the 11 hours of daily rest) in each 7-day period. This may be averaged over 2 weeks i.e. 2 days' rest over a fortnight.
  - A minimum uninterrupted break of 20 minutes if the daily working time exceeds 6 hours. The break is unpaid.
  - Young workers are entitled to a break of 30 minutes if they work a 4½-hour period. They are entitled to a daily rest period of 12 consecutive hours in each 24-hour period and to 48 hours' uninterrupted rest in any 7-day period.
- 9.2. Please note that breaks are intended to be taken as rest periods during the working day. They cannot therefore be used at the beginning or end of the working day in order that employees may delay their start or finish early. If employees cannot take their daily and weekly rest periods, for business reasons and agreed with their line manager, they are entitled to compensatory rest. Unless there are exceptional circumstances, equivalent periods of compensatory rest should be given. Exceptional circumstances would include a need to provide security or protect persons or property, a foreseeable surge in activity e.g. winter pressures, or unforeseen circumstances beyond the employers control, e.g. unexpected weather, major pandemic which demands extra work to be carried out. Compensatory rest should be taken as soon as is reasonably practicable, and normally within 2 weeks.

## **10. Secondary Employment**

- 10.1. When an employee declares interest in secondary employment a meeting will take place to discuss the implications on the service and working time regulations before an agreement is made. The employee must complete appendix 3 Declaration of Secondary Employment.
- 10.2. Before granting permission to undertake secondary employment for current employees the manager should consider the following:
- Potential conflicts of interest.
  - The Working Time Regulations.

- The employee's current performance.
- The employee's attendance and capability in their role and the potential impact secondary employment may have on attendance and performance.
- Health and Safety of individuals, colleagues and service users.

If permission is granted and the combined number of hours across all employment exceeds 48 hours a week the line manager will ask the employee whether they wish to sign an opt out agreement (appendix 4). If the employee declines to sign an opt out agreement, advice must be sought by HR. The line manager should take reasonable steps to remove the health and safety risk for instance by asking the employee to reduce hours being worked where this is possible or informing the other employer that the employee is exceeding the 48 hour limit. Declarations of secondary employment and opt out forms must be kept on the employees personal file for record purposes. Line managers will monitor secondary employment to ensure this does not adversely affect their ability to satisfactorily perform their work for the organisation or put health and safety at risk.

- 10.3 For new starters, during the induction process the manager must establish whether the employee is carrying out any secondary employment and if they intend to continue with any secondary employment both inside and outside of the organisation. If the employee does intend to continue with any secondary employment the appointing manager should discuss with the employee the nature of the secondary employment and consider the following points before agreeing that the secondary work can continue:
- Potential conflicts of interest.
  - The Working Time Regulations.
  - Health and Safety of individuals, colleagues and service users.
- 10.4 Employees may not be able to undertake secondary employment whilst on sick leave from the organisation and guidance must be sought from HR. This includes any work during "off peak" periods, e.g. weekends and evenings unless a GP Certificate/note states otherwise.
- 10.5 If an employee wishes to continue with voluntary work whilst off sick they must request permission in writing from their manager. The employee should outline in the request the nature of the work they wish to undertake, the number of hours they intend to work and confirm that no payment will be received for this work (excluding expenses). The manager must seek advice from the HR team in this situation and advice from Occupational Health Services where appropriate. Permission may be granted based on the fact that it is beneficial to the employee's recovery and wellbeing to undertake the voluntary work.
- 10.6 Failure to adhere to this policy whilst on sick leave may result in disciplinary action which could lead to dismissal. Contravening this policy could also be considered fraud, in which case the matter would be referred to the Local Counter Fraud Service.

## **11. Retraction of Permission to Undertake Secondary Employment**

- 11.1. There may be circumstances where it is necessary for the organisation to retract its agreement for an employee to undertake secondary employment. Examples of these are outlined below.

### **Attendance / Time keeping**

Where attendance or time-keeping is of concern and is attributable to Secondary Employment the organisation reserves the right to retract any permission given to an employee to undertake secondary employment.

## **Capability / Performance**

Managers must monitor the performance of their staff. If performance falls below acceptable standards and the Managing Concerns with Performance Policy has been invoked the organisation reserves the right to retract any permission given to an employee to undertake secondary employment if the secondary employment is deemed to contribute to the poor performance.

## **A new Conflict of Interest**

There may be times where a new conflict of interest has arisen that did not previously exist when an employee was appointed or when permission was given by the organisation for an employee to undertake secondary employment. Employees have a responsibility to highlight any new potential conflicts of interest that arise or may arise with their manager. The manager must assess the risk of the potential conflict of interest and if anything can be put in place to prevent the conflict of interest (i.e. removing the employee from a certain project etc.). If this cannot be avoided and the risk to the organisation and service delivery is too high, permission to undertake secondary employment may be retracted.

## **12. On Call**

- 12.1. For the purpose of the WTR, working time will not start until the employee on call receives a call to go to work immediately, or responds to a call to deal with an incident over the phone and continues for the period they are working.

## **13. Annual Leave**

- 13.1. Under the WTR a worker is entitled to a minimum of 28 days paid leave per annum (pro rata), including bank holidays.

## **14. Night Work**

- 14.1. Night-time is defined by the period from 11.00 p.m. to 6.00 a.m. Employees who work on a 24-hour rotation which results in working regularly during night-time may be classed as night workers. A night worker is someone who normally works at least three hours during night-time on a nightly basis.
- 14.2. Time worked as overtime on a night-shift is not normal work and therefore the employee would not be classed as a night-worker. A night worker should not exceed an average of 8 hours in 24 hours over a 17-week period.
- 14.3. Where night workers are identified by a medical practitioner to suffer from health and safety problems relating to the performance of night work the organisation should consider transferring them to suitable available day work. A night worker is entitled to a free regular and confidential health-check by Occupational Health Services to check that they are fit to carry out night work. Paid time off will be given to employees to attend Occupational Health assessments.

## **15. Appeal**

- 15.1. The Employee reserves the right to invoke the grievance procedure if they feel that a decision to retract this permission is not justified or considers they have been unfairly treated in relation to their working time.

## **16. Link to Flexible Working Policy**

Working patterns and hours worked will be considered under the Working Time



## **DEFINITIONS OF WORKING TIME**

### **(NOT EXHAUSTIVE)**

Working time is defined as when someone is:

“Working at their employer’s disposal and carrying out their activity or duties.”

It has been agreed that the following constitutes working time:

**On-call:** Classed as working time from the point at which the employee is required to start work (e.g. called out or time spent on telephone) until the point the employee is required to stop.

**Travel to allocated base:** Not classed as working time, however travel between bases during the working day would be classed as working time, unless the terms and conditions specify otherwise. Any travel in connection with business would be classed as working time.

**Breaks:** Not classed as working time, except where individuals are required to work during meals.

**Civic and Public duties:** If staff receive paid time off these would be classed as working time.

**Trade Union duties:** If staff receive paid time off it would be classed as working time. Representatives should take some personal responsibility for ensuring that their contracted hours and trade union duties do not exceed an average of 48 hours per week.

**Work related Study Leave:** Any period during which staff are receiving relevant training. This includes work experience provided pursuant to a training course or programme, and training for employment. It does not include non-job-related evening classes or day release courses. For further information please refer to the Learning and Development policy.

Working time for the organisation does not include:

- Travelling between home and work.
- Lunch or rest breaks when no work is done.
- Evening classes or day-release courses (non-job related)
- Where staff are on call but otherwise free to use the time as their own, this will not count towards working time.
- Additional hours staff choose to do without being required by/ or without the agreement of their manager.

Please seek advice from your manager or HR team if you are unsure if the latter exception applies to you.

## DEFINITIONS OF SECONDARY EMPLOYMENT

### (NOT EXHAUSTIVE)

The term 'Secondary Employment' in this policy covers:

- Paid employment outside of the organisation.
- Paid employment within the organisation in a different service.
- Voluntary work outside of the organisation (***volunteering is any activity that involves spending time, unpaid, doing something that aims to benefit the environment or someone (individuals or groups) other than, or in addition to, close relatives. Volunteering is a choice freely made by each individual. This can include formal activity undertaken through public, private and voluntary organisations as well as informal community participation***) \*
- Self-employment.
- Bank / Locum / Agency Work.
- Reservist Occupations.

\* All hours worked will be considered (as listed above), to ensure the Working Time Regulations have been abided by.

**DECLARATION OF SECONDARY EMPLOYMENT**

There should be no conflict of interest between your duties and any other job.  
 If you have another job but there is no conflict of interest, you must still declare it below.

**PERSONAL DETAILS**

Full Name:

Title:

Job Title:

Department:

Hours of work per week:

Pattern of work (e.g. 24/7 shifts, 8:30am – 5:00pm):

Days worked:

**OTHER EMPLOYMENT / WORK DETAILS**

I have other employment / work or I am considering other employment / work including Bank/ Locum /Voluntary work/ Agency work. The details of which are below:

Organisation / Company / Agency:

Job Title:

Date employment began:

Description of work undertaken:

Type of work: (please circle)	Paid	Unpaid	Voluntary	Casual
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Hours per week:

Pattern of work (e.g. 24/7 shifts, 8:30am – 5:00pm):

Annual Leave Entitlement:

Date Commence (if already in secondary employment):

## DECLARATION

I declare that the above information is correct and that Secondary Employment in this instance will not have a detrimental effect on my work at the CCG. I will inform my Line Manager if there are any changes to the above.

I understand that false information given with regard to this policy could be treated as Gross Misconduct or fraudulent and dealt with accordingly under the Disciplinary/Counter Fraud Policy. To prevent and detect fraud, I consent to the disclosure of relevant information from this form to and by the NHS Counter Fraud Service.

I have read and understand the CCG's Working Time Regulations Policy and the organisation's code of business conduct as it relates to conflicts of interest and I agree to comply with its requirements to declare secondary employment. **I understand that my application will not be approved should my hours exceed those stipulated in the Working Time Directive.**

I declare that the information I have provided on this form is correct and complete.

Name:	
Signature:	
Date:	

Thank you for completing this form, please ensure that it is returned, fully completed and signed, to your line manager, for onward submission to Human Resources.

Line manager use only

Declaration (please delete as appropriate)	Acceptable	Unacceptable
Comments		
Would you like a HR Advisor to contact you regarding this declaration? (please delete as appropriate)	Yes	No
If yes, please give details of your query:		
Name:		
Signature:		
Date:		

## OPT OUT AGREEMENT

The Working Time Regulations define working time as when someone is “working, at his/her employer’s disposal and carrying out his/her activity or duties.”

This incorporates:

- Working lunches i.e. business lunches.
- If you have to travel as part of your work during working time.
- If you are engaged in job-related training.

You may agree to work up to 48 hours a week but cannot be forced or expected to work more than this limit. You cannot be dismissed or discriminated against for refusing to sign an opt out statement.

Should you wish to work more than the 48 hour week average, please sign the following opt-out agreement and return it to your manager. Your manager will then forward a copy of this to the workforce department.

Employee’s Name:

Job Title:

Work Telephone No:

Managers Name:

**I agree that I may work for more than an average of 48 hours a week. If I change my mind, I will inform the organisation in writing, to end this agreement giving 7 days’ notice.**

Signed: Print Name:

Date:

If you will be working more than 48 hours a week because of a second job please give details below:

Job Title in Second Job:

Name & Address of second employer:

Employees should be aware that the organisation reserves the right to not accept this Opt Out Form (if it believes the health and safety of any staff or patients are likely to be affected).

## Equality Impact Assessment

<b>Title of policy</b>	Working Time Regulations Policy	
<b>Names and roles of people completing the assessment</b>	Alison Ewart - HR Business Partner Nadeem Murtuja, Senior Associate E&D	
<b>Date assessment started/completed</b>	24/01/14	To be reviewed August 2018

**1. Outline**

<b>Give a brief summary of the policy</b>	This document sets out the CCG standard Working Time Regulations and Secondary Employment policy and procedures. It has been drafted to comply with statutory requirements. This should be read together with other relevant CCG policies, procedures and local guidance.
<b>What outcomes do you want to achieve</b>	To comply with statutory requirements and ensure a safe workplace.

**2. Evidence, data or research**

<b>Give details of evidence, data or research used to inform the analysis of impact</b>	The impact assessment is informed and supported by a holistic performance framework for equality and diversity across the suite of HR policies. After an initial screening the review has advised an impact assessment is not required for the policy as it is based on working time legislation.
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**4. Analysis of impact**

This is the core of the assessment, using the information above detail the actual or likely impact on protected groups, with consideration of the general duty to;  eliminate unlawful discrimination; advance equality of opportunity; foster good relations			
	<b>Are there any likely impacts?  Are any groups going to be affected differently?</b>	<b>Are these negative or positive?</b>	<b>What action will be taken to address any negative impacts or enhance positive ones?</b>

	<b>Please describe.</b>		
<b>Age</b>	No		
<b>Carers</b>	No		
<b>Disability</b>	No		
<b>Sex</b>	No		
<b>Race</b>	No		
<b>Religion or belief</b>	No		
<b>Sexual orientation</b>	No		
<b>Gender reassignment</b>	No		
<b>Pregnancy and maternity</b>	No		
<b>Marriage and civil partnership</b>	No		
<b>Other relevant group</b>	No		

<b>If any negative/positive impacts were identified are they valid, legal and/or justifiable?</b>			
<b>Please detail.</b>	No anticipated detrimental impact on any equality group. The policy is applicable to all employees and adheres to the NHS Litigation Authority Standards, statutory requirements and best practice. Makes all reasonable provision to ensure equity of access to all employees. There are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic.		

<b>5. Monitoring, Review and Publication</b>			
<b>How will you review/monitor the impact and effectiveness of your actions</b>	Will monitor applications of opt-out applications and secondary employment to ensure that there is no detriment suffered by any protected characteristic		
<b>Lead Officer</b>	Alison Ewart	<b>Review date:</b>	August 2018

<b>6. Equality and Diversity Sign off</b>			
Equality Lead Officer	Nadeem Murtuja		
		Date approved:	April 2014

<b>7. Sign off</b>			
<b>Lead Officer</b>	Fiona Stephens		
<b>Director</b>	Associate Director of Corporate Affairs	<b>Date approved:</b>	August 2015