
STATUTORY INSTRUMENTS

2004 No. 1713

The Fishing Vessels (Working Time:
Sea-fishermen) Regulations 2004

PART 2

RIGHTS AND OBLIGATIONS CONCERNING WORKING TIME

General

5. The provisions of this Part have effect subject to the exceptions provided for in Part 3 of these Regulations.

Maximum weekly working time

6.—(1) A worker's working time, including overtime, in any reference period which is applicable in his case shall not exceed an average of 48 hours for each seven days.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each worker employed by him in relation to whom it applies.

(3) Subject to paragraph (4) the reference period which applies in the case of a worker is any period of 52 weeks in the course of his employment.

(4) Where a worker has worked for his employer for less than 52 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his employer.

(5) For the purposes of this regulation, a worker's average working time for each seven days during a reference period shall be determined according to the formula—

$$\frac{A - B}{C}$$

where—

A is the aggregate number of hours comprised in the worker's working time during the course of the reference period;

B is the aggregate number of hours comprised in his working time during the course of the period beginning immediately after the end of the reference period and ending when the number of days in that subsequent period on which he has worked equals the number of excluded days during the reference period; and

C is the number of weeks in the reference period.

(6) In paragraph (5), "excluded days" means days comprised in—

- (a) any period of annual leave taken by the worker in exercise of his entitlement under regulation 11;
- (b) any period of sick leave taken by the worker; and

- (c) any period of maternity, paternity, adoption or parental leave taken by the worker.

Rest

7.—(1) A worker is entitled to adequate rest.

(2) For the purposes of this regulation, “adequate rest” means that a worker has regular rest periods, the duration of which are expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, he does not cause injury to himself, to fellow workers or to others and that he does not damage his health, either in the short term or in the longer term.

(3) Without prejudice to the generality of paragraph (2), a worker’s minimum rest periods shall be—

- (a) 10 hours in any 24-hour period, and
- (b) 77 hours in any seven-day period.

(4) The rest periods referred to in paragraph (3)(a) above may be divided into no more than two periods, one of which shall be at least six hours in length; and the interval between consecutive rest periods shall not exceed 14 hours.

Health assessment and transfer of night workers to day work

8.—(1) An employer—

- (a) shall not assign a worker to work which is to be undertaken during periods such that the worker will become a night worker unless—
 - (i) the employer has ensured that the worker will have the opportunity of a free health assessment before he takes up the assignment; or
 - (ii) the worker had a health assessment before being assigned to work to be undertaken during such periods on an earlier occasion, and the employer has no reason to believe that that assessment is no longer valid, and
- (b) shall ensure that each night worker employed by him has the opportunity of a free health assessment at regular intervals of whatever duration may be appropriate in his case.

(2) For the purpose of paragraph (1), an assessment is free if it is at no cost to the worker to whom it relates.

(3) No person shall disclose an assessment made for the purposes of this regulation to any person other than the worker to whom it relates, unless—

- (a) the worker makes the disclosure or has given his consent to it in writing, or
- (b) the disclosure is confined to a statement that the assessment shows the worker to be fit—
 - (i) in a case where paragraph (1)(a)(i) applies, to take up an assignment, or
 - (ii) in a case where paragraph (1)(b) applies, to continue to undertake an assignment.

(4) Where—

- (a) a registered medical practitioner has advised an employer that a worker employed by the employer is suffering from health problems which the practitioner considers to be connected with the fact that the worker performs night work, and
- (b) it is possible for the employer to transfer the worker to work—
 - (i) to which the worker is suited, and
 - (ii) which is to be undertaken during periods such that the worker will cease to be a night worker,

the employer shall transfer the worker accordingly.

Pattern of work

9. Where the pattern according to which an employer organises work is such as to put the health and safety of a worker employed by him at risk, in particular because the work is monotonous or the work-rate is predetermined, the employer shall ensure that the worker is given reasonable rest breaks.

Records

10. An employer shall—

- (a) keep records which are adequate to show whether regulations 6(1), 7(1), (3) and (4) and 8(1) are being complied with in the case of each worker employed by him in relation to whom they apply; and
- (b) retain such records for two years from the date on which they are made.

Entitlement to annual leave and payment for leave

11.—(1) Subject to paragraph (2), a worker is entitled to at least four weeks' annual leave and to be paid in respect of any such leave at the rate of a week's pay in respect of each week of leave.

(2) In respect of a period of employment of less than one year, a worker is entitled to annual leave of a proportion of four weeks equal to the proportion the period of employment in question bears to one year; the proportion to be determined in days and any fraction of a day to be treated as a whole day.

(3) Leave to which a worker is entitled under this regulation—

- (a) may be taken in instalments;
- (b) may not be replaced by a payment in lieu, except where the worker's employment is terminated.

(4) Sections 221 to 224 of the Employment Rights Act 1996(1) shall apply for the purpose of determining the amount of a week's pay for the purposes of paragraph (1), subject to the modifications set out in paragraph (5).

(5) The provisions referred to in paragraph (4) shall apply as if—

- (a) references to the employee were references to the worker;
- (b) references to the employee's contract of employment were references to the worker's contract;
- (c) the calculation date were the first day of the period of leave in question; and
- (d) the references to sections 227 and 228 did not apply.

(6) A right to payment under paragraph (1) does not affect any right of a worker to remuneration under his contract ("contractual remuneration").

(7) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Entitlements under other provisions

12. Where during any period a worker is entitled to a rest period or annual leave both under a provision of these Regulations and under a separate provision (including a provision of his contract), he may not exercise the two rights separately, but may, in taking a rest period or annual leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.