

**WORKING TIME ACT**

**Principal Act**

<b>Act. No. 1999-33</b>	<i>Commencement</i>	23.3.2000
	<i>Assent</i>	4.11.1999

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AN ACT TO IMPLEMENT IN GIBRALTAR THE PROVISIONS OF COUNCIL DIRECTIVE 93/104/EC CONCERNING CERTAIN ASPECTS OF THE ORGANISATION OF WORKING TIME.

## PART I. GENERAL.

### **Title and commencement.**

1. This Act may be cited as the Working Time Act, 1999 and comes into operation on such day as the Minister may appoint by notice in the Gazette and different days may be appointed for different purposes.

### **Interpretation.**

2. In this Act—

“the civil protection services” includes the police, the fire and ambulance services, customs and immigration services, and civilian voluntary rescue services;

“collective agreement” means an agreement reached between an employer or group of employers and their employees, either directly or through a trade union or unions, relating to any of the matters covered by this Act;

“day” means a period of 24 hours beginning at midnight;

“the Directive” means Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time;

“employer”, “employment” and “employed” relate to a contract of employment;

“the Minister” means the minister with responsibility for employment;

“night time” means the period between 11 p.m. and 6 a.m.;

“night work” means work during night time;

“night worker” means a worker who works, as a normal course, at least three hours of his daily working time during night time or who is likely to work such proportion of his annual working time during

night time as may be specified for the purposes of this Act in a collective agreement or workforce agreement;

“rest period” means a period which is not working time, other than a rest break or leave to which a worker is entitled;

“worker” means a person under a contract of employment or who provides work or services to another person under a contract which is not a contract for professional services;

“workforce agreement” means an agreement between an employer and workers employed by him or their representatives relating to any of the matters covered by this Act; and

“working time” means any period during which a worker is working at the employer’s disposal and carrying out his activity or duties.

## PART II.

### RIGHTS AND OBLIGATIONS CONCERNING WORKING TIME.

#### **General.**

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

#### **Maximum weekly working time.**

4.(1) Subject to subsection (3), a worker’s average working time, including overtime, shall not exceed 48 hours each week.

(2) The average time shall be computed over a period of 17 weeks, but excluding any periods of sick leave, maternity leave or annual leave.

(3) Subsection (1) does not apply to any worker who has agreed with his employer in writing that it should not apply to him, if the employer complies with the requirements of subsection (4).

- (4) The requirements referred to in subsection (3) are that the employer–
- (a) keeps up-to-date records of all workers who carry out such work;
  - (b) permits the Factories Inspectors to inspect those records;

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- (c) provides, on request, to the Factories Inspectors information on cases where agreement to carry out such work has been given; and
- (d) does not subject any of his employees to any detriment because he does not agree to carry out such work.

(5) An agreement under subsection (3) may provide for a notice period of not more than three months; where no notice period is provided, the worker may terminate it by giving not less than seven days' notice.

## **Night work.**

5.(1) A night worker's average normal hours of work shall not exceed eight hours in each 24-hour period.

(2) The average hours of work shall be computed over a period of 17 weeks but excluding any period of sick leave, maternity leave or annual leave and any rest period entitlement under section 9.

(3) A night worker whose work involves special hazards or heavy physical or mental strain shall not work for more than 8 hours in any period of 24 hours.

(4) For the purposes of subsection (3), work involving special hazards or heavy mental or physical strain means work identified as such—

- (a) in any collective or workforce agreement;
- (b) by the employer in any risk assessment made by him; or
- (c) by the Factories Inspectors.

(5) An employer of a night worker shall ensure that he has the opportunity of a health assessment at no cost to the worker before the assignment to night work and at regular intervals thereafter.

(6) The health assessment referred to in subsection (5) shall not be disclosed to any person except the worker to whom it relates unless the worker has given his consent in writing to the disclosure, or the disclosure is confined to a statement that the worker is fit to carry out night work.

(7) An employer shall wherever possible transfer a night worker who is suffering from health problems connected with the fact that he performs night work to day work to which he is suited.

**Pattern of work.**

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

**Records.**

7. An employer shall keep records for a minimum of two years from the date to which they refer which are adequate to show whether the limits referred to in sections 4, and 5 are being complied with.

**Daily rest.**

8.(1) A worker aged 18 or over is entitled to a rest period of not less than 11 consecutive hours in each 24 hour period during which he works for his employer.

(2) A worker between the ages of 15 and 18 is entitled to a rest period of not less than 12 hours in each 24 hour period during which he works for his employer; this rest period may be interrupted in the case of in the case of activities involving periods of work that are split up over the day or of short duration.

**Weekly rest period.**

9.(1) A worker aged 18 or over is entitled to an uninterrupted rest period of not less than 24 hours in each 7 day period during which he works for his employer.

(2) In place of the entitlement in subsection (1), if the employer so determines, a worker aged 18 or over is entitled to two uninterrupted rest periods of not less than 24 hours in each 14 day period or one uninterrupted rest period of not less than 48 hours in each 14 day period; the rest period should normally include a Sunday.

(3) A worker between the ages of 15 and 18 is entitled to a rest period of not less than 2 days, consecutively if possible, in each 7 day period in which he works for his employer.

(4) For the purposes of subsections (1) to (3), a 7 or 14 day period begins at the time set out in a workforce or collective agreement, or, in the absence of such an agreement, at the start of a week.

(5) The minimum rest period under subsection (1) or (2) shall not include any part of a rest period to which the worker is entitled under section 8(1), except where this is justified by technical or work organisation conditions.

## **Rest breaks.**

10.(1) A worker aged 18 or over is entitled to a rest break if his daily working time is more than 6 hours.

(2) The details of the rest break may be contained in a collective or workforce agreement; in the absence of such an agreement the rest break shall be an uninterrupted period of not less than 20 minutes.

(3) A worker aged between 15 and 18 is entitled to a rest break of an uninterrupted period of not less than 30 minutes if his daily working time is more than 4 hours; and, if such a worker works for more than one employer, his daily working time shall be aggregated.

## **Annual holiday.**

11.(1) The following is deleted from paragraph 7(1)(a) of the Employment (Annual and Public Holidays) Order - “for not less than twenty hours”.

(2) The following is inserted after “Schedule 2” in paragraph 4(1) of the Employment (Annual and Public Holidays) Order - “and the duration of the annual holiday of part-time employees shall be calculated pro rata to the columns headed “5 days or less” in Schedule 2.”.

(3) In the Table in Schedule 2 to the Employment (Annual and Public Holidays) Order, the words “or less” are deleted in each column headed “5 days or less”.

## **Employment in dangerous industries.**

12. No person under the age of 16 years shall be admitted to any employment which, by its nature or the circumstances in which it is carried on, is dangerous to life, health or morals of the persons employed therein.

## **PART III. EXCEPTIONS.**

### **Excluded sectors.**

13.(1) Sections 4 to 10 do not apply to a worker employed in air, rail, road or sea transport, sea fishing or other work at sea, the activities of doctors in

training, or the specific activities of the armed forces of the Crown or the civil protection services.

(2) Sections 4 and 5, and 7 to 10 do not apply to a worker where, on account of the specific characteristics of the activity in which he is engaged, the duration of his working time is not measured or predetermined or can be determined by the worker himself and particularly in the case of -

- (a) managing executives or other persons with autonomous decision-making powers;
- (b) family workers; or
- (c) workers officiating at religious ceremonies in churches and religious communities.

(3) Sections 5, 8, 9 and 10 do not apply to a worker—

- (a) where the worker's activities are such that his place of work and place of residence are distant from one another or his different places of work are distant from one another;
- (b) where the worker is engaged in security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms;
- (c) where the worker's activities involve the need for continuity of service or production, particularly—
  - (i) services relating to the reception, treatment or care provided by hospitals or similar establishments, residential institutions and prisons;
  - (ii) work at docks or airports;
  - (iii) press, radio, television, cinematographic production, postal and telecommunications services and civil protection services;
  - (iv) gas, water and electricity production, transmission and distribution, household refuse collection and incineration;
  - (v) industries in which work cannot be interrupted on technical grounds;



- (vi) research and development activities;
- (d) where there is a foreseeable surge of activity, particularly in–
  - (i) tourism; and
  - (ii) postal services;
- (e) where the worker's activities are affected by–
  - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the control of the worker's employer, or to exceptional events, the consequences of which could not have been avoided despite the exercise of all due care; or
  - (ii) an accident or the imminent risk of an accident.

## **Shift workers.**

14.(1) Subject to section 16 –

- (a) section 8 does not apply in relation to a shift worker when he changes shift and cannot take a daily rest period between the end of one shift and the start of the next one;
- (b) section 9 does not apply to a shift worker when he changes shift and cannot take a weekly rest period between the end of one shift and the start of the next one; and
- (c) neither section 8 nor section 9 applies to a worker engaged in activities involving periods of work split up over the day, particularly those of cleaning staff.

(2) For the purposes of this section–

“shift worker” means any worker whose work schedule is part of shift work; and

“shift work” means any method of organizing work in shifts whereby workers succeed each other at the same workstations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks.

**Collective and workforce agreements.**

15. A collective agreement or a workforce agreement may—

- (a) modify or exclude the application of sections 5, 8, 9, and 10, and
- (b) for objective or technical reasons or reasons concerning the organization of work, modify the application of section 4 by the substitution, for each reference to 17 weeks, of a different period, being a period not exceeding 52 weeks,

in relation to particular workers or groups of workers.

**Compensatory rest.**

16. Where the application of any provision of this Act is excluded by section 13 or 14, or is modified or excluded by means of a collective agreement or a workforce agreement under section 15, and a worker is accordingly required by his employer to work during a period which would otherwise be a rest period—

- (a) his employer shall wherever possible allow him to take an equivalent period of compensatory rest, and
- (b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, his employer shall afford him appropriate protection.

**Young workers: force majeure.**

17.(1) Sections 8 and 10 do not apply in relation to a worker aged between 15 and 18 where his employer requires him to undertake work which no worker aged 18 or over is available to perform and which—

- (a) is occasioned by unusual and unforeseeable circumstances, beyond the employer's control, or exceptional events, the consequences of which could not have been avoided despite the exercise of all due care;
- (b) is of a temporary nature; and
- (c) must be performed immediately.

(2) Where the application of section 8 or 10 is excluded by sub-section (1), and a worker under the age of 18 is accordingly required to work during

a period which would otherwise be a rest period or rest break, his employer shall allow him to take an equivalent period of compensatory rest within the following three weeks.

## **PART IV. MISCELLANEOUS.**

### **Enforcement.**

18.(1) It shall be the duty of the Factories Inspectors to make adequate arrangements for the enforcement of this Act and the Minister with responsibility for employment may make regulations prescribing their duties.

### **Offences.**

19.(1) An employer who fails to comply with sections 5(5) to (7), 6 and 7 is guilty of an offence.

- (2) An employer guilty of an offence under sub-section (1) is liable—
  - (a) on summary conviction, to a fine up to level 5 on the standard scale;
  - (b) on conviction on indictment, to a fine.

### **Remedies.**

20.(1) A worker may present a complaint to the industrial tribunal that his employer—

- (a) has refused to permit him to exercise any right he has under—
    - (i) section 8, 9, 10 or 11; or
    - (ii) section 16, in so far as it applies where section 8, 9 or 10 is modified or excluded; or
  - (b) has failed to pay him the whole or any part of any amount due to him under section 11.
- (2) The industrial tribunal shall not consider a complaint under this section unless it is presented—
- (a) before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should

have been permitted (or in the case of a rest period extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;

- (b) within such other period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where the industrial tribunal finds a complaint under subsection (1)(a) well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the worker.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the employer's default in refusing to permit the worker to exercise his right, and
- (b) any loss sustained by the worker which is attributable to the matters complained of.

(5) Where on a complaint under sub-section (1)(b) the industrial tribunal finds that an employer has failed to pay a worker in accordance with section 11, it shall order the employer to pay to the worker the amount which it finds to be due to him.