

NTF/NARS EMPLOYMENT GUIDELINES FOR RACING STAFF

NATIONAL JOINT COUNCIL FOR RACING STAFF

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INTRODUCTION

To help the membership, the NTF executive and its employment advisors met with NARS and reached certain collective agreements. These are for a 52 week reference period, amended holidays arrangements and a precise definition for the starting of the working week. The starting time for a seven day period for the provision of weekly rest breaks shall be 7am unless a different time is defined as appropriate. We also explained to NARS the advice we will be giving members in respect of daily and weekly rest breaks and it confirms that it is in agreement with this advice.

MAXIMUM WEEKLY WORKING TIME

Legal provision

An adult worker's weekly working time, including overtime shall not exceed an average of 48 hours for each seven days, applied over a 17 week reference period. An adult worker is one aged 18 or over.

Agreement

The NTF and NARS have reached a collective agreement under clause 23(b) of the Regulations stating that due to technical and objective reasons concerning the organisation of work the 17 week reference period is replaced with successive fixed reference periods of 52 weeks from 5th October 1998.

Opt Out

The Regulations also allow for individual employees whose working time is likely to exceed an average of 48 hours over 52 weeks to be excluded from the Regulations provided:

1. They sign an opt out agreement (model opt out agreement and covering letter provided at Appendix A)
2. Up to date records are kept which:

- a) identify each employee who has signed an opt out agreement
- b) set out any terms on which the employee has agreed the limits should not apply.

DAILY AND WEEKLY REST BREAKS – ADULT WORKERS

Legal Provision

An adult worker 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. An adult worker is entitled to an uninterrupted rest period of not less than 24 hours in each 7-day period in which he works for his employer or one uninterrupted rest period of not less than 48 hours in each 14-day period.

Advice

Regulation 22(1)(c) states that daily and weekly rest breaks do not apply to adult workers engaged in activities involving periods of work split up over the day, providing that compensatory rest is provided. This means that time off in the middle of the day or time not working at the races will count as compensatory rest periods towards meeting the 11 hour entitlements.

The weekly rest period (24 hours) must normally be taken in addition to the daily rest period (11 hours) so that an adult worker would normally be entitled to one rest period of at least 35 consecutive hours each week. However, the daily rest period can be excluded where it is justified by objective or technical reasons or reasons concerning the organisation of work. The training industry can justify such exclusion. Regulation 22(1)(c) also applies so that time off in the middle of the day or time not working at the races will count as compensatory rest periods towards meeting the 24 hour entitlement.

DAILY AND WEEKLY REST PERIODS – YOUNG WORKERS

Legal Provision

A young worker is defined as an individual who has attained the age of 15 but not after the age of 18. A young worker is entitled to a rest period of not less than 12 consecutive hours in each 24 hour period during which he works for his employer. Regulation 10(3) states the rest period may be interrupted in the case of activities involving periods of work that are split up over the day. A young worker is entitled to a rest period of not less than 48 hours in each 7 day period he works for his employer. Regulation 11(8)(b) states that this entitlement may be reduced to 36 consecutive hours for technical or organisation reasons which the training industry will be able to justify.

Agreement

In order to achieve maximum flexibility the NTF and NARS have reached a collective agreement under clause 11(4)(a) that a 7 day period for the calculation of weekly rest for a young workers shall commence at 7am unless defined at yard level.

Advice

The daily rest period of 12 hours may be interrupted where periods of work are split up over the day. This means that time off in the middle of the day or time not working at the races can count towards the daily rest period.

The entitlement of 36 consecutive hours in a 7 day period creates a problem with young people working weekends as they have an entitlement to cease work 36 hours before they are due to start on a Monday morning. They can waive this entitlement if they choose and volunteer to work on Sundays. Young workers should not ordinarily work more than 8 hours a day nor more than 40 hours a week and young workers cannot opt out of the 40 hour limit.

HOLIDAYS

Legal provision

By law a worker is entitled to a minimum of 5.6 weeks paid holiday a year, capped at 28 days for those working more than a 5 day week. The NTF and NARS under their collective agreement have agreed a minimum holiday entitlement of 30 days per annum to include bank and public holidays, with additional holiday entitlement with length of service.

Except in some specific circumstances where holiday has not been taken due to sickness absence or maternity, paternity or adoption leave the holiday can only be taken in the leave year in which it is due and no part of the minimum 5.6 weeks holiday may be replaced by payment in lieu except when the worker's employment is terminated.

Advice

Trainers can chose which holiday year suits their circumstances and must advise staff of the holiday year applicable to their employment.

Annual leave is an entitlement. If an employee requests that any holiday in excess of the 5.6 weeks entitlement is carried over to another year or is paid in lieu, then the employer can agree to that request.

Where a worker is expected to work on any day which is a bank or public holiday an alternative day will be taken to be mutually agreed.

Trainers and workers should refer to the NTF/NARS collective agreement from time to time in force for further detailed information on holiday entitlement.

Further advice on specific holiday issues available from the NTF and NARS or from government websites such as www.businesslink.gov.uk and www.acas.org.uk

RECORD KEEPING

Legal Provisions

There is a general obligation for employers to keep and retain records to show that the hourly limits on working time are complied with.

Advice

The employer must keep and retain records adequate to show that the hourly limit on working time has not been exceeded. In circumstances where employees keep regular hours but there are less than 48 hours per week (e.g. 7am – 12.30 pm excluding half hour breakfast Monday to Saturday 4pm – 6pm Monday to Friday plus one weekend in two) an employer could require employees to notify them that they are working in excess of 48 hours per week, perhaps on a pre-printed form. An employer adopting this system should also regularly remind employees of the requirement to complete the form, perhaps on a notice board in the tack room or in a statement in the pay packet.

Having reviewed the completed forms, or taken in account the lack of them, the employer can then take a view as to whether there is any risk of working times being infringed. Records relating to the hours of work of only those employees who completed the form would then be maintained whereas the employer could rely on the standard contractual hours as the records in other cases. If the forms show that an employee is regularly working more than 48 hours, the employer will need to monitor the employee's hours much more closely and take appropriate action.

The following calculation should be used to calculate the average working time per seven days in each reference period (52 weeks from 5th October).

The formula used $\frac{A+B}{C}$ where:

A is the number of hours worked during the reference period

B is the number of hours worked in the period equivalent to the excluded days *

C is the number of weeks in the reference period (52)

*Excluded Days - statutory leave, sickness absence and maternity absence will be excluded from the hours counted in a particular reference period. The number of hours worked in the equivalent number of days when the employee is at work immediately following the reference period will be included in their place. Therefore, if a worker normally works from Monday to Saturday lunchtime and has taken a week's statutory leave during the reference period, five and a half days (not seven days) will be excluded days. The first five and a half days on which the worker works after the end of the reference period will replace those excluded days.

APPENDIX A

LETTER TO NTF MEMBERS ON THE IMPLEMENTATION OF THE EUROPEAN WORKING TIME DIRECTIVE – 1 OCTOBER 1998

Specimen letter to accompany individual opt out agreement as shown overleaf

Date

Address

Dear [name of employee]

I am writing to confirm that what we discussed about individual opt out agreements from the limit on weekly working time in the Working Time Regulations.

The National Joint Council for Racing Staff believes that its established working hours suit both employees' and employers' needs well. The Working Time Regulations 1998 state that an employee cannot be required to work for more than 48 hours a week, unless he/she signs an individual opt out agreement, agreeing that the limit will not apply to him/her.

If you would like to continue to work more than 48 hours a week from time to time you will need to sign and return the enclosed agreement to me. The sole purpose of the agreement is to ensure that our current working practices comply with the law. **There will be no change to your terms and conditions as a result.**

If you have any concerns about this agreement, please discuss them with me.

Yours sincerely

[name of employer]

INDIVIDUAL OPT OUT AGREEMENT

Agreement to Opt Out of Regulation 4(1) of the Working Time Regulations 1998 about Maximum Weekly Working Time

I [name of employee] of [address of employee] agree with [name of employer] of [address of employer] that the limit in regulation 4(1) of the Working Time Regulations 1998 shall not apply to me and that my average working time may therefore exceed 48 hours for each seven day period (as defined by and calculated in accordance with the Working time Regulations 1998)

1. This agreement shall apply from [date] until [date]
2. I agree that I will comply with any and all policies of the employer from time to time in force which relate to its maintenance of records of my hours of work.
3. This agreement can be terminated by me giving three months notice in writing to the employer.

Signed:

Dated :

[name of employee

Signed :

Dated :

[Name of employer]

