

L.N. 247 of 2003

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT, 2002
(ACT NO. XXII OF 2002)**

Organisation of Working Time Regulations, 2003

IN exercise of the powers conferred by article 6 of the Employment and Industrial Relations Act 2002, the Deputy Prime Minister and Minister for Social Policy, has made the following regulations.

1. (1) The title of these regulations is the Organisation of Working Time Regulations, 2003. Title and commencement.

(2) These regulations shall come into force on such date as the Minister responsible for employment and industrial relations may, by order or orders, direct and different dates may be fixed in respect of different provisions or purposes of these regulations or different sectors of employment.

2. (1) In these regulations, unless the context otherwise requires: Interpretation.

“the Act” means the Employment and Industrial Relations Act, 2002;

“adequate rest” means such rest periods, the duration of which is 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, workers do not cause injury to themselves, to fellow workers or to others;

“civil protection services” includes the police, fire brigades and ambulance services, the security and intelligence services, customs and immigration officers, the prison service, any voluntary rescue services, port and airport safety officers and air traffic controllers;

“Director” means the Director responsible for employment and industrial relations;

“employer” includes a partnership, company, association or other body of persons, whether vested with legal personality or not, and in relation to a worker means the person by whom the worker is, or, where the employment has ceased, was employed;

“family worker” shall mean a relative of the employer to the second degree, ascending or descending as well as persons under the legal custody of the employer;

“Minister” means the Minister responsible for employment and industrial relations;

“mobile worker” means any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road, air or inland waterway;

“night time” means the period between 10 p.m. of any one day and 6 a.m. of the next day;

“night worker” means a worker who:

- (a) works at least three hours of his daily working time as a normal course during night time; or
- (b) works more than 50 per cent of his annual working time, or such lower proportion as may be specified in appropriate provisions of a relevant collective agreement during night time:

Provided that for the purposes of paragraph (a) of this definition, the term “normal course” means those instances where the worker works such hours on the majority of days during which he works;

“offshore work” means work performed mainly on or from offshore installations, including drilling rigs, directly or indirectly in connection with the exploration, extraction or exploitation of mineral resources, including hydrocarbons, and diving in connection with such activities, whether performed from an offshore installation or from a vessel;

“rest period” means any period which is not working time and does not include leave to which a worker is entitled under these regulations;

“shift work” means any method of organising work in shifts whereby workers succeed each other at the same work stations 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;

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

“working time” means any period during which the worker is available for service to the employer and is carrying out his activity or duties, and includes any relevant training and any other additional period which is to be treated as working time for the purpose of these regulations under any relevant agreement and “work” shall be construed accordingly.

(2) Subject to the provisions of sub-regulation (1) of this regulation, terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

3. (1) These regulations shall be construed as a National Standard Order and lay down the minimum requirements for the organisation of working time. Purpose, scope and applicability of regulations.

(2) These regulations shall apply:

(a) to minimum periods of daily rest, weekly rest and annual leave, and to breaks; and

(b) to maximum weekly working time; and

(c) to certain aspects of night work, shift work and patterns of work; and

(d) unless otherwise provided hereunder in these regulations or in any applicable law, these regulations shall apply to all sectors of activity, both public and private.

(3) These regulations shall not apply:

(a) where other legislation laying down more specific provisions relating to the organisation of working time for certain occupations or occupational activities are in force;

(b) to seafarers on board every seagoing vessel, whether publicly or privately owned.

(4) These regulations shall be applicable without prejudice to the introduction and implementation of provisions in collective agreements or any other agreement entered into between employers and employees, which are more favourable to the protection of the safety and health of workers.

(5) These regulations shall be read and construed together with the provisions of any applicable health and safety legislation and in the case of conflict, these regulations shall apply.

Minimum Rest Periods and Maximum Working Time

Daily rest.

4. Every worker shall be entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period during which the worker performs work for his employer.

Rest breaks.

5. (1) Every worker shall be entitled to a rest break where the working day is longer than six hours.

(2) The rest break to which a worker shall be entitled, including its duration and the terms on which it is granted, shall be in accordance with any provisions laid down in collective agreements or any other agreement entered into between employers and employees.

(3) Subject to the provisions of any applicable collective agreement in accordance with regulation 3(4), the rest break provided for in sub-regulation (1) of this regulation shall be for an uninterrupted period of not less than fifteen minutes, and the worker shall be entitled to spend it away from his workstation, if he has one.

Weekly rest period.

6. (1) Subject to the provisions of sub-regulations (2) and (3) of this regulation, every worker shall be entitled to a minimum uninterrupted weekly rest period of 24 hours, in addition to the daily rest period of 11 hours referred to in regulation 4, for each seven-day period during which the worker works for the employer:

Provided that, if the employer proves to the Director that technical or work organisation conditions so require, then a minimum rest period of 24 hours for each seven day period shall be applied so as to resolve the technical or work organisation conditions:

Provided further that if the employer fails to prove to the Director that technical or work organisation conditions so require, the Director shall have the power to oblige the employer to allow the worker a weekly rest period as provided in the first paragraph of this sub-regulation.

(2) Notwithstanding the provisions of sub-regulation (1) of this regulation, the weekly rest period may be calculated over a 14-day reference period if the employer so determines, and in such cases, a worker shall be entitled to either -

(a) two uninterrupted rest periods each of not less than 24 hours, each preceded by a daily rest period, in each 14-day period during which the worker works for the employer; or

(b) one uninterrupted rest period of not less than 48 hours, preceded by a daily rest period, in each such 14-day period during which the worker works for the employer.

7. (1) Saving as otherwise provided in these regulations, the average working time for each seven-day period of a worker, including overtime, shall not exceed 48 hours: Maximum average weekly working time.

Provided that:

(a) the average weekly working time shall be calculated from the total number of hours worked in a reference period as specified in sub-regulation (3) of this regulation;

(b) the periods of paid annual leave, granted in accordance with regulation 8 of these regulations, the periods of sick leave as specified in any relevant legislation issued in terms of the Act or as may be specified in a relevant collective agreement and any other leave to which a worker shall be entitled pursuant to any relevant legislative provision issued in terms of the Act shall not be included in the calculation of the average.

(2) Sub-regulation (1) of this regulation shall not apply:

(i) until 31st July, 2004 in the following manufacturing sub-sectors:

- food and beverages,
- textiles,
- clothing and footwear,
- transport equipment,

- electrical and electronic machinery, appliances and supplies,
- furniture;

(ii) until 31st December, 2004 in respect of collective agreements existing on 12th December, 2001 in the above mentioned sub-sectors where these agreements contain clauses relevant to this regulation with validity beyond July 2004.

(3) Subject to any relevant provisions in any applicable collective agreement in accordance with regulation 3(4) of these regulations, the reference periods which apply in the case of a worker are -

(a) in the case of the manufacturing sector and the tourism sector, including travel and catering establishments, a period of 52 weeks;

(b) where a relevant collective agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period;

(c) in any other case, any period of 17 weeks in the course of the worker's employment.

(4) Where a worker has been in employment for his employer for less than 17 weeks, the applicable reference period shall be the period that has elapsed since starting work for the employer.

(5) It shall be the duty of the employer to ensure that the limit specified in sub-regulation (1) shall be complied with, in the interests of the health and safety of the workers.

(6) Any provisions in any other legislation issued under the Act which relate the minimum weekly wage of a whole-time employee to a weekly working time of more than 48 hours, shall, henceforth, be considered to relate such minimum weekly wage to a maximum average weekly working time of 48 hours.

Annual leave.

8. (1) Every worker shall be entitled to paid annual leave of at least the equivalent in hours of four weeks and four working days calculated on the basis of a 40-hour working week, and an 8-hour working day and out of this paid annual leave entitlement, a minimum period equivalent to four weeks may not be replaced by an allowance in lieu, except where the employment relationship is terminated, and any agreement to the contrary shall be null and void:

Provided that in cases where the average weekly working time, calculated on the basis of a reference period of 17 weeks, is below or exceeds 40 hours per week, the annual leave entitlement in hours shall be adjusted accordingly:

Provided further that the average weekly working time shall be calculated on the normal hours of work of the employee and shall not include overtime hours.

(2) With the exception of the hours of annual leave entitlement which may be availed of as urgent leave, leave shall be availed of as whole working days, with the equivalent number of hours being deducted from the annual leave entitlement calculated in hours, unless otherwise provided for in a collective agreement or established by mutual consent:

Provided that in cases when the residual hours of annual leave entitlement is less than the equivalent of a whole working day, such residual leave entitlement shall be granted on one occasion as part of a whole working day.

(3) Notwithstanding the provisions of sub-regulation (1) of this regulation, a proportion of the leave entitlement not exceeding 50% of the annual leave entitlement, may, by mutual agreement between employer and employee, be carried over once to the next calendar year. Such vacation leave carried forward from the previous year will be utilised first, and may not be carried forward again.

(4) When an employee is in employment for less than 12 months in any calendar year, the worker shall be entitled to such annual leave as is in proportion to the period in employment.

(5) Every whole-time employee shall be entitled to the national holidays and to all public holidays with full pay.

(6) Subject to any relevant provision in a recognised collective agreement or established by mutual consent:

(a) in the case of workers on a regular daily schedule, when a national holiday or public holiday falls on a worker's day of rest, the worker shall be credited with extra hours of annual leave equivalent to the number of hours of a normal working day;

(b) notwithstanding the preceding paragraph, in the case of workers on irregular schedules or where the hours of work vary

from day to day, the hours of work equivalent to a working day which are to be credited to the annual leave entitlement of such workers when a public holiday or a national holiday falls on a day of rest shall be calculated on the basis of the number of normal hours scheduled to be worked in a 17 week period, divided by the number of working days in that same period.

Night Work and Shift Work

Length of night
work.

9. (1) Subject to the provisions of sub-paragraph (2) of this regulation a night worker's normal hours of work shall not exceed an average of eight hours in any 24-hour period:

Provided that the average number of hours worked each night shall be calculated on the total number of hours worked in a reference period as specified in sub-regulations (4) and (5) of this regulation:

Provided further that if the minimum weekly rest period of 24 hours required by regulation 6 falls within the reference period it shall not be included in the calculation of the average.

(2) The employer shall ensure that no night worker whose work involves special hazards or heavy physical or mental strain shall work more than eight hours in any period of 24 hours during which night work is performed.

(3) For the purposes of sub-regulation (2) of this regulation, work involving special hazards or heavy physical or mental strain shall be recognised as such by means of :

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(a) a risk assessment carried out by the employer pursuant to article 6 of the Occupational Health and Safety Authority Act; or

(b) appropriate provisions in collective agreements pursuant to regulation 3(4) of these regulations specifying particular work activities, taking account of the specific effects and hazards of night work.

(4) The reference periods which apply in the case of a night worker shall be defined:

(a) by collective agreements, or

(b) in any other case by any period of 17 weeks in the course of employment.

(5) Where a worker has been in employment with his employer for less than 17 weeks, the applicable reference period shall be the period that has elapsed since starting work for the employer.

10. (1) Prior to assigning a worker to carry out night work and at regular intervals thereafter, it shall be the duty of an employer to take the necessary measures to ensure that the worker concerned undergoes a suitable health assessment to determine the worker's health status in order to ascertain fitness for the proposed work:

Health assessment and transfer of night workers to day work.

Provided that an employer shall repeat the health assessment after a reasonable length of time has elapsed since a previous assessment or whenever there has been a change in the working environment or in the health status of the worker.

(2) No person shall disclose a health assessment made for the purposes of this regulation to any person other than the worker to whom it relates, unless -

(a) the worker has given his consent in writing to the disclosure, or

(b) the disclosure is confined to a statement that the assessment shows the worker to be fit or unfit as the case may be prior to undertaking an assignment, or to continue to undertake an assignment.

(3) 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.

(4) The employer shall not levy or permit to be levied on any worker any charge or deduction in wages in respect of anything done pursuant to any measure required by these regulations.

Notification of regular use of night workers.

11. It shall be the duty of an employer who regularly uses night workers, to keep adequate records on any workers carrying night work to show that there is suitable compliance with the provisions of these regulations and to furnish the Director, whenever so requested, with any information related to night work which may be considered necessary.

Pattern of work.

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12. It shall be the duty of the employer to ensure that a worker shall be given adequate rest breaks, to the satisfaction of the Director, where a risk assessment in terms of the General Provisions for Health and Safety at Workplaces Regulations, or any other relevant health and safety legislation which may be in force from time to time, and carried out to the satisfaction of the Occupational Health and Safety Authority, shows that the pattern according to which an employer organizes work is such as to put the health and safety of a worker employed by him at risk, and in particular, because the work is monotonous or the work-rate is predetermined.

Miscellaneous Provisions

Exceptions.

13. Regulations 4, 5, 6, 7 and 9, shall not apply in relation to a worker where, on account of the specific characteristics of the activity in which the worker is engaged, the duration of the working time is not measured or predetermined or can be determined by the worker, as may be the case for, but not limited to –

(a) managing executives or other persons with autonomous decision-taking powers;

(b) family workers; or

(c) workers officiating at religious ceremonies in churches and religious communities.

Compensatory rest.

14. Where the application of any provision of these regulations is excluded by regulation 15 or 16 hereunder, or is modified or excluded by means of a collective agreement under regulation 17, and a worker shall be accordingly required by his employer to work during a period which would otherwise be a rest period or rest break -

(a) the employer shall, notwithstanding such exemption, be obliged to ensure that any worker concerned is allowed such compensatory rest period or rest break, as the case may be, that can be reasonably considered as equivalent to the rest period or break referred to in regulation 4 or 6 of these regulations, and

(b) in exceptional cases in which it shall not be possible, for objective reasons, to grant such a period of rest, the employer shall afford the worker such protection as may be appropriate in order to safeguard the worker's health and safety:

Provided that the arrangement with regards to the conditions of work provided for in this regulation shall not include:

(i) the granting of monetary compensation to the worker; or

(ii) the provision of any other material benefit to the worker other than the provision of such a benefit as will improve the physical conditions under which the worker works or the amenities or services available to the worker while working.

15. Subject to the provisions of regulation 14, regulations 4, 5, 6, and 9 shall not apply - Other special cases.

(a) in relation to activities where the worker's place of work and place of residence are distant from one another, including offshore work, or his different places of work with the same employer are distant from one another;

(b) in relation to security and surveillance activities requiring a permanent presence in order to protect property and persons, as may be the case for security guards and caretakers or security firms;

(c) in relation to activities involving the need for continuity of service or production, as may be the case in relation to -

(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 plants;

(v) industries in which work cannot be interrupted on technical grounds;

(vi) research and development activities;

(vii) agriculture;

(viii) workers concerned with the carriage of passengers on regular urban transport services;

(d) where there is a foreseeable surge of activity, as may be the case in relation to -

(i) agriculture;

(ii) tourism; and

(iii) postal services;

(e) in the case of persons working in railway transport:

(i) whose activities are intermittent;

(ii) who spend their working time on board trains; or

(iii) whose activities are linked to transport time-tables and to ensuring the continuity and regularity of traffic;

(f) 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;

(ii) exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer; or

(iii) an accident or the imminent risk of an accident.

16. Subject to the provisions of regulation 14 above -

(a) regulation 4 shall 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) regulation 6 shall not apply in relation to a shift worker when the worker changes shift and cannot take a weekly rest period between the end of one shift and the start of the next one; and

(c) regulation 4 shall not apply to workers engaged in activities involving periods of work split up over the day, as may be the case for cleaning staff.

17. (1) With respect to doctors in training, regulation 7 (1) shall not apply until such date as the Minister may by notice in the Gazette prescribe: Doctors in training.

Provided that as from the 1st August, 2004 a transitional period shall take effect in which the number of weekly working hours for doctors in training shall not exceed an average of 58 during the first three years, an average of 56 for the following two years and an average of 52 for any remaining period.

(2) The employer shall consult the representatives of the employees in good time with a view to reaching an agreement, wherever possible, on the arrangements applying to the transitional period. Within the limits set out in the preceding sub-regulation, such an agreement may cover:

(i) the average number of weekly hours of work during the transitional period; and

(ii) the measures to be adopted to reduce weekly working hours to an average of 48 by the end of the transitional period.

(3) Regulation 7 (3) shall not apply to doctors in training provided that the reference period does not exceed:

(a) 12 months, during the first three years commencing on the 1st August, 2004 and

(b) six months for the following 2 years.

Collective
agreements.

18. Subject to the provisions of regulation 14, a collective agreement may:

(a) modify or exclude the application of regulations 4, 5, 6 and 9 in relation to workers or a group of workers;

(b) modify the application of regulation 7(3) by the substitution for each reference to 17 weeks with a different period not exceeding 52 weeks, when there are sufficient objective or technical reasons or reasons concerning the organisation of working time.

Mobile workers and
offshore work.

19. (1) Regulations 4, 5, 6, and 9 shall not apply to mobile workers:

Provided that necessary arrangements are taken to ensure that such mobile workers shall have adequate rest except in circumstances laid out in regulation 15 (f).

(2) In cases where there may be objective or technical reasons or reasons concerning the organisation of work, the reference period referred to in regulation 7 (3) may be extended to twelve months in respect of workers who mainly perform offshore work.

Final provisions.

20. (1) The provisions of regulation 7 shall not apply in relation to a worker who has agreed with his employer in writing that it should not apply, provided that the employer takes the necessary measures to ensure that:

(a) no worker shall be required to work more than 48 hours over a seven-day period, calculated as an average for the reference period referred to in paragraph (b) of regulation 14, unless the employer has first obtained the worker's agreement to perform such work;

(b) no worker shall be subjected to any detriment by his employer because he is not willing to give his agreement to perform such work;

(c) the employer keeps up-to-date records of all workers who carry out such work, which shall include the specific number of hours to be worked by the employee in a particular reference period;

(d) the records are placed at the disposal of the Director, who may, for reasons connected with the safety and, or health of

workers, prohibit or restrict the possibility of exceeding the maximum weekly working hours;

(e) the employer provides the Director at his request with information on cases in which agreement has been given by workers to perform work exceeding 48 hours over a period of seven days, calculated as an average for the reference period referred to in paragraph (b) of regulation 7(3).

(2) Any written agreement pursuant to what is stated in paragraph (a) of sub-regulation (1) of this regulation shall be terminable by the worker by giving no less than seven days' written notice to his employer or any other longer period, not exceeding three months, that is stipulated in the written agreement.

(3) It shall be the duty of the employer to:

(a) keep adequate records to show that the limits specified in regulations 7 and 9, and the requirements pursuant to regulation 10 are being complied with in the case of any workers to whom these regulations apply, and

(b) to retain such records for at least two years from the date on which they are made.

(4) When an employer fails to keep records under any relevant provision in these regulations in relation to an employee, the onus of proving, in proceedings before a Court, that the said provision was complied with in relation to the employee shall lie on the employer.

Unfair dismissal and other offences

21. (1) An employee who is dismissed shall be regarded for the purposes of these regulations as having been unfairly dismissed if the reason, or, if more than one, the principal reason, for the dismissal is that the employee - Unfair dismissal.

(a) refused, or proposed to refuse, to comply with a requirement which the employer imposed, or proposed to impose, in contravention of these regulations;

(b) refused, or proposed to refuse, to forgo a right conferred on him by these regulations.

(2) In cases referred to in sub-regulation (1) of this regulation, a worker may present a complaint to the Industrial Tribunal set up in terms of Part III of Title II of the Act, that his employer –

(a) has refused to permit him to exercise any right he has under these regulations; or

(b) has failed to pay him the whole or any part of any amount due to him under regulation 8.

Offences.

22. Any person who contravenes or fails to comply with the provisions of any of these regulations shall be guilty of an offence against the Act in terms of article 45 of the Act and shall be liable to a minimum fine (*multa*) of two hundred liri (Lm200).

Repeals less
favourable
provisions.

23. These regulations supersede any less favourable relevant provisions in any regulations, orders or other subsidiary legislation made under or kept in force under the Act, and any such relevant provisions are hereby being revoked.