

## **Working Time in Road Transport by Ruth Pott, Head of Employment**

### ***The "48 hour" week***

- 1st August 2003 - non mobile workers have the right not to work more than an average of 48 hours per week. Can be averaged over a 17 week reference period, which can be extended by agreement with the worker up to 52 weeks. Individuals can opt out.
- 1st August 2003 – DTI are **not** allowing mobile workers the above right – drivers have to wait until 2005
- *To calculate – divide the number hours worked during the reference period by the number of weeks in the reference period. If the worker is away during the reference periods, add in the time worked immediately after the end of the period*

### **Daily Break/Rest Periods - Non-Mobile Workers (wef 1/8/03)**

- 20 minute break after 6 hours work;
- Note: they do not have to take the break (except drivers!)
- or longer period as is provided for in their contracts or a collective agreement with a trade union
- The break cannot be taken at the beginning or end of a shift
- 11 consecutive hours daily rest
- An uninterrupted weekly rest period of 24 hours (2 x 24 in 14 days or 1 x 48 in 14 days).

### **Night workers**

- Workers whose daily working time includes at least 3 hours of night time (11pm – 6am)
- A different period can be agreed, of at least 7 hours, but must include midnight to 5am
- 8 hours average
- calculated over 17 weeks
- "Special Hazards"
- Health assessments (for mobile and non-mobile workers)

### **The Opt Out**

- An individual worker may agree to work more than the average of 48 hours a week
- but such an agreement **must** be in writing
- may be cancelled by the worker giving up to 3 months notice
- a worker cannot be forced to sign an opt out
- or denied the opportunity to rescind the opt out or be caused to suffer any detriment for refusing/revoking the opt out – a complaint can be made to the tribunal

- the opt out is under review itself in 2003

### **Paid leave entitlement (all workers from Aug 03)**

*Every worker is entitled to:*

- 4 weeks paid leave - may include bank/public holidays
- Subject to giving the employer notice
- Subject to the employers requirements (can refuse)
- Payment in lieu of holidays not taken when the employment ends
- There is no qualifying period
- When is the holiday year
- Employers can give 4 weeks plus bank/public holidays
- Part timers are entitled to pro rata entitlement eg 4 weeks leave @ 3 days per week = 12 days paid leave
- Holiday pay cannot be withheld in gross misconduct cases or failure of employee to work out their notice

### **Workforce Agreement:**

- Can apply where there is **no** collective agreement;
- Can apply to the whole workforce, or to a group of workers;
- Must be in writing
- Have be circulated in draft to all concerned workers, with guidance to assist their understanding
- Be signed before it comes into effect by either all the representatives of the workforce/group of workers or
- if there are 20 or less workers in the company, either by all representatives of a workforce or by a majority of the workforce
- *be valid for no more than 5 years*

### **The Mobile Workers Directive**

- will only apply to those subject to Drivers Hours rules (3820/85)
- drivers hours rules will take precedent, but drivers will have to comply with the WTD as well
- is likely to apply to the self employed in 2009

### **The Self Employed**

*Shall be included from 2009 subject to:*

- in 2007, the Commission will prepare a report outlining the effect the exclusion has had on road safety, competition and the structure of the profession.
- It will then recommend either automatic inclusion, partial inclusion or final
- exclusion from the Directive

## Definitions

- Working Time
- Periods of Availability
- "Workstation" (rather than place of work)
- Mobile Worker
- Week

## The 48 Hour Week

- the average working week cannot exceed 48 hours;
- 60 hours is the absolute maximum
- the reference period is 4 months
- the above figures are the sum of total hours worked, if for more than one employer

## Night Work

*"Night time" means a period of at least 4 hours, as defined by national law, between 00.00 and 07.00 hours;*

*"Night work" shall mean any work performed during night time.*

- daily work time cannot exceed 10 hours if working at night (8 hours for non-mobile workers)
- compensation should be given to night workers

## Breaks, Rest Periods

- drivers hours rules take precedent – but a 30 minute break must be taken after more than 6 consecutive hours
- or 45 minute break if working between 6 and 9 hours
- can be taken in 15 minute periods (except drivers won't be able to under Drivers Hours revision proposal!)

## Flexibility (Derogations)

*Can be made from 48 hour week and night work if:*

- for objective, technical reasons or reasons concerning the organisation of work, be adopted by means of collective agreements, agreements between the social partners, laws, regulations or administrative provisions provided there is consultation
- derogation from the 48 hour week also includes extending the reference period to 6 months
- derogations may only be permitted, as a general rule, if the workers concerned are given compensatory rest

## Recording Keeping and Penalties

- Mobile workers are to be informed of rules and regulations, and any relevant agreements
- Records to be kept for 2 years
- Employers must provide employees with copy of records if requested
- Penalties shall be effective, proportional and dissuasive!!
- Enforcement by Vehicle Inspectorate and/or Health and Safety Executive?

### **What happens now ...?**

- Directive to be implemented by 23 March 2005
- DfT needs to commence formal consultation and draft regulations due mid 2003
- Employers need to consult with customers and employees, review and update contracts, consider working practices, schedules etc ....