

# **ACAS Publication**

## **Employment policies and practices**

### **Changing patterns of work**

#### Changing patterns of work

This booklet is intended to assist anyone dealing with or affected by Changing Patterns of Work. It is one of a series of booklets and handbooks designed to give impartial advice on employment matters to employers, employees and their representatives. Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be looked at in the light of the particular circumstances and it may be wise to seek legal advice. For information on any subsequent changes or for further help, please contact the appropriate ACAS helpline.

November 2001

## Contents

	<b>Page</b>
Introduction	1
Making the changes	2
Flexible working hours	2
Part-time work	3
Overtime	4
Flexitime	6
Sunday working	7
Flexible working weeks	8
Job sharing	8
Compressed working weeks	9
From shiftworking to flexible working year	10
Shiftwork	11
Annual hours	13
Flexible contracts	15
Temporary working	16
Sub-contracting	17
Zero hours contracts	18
Flexible places of work	18
Teleworking	19
Flexible working lives	21
Career breaks	21
Conclusions	22
Appendix 1	The Working Time Regulations 1998
Notes	Suggested further reading

## Introduction

Patterns of working time have always been subject to change but the pace of change is now more rapid than ever. The driving force for this change comes from both organisations and individuals. Organisations are under constant pressure to produce goods and services, of the right quality and price, and when customers want them. This pressure can often mean that new ways of working have to be found to make the best use of staff and resources. For example:

the cost and complexity of capital equipment may mean that organisations cannot afford to leave it standing idle: this may necessitate the introduction of shift work to allow 7-day or even continuous working customers want goods and services outside traditional standard working hours some organisations have seasonal peaks and troughs and a consequent fluctuation in the demand for employees during the year some aspects of a company's work may require high-level specialist skills but only for a temporary period, for example the design and installation of a new computer network.

Alongside pressures to change working patterns employers must also take account of the needs of employees and the requirements of legislation such as the Working Time Regulations 1998.

Employees may have their own reasons for preferring one pattern of working time to another. For example:

- people with responsibility for care of children, the sick or the elderly may not be able to work certain shifts, weekends or during school holidays
- people with other interests outside of paid work may be unavailable to work at certain times because of religious observances
- some people with particular disabilities may be unable to work full-time
- those who have retired may remain available for work on a part-time or temporary basis
- some people may want to combine work with continued education.

The contribution that employees make is often the difference between those companies which can compete in the market place and those which cannot. Employers who can best combine their own needs for flexibility with those of employees and potential employees will be well placed to succeed. There is no one blueprint for success; companies should agree working patterns with employees and their representatives that suit their organisation.

This booklet describes various patterns of working time and indicates their advantages and disadvantages. It aims to help organisations consider which of the alternatives may be suitable for them and lists more detailed sources of information. It also suggests how to make a success of new patterns of work.

The terms employee and worker are generally used interchangeably in this booklet but may have more specific meanings in relation to some legislation – for example the Working Time Regulations 1998 or the Minimum Wage Act 1998. Definitions or guidance on how such terms are used are usually provided in the legislation or guidance literature produced by the relevant Government Department. Where there is any doubt about who is covered seek legal advice.

## **Making the changes**

Making changes to patterns of work is not an easy process.

Before they are introduced:

work through the consequences of the changes on other systems and procedures. Pay particular attention to reviewing production systems; staffing levels; systems for supervision; monitoring working time and absence; the terms of employees' contracts; and procedures for communication, consultation and negotiation.

- Allow time to plan and introduce changes consider the potential costs to the business and to the earnings(1) and the wishes of employees.
- Consult early with managers, employees and their representatives. They will be aware of the practical implications and potential problems of introducing new patterns of work consider the implications of the Working Time Regulations 1998. A brief outline of the regulations is included in this booklet at Appendix 3(2).
- consider setting up an inter-disciplinary working party with management and employee representatives to plan, implement and monitor the changes
- seek agreement with employees and their representatives before making changes(3)
- inform employees how the changes will affect them
- choose methods for recording working patterns that provide the necessary information but are kept as simple as possible
- be prepared to provide the time and money for communications and training to make new patterns of work successful
- be prepared to pay a lump sum to compensate employees for loss of earnings due to changing working patterns.

## **Flexible working hours**

### **Key Points: –**

- Flexible working hours can be achieved through part-time working, flexitime, and overtime
- Flexible working hours can enable employers to meet fluctuations in demand and employees to meet their particular needs
- Part-time employees have the same employment rights as full-time employees
- The availability of part-time work can attract skilled workers who are unable to work full-time
- More efficient use can be made of expensive equipment where there are flexible working hours but there may be increased costs for recruitment, training and administration

- Flexitime is mostly used for office-based staff below managerial levels
- Flexitime allows employees to choose, within certain limits, when to begin and end work
- Flexitime can aid recruitment and retention and can give employees greater freedom to organise their lives at home and at work
- Overtime can help organisations to cope with increases in demand but regular overtime working can be a sign of inefficiency
- Shop workers have the right to choose not to work on Sundays

## **Part-time work**

### ***What is part-time work?***

Work is generally considered part-time when employees are contracted to work for anything less than the normal basic full-time hours.

### ***Where do part-timers work?***

The highest concentrations of part-time workers are in hotels and restaurants, health and social work, distributive trades (for example shops, warehouses) and education. Other sectors with high proportions of part-timers include business and financial services, and agriculture. Part-timers make up a small proportion of workers in manufacturing although numbers are rising.

About a quarter of employees in Britain work part-time and over 80 per cent of them are women. Most part-timers seek shifts which fit in with family or other responsibilities. Retired people also often work part-time, as do students looking for work that will fit in with their studies. Full-time workers may seek to supplement their income by taking additional jobs, working part-time near to their homes or places of work. A small but increasing number of skilled professional people work part-time. Part-time work is also prevalent in insecure, lower paid occupations.

### ***What is the law on part-time work?***

Part-time employees have the same employment rights as full-time employees. Less favourable treatment of part-time workers has long been seen as potentially unlawful indirect sex discrimination – more women than men are likely to be affected.

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (subject to parliamentary approval) came into force on 1 July 2000. The regulations cover rights on pay, pensions, training and holidays and extend to homeworkers and agency workers. The regulations include rights for part-timers to:

- **receive** the same hourly rate as comparable full-time workers
- **receive** the same hourly rate of overtime as comparable full-time workers, once they have worked more than the normal full-time hours
- **not be excluded** from training simply because they work part-time

- **have the same** entitlements to annual leave and maternity/parental leave on pro rata basis as full-time colleagues

The regulations are available on the Department of Trade and Industry (DTI) website at [www.dti.gov.uk/er/ptime.htm](http://www.dti.gov.uk/er/ptime.htm). Paper copies may be obtained from the DTI Enquiry Line on 020 7215 2152/6207.

### ***What are the advantages and disadvantages?***

More efficient use may be made of machinery and other equipment by using part-timers to cover lunch breaks and operate twilight shifts. Part-time working can create greater flexibility. Employee levels can be increased during times of peak activity and the hours of operating extended by using part-timers in the evening or at weekends. The employer can use staff selectively to cover peaks in demand without incurring the costs of over-capacity during slack periods. Some employers are trying to solve skill and other shortages by attracting back to the workforce trained and experienced staff who cannot work full-time; and helping employees to arrange their hours to suit domestic, leisure or educational needs.

The employment of part-time workers may lead to higher training, administrative and recruitment costs. For example, it may take longer to recruit, administer and train two part-timers than one full-timer to cover the same hours of work. In addition providing continuity of service may be more difficult.

### ***How can part-time working be made successful?***

There are a number of steps which an employer can take to make part-time working successful including:

- **make sure** that applicants for part-time work can be present for the required time. Investigate whether arranging hours of work to suit their needs and those of the organisation is possible. For example, some employers have set up schemes which allow parents to work during school terms and take leave during children's holidays
- **give** part-timers pay and benefits that are proportionately as favourable as those of full-timers
- **give** sick pay and holiday pay to part-timers in proportion to their hours of work
- **consider** how to deal with overtime payments. If part-timers are paid premium rates for work over their normal working hours, their pay could be higher than for full-timers working the same hours. Most employers, therefore, pay overtime premiums to part-timers only when they work more than the contractual working hours of full-time employees, or when they work unsocial hours for which a full-time employee would receive enhanced rates. On the other hand, some organisations pay premium rates when staff work more than their own contracted daily or weekly hours.

## **Overtime**

### ***Who works overtime?***

It is more usual for hourly paid workers to have a recognised system of paid overtime than salaried staff. Manual workers have the highest levels of paid overtime averaging more than nine hours a week, with men working more overtime than women. Other groups, such as professional staff, work considerable amounts of unpaid overtime.

UK companies have traditionally worked higher levels of overtime than other European countries.

### ***What are the advantages?***

Overtime can provide flexibility for employers to meet fluctuations in demand, bottlenecks in production and labour shortages without the need to recruit extra staff. Overtime is used regularly in jobs which cannot be split up easily (such as transport) and where repair and maintenance has to be done outside normal working hours. Providing paid overtime, even with premium payments, is often less costly for employers than recruiting and training extra staff or purchasing extra capital equipment.

### ***What are the disadvantages?***

Regular overtime can encourage inefficiency, because employees may slacken their pace of work to qualify for overtime. This is especially true where employees use extensive overtime to compensate for low pay. The regular working of long hours can adversely affect employees' performance, health and home life. Employees can become fatigued when working excessive overtime. This can result in high absence levels and unsafe working practices which place the employee and others at risk. Supervisors can come to depend on their control over overtime as an inducement for their subordinates. Overtime can thereby become a source of inefficiency, deception and disputes.

### ***What are the legal aspects of overtime?***

The Working Time Regulations 1998 affect the hours people can work – see appendix 3 for brief details.

### ***How are overtime premiums calculated?***

Most organisations pay premium rates for hours employees work in excess of their contractual daily or weekly hours. The most common overtime rate for Monday to Saturday is one and a half times the basic rate. For Sunday and Public Holidays, the most usual rate is double time.

Some organisations specify a minimum qualifying period before they pay overtime – commonly between 15 minutes and 1 hour. Other organisations vary premiums according to the length of time worked – for example, time and a third for the first two hours and time and a half thereafter on Monday to Friday. Some organisations do not pay enhanced rates for overtime but instead have inclusive salary scales. Employees who are called out from home to perform urgent duties at work, such as repairs, normally receive call out allowances or guaranteed hours at overtime rates.

### ***How can the use of overtime be made successful?***

use overtime to provide greater flexibility to meet fluctuations in demand, bottlenecks in production, and labour shortages

Consider various methods to control excessive overtime. For instance:

- **monitor overtime levels** and identify those areas where it can be reduced
- **pay special attention** to overtime working when it becomes regular and unvarying
- **limit the overtime** employees may work over a given period

- **make no change in the hours which qualify for overtime** after basic working hours are reduced. For example, if basic hours are reduced from 40 to 38, then employees work the first two hours of overtime at flat rate
- **pay employees a lump sum** to compensate for the loss of regular overtime and/or replace regular overtime with time off in lieu
- **enhance employees' annual earnings** to compensate for the loss of overtime or give employees 'staff status' and secure their commitment to work, within specified limits, beyond the normal day or shift when this proves essential.

## **Flexitime**

### ***What is flexitime?***

Flexitime allows employees to choose, within set limits, when to begin and end work. Employees are required to work during core times and must work an agreed number of hours during a settlement or accounting period (typically four weeks). Outside the core times, at the beginning or end of each day, are flexible bands when employees may choose whether to be at work. The total period for which the workplace is open is the bandwidth. Working out the starting and finishing times of lunch breaks and the maximum and minimum lunch period is also necessary.

Hours of attendance are recorded and added up at the end of each settlement period. Within limits, employees can carry over any excess or deficit in the number of hours they are required to work (typically a day to a day and a half a month). Some schemes allow employees to take excess hours as additional leave, known as flexi-leave.

### ***Who uses flexitime?***

Flexitime is mostly used for office-based staff below managerial level in the public sector and in private sector service organisations. Manufacturing companies are less likely to operate flexitime.

Shift workers are generally excluded from flexitime schemes as are senior managers. Other groups of workers for whom flexitime arrangements are rare include those who serve the public during specific opening times.

### ***What are the advantages and disadvantages?***

For employers, flexitime can aid the recruitment and retention of staff. It can also help provide staff cover outside normal working hours and reduce the need for overtime. Additionally flexitime can also improve the provision of equal opportunities to staff unable to work standard hours.

Flexitime can give employees greater freedom to organise their working lives to suit personal needs. In addition, travelling can be cheaper and easier if it is out of peak time.

On the debit side, flexitime can result in increased administration costs. These may include the costs of keeping records, and extra heating and lighting. Providing adequate supervision throughout the bandwidth may also be difficult.

### ***How can flexitime be made successful?***

- involve managers and employee representatives at an early stage, possibly by means of a working group, to plan, implement and monitor the scheme
- brief first-line supervisors and ensure that employees are kept fully informed about the development of the scheme through information notes, email (where applicable) and meetings
- set up a trial scheme and discuss any problem areas with managers, employees and their representatives
- decide which employees will be covered by flexitime and whether it will be voluntary or compulsory
- explain clearly to managers, supervisors and staff the rules and methods for operating flexitime. These should include an explanation of how absences and other issues such as medical appointments will be dealt with
- consider a general rule that flexitime arrangements must not interfere with effective working
- choose an effective method of time recording. Common recording methods include:
  - manual time sheets completed by employees
  - clocking systems using traditional time-clock cards
  - computerised electronic systems which may involve the use of 'swipe cards'. Such systems are becoming more popular and often have facilities for analysing attendance and producing reports.

Manual systems are the most common and these are generally checked and signed by an employee's manager or supervisor.

### **Sunday working**

Many shops and stores open on a Sunday, although the opening hours of most large shops are subject to certain restrictions(4).

The Employment Rights Act 1996 gives shop workers in England and Wales (except those who are employed to work only on Sundays) the right to choose not to work on Sundays. The Act also includes measures designed to protect workers who refuse to work on Sundays.

The Department of Trade and Industry leaflet PL960 Sunday Trading Act 1994 contains details of the law on Sunday trading.

## **Flexible working weeks**

### **Key Points: –**

- Flexibility in the working week may be obtained by job sharing or by compressing total hours into fewer days
- Job sharing is a form of part-time working where two people share the responsibility for a full-time job
- Job sharing is a form of part-time working where two people share the responsibility for a full-time job
- Two people sharing a job can bring a wider range of skills, experience, views and ideas than one person doing the job full-time
- Unless care is taken, problems can arise over communication with and between job sharers; shared supervisory responsibilities; and replacing a job sharer who leaves
- Compressed working weeks involve reorganising working time so that employees work the same number of hours over fewer days
- Compressed working weeks can help recruitment and reduce overtime, labour turnover and absenteeism
- Compressed working weeks can lead to increased fatigue if daily hours are excessive

## **Job sharing**

### ***What is job sharing?***

Job sharing is a form of part-time working where two (or occasionally more) people share the responsibility for a full-time job. They share the pay and benefits in proportion to the hours each works. Job sharers may work split days, split weeks, or alternate weeks.

### ***What are the legal aspects of job sharing?***

Like all part-time workers, job sharers have the same employment rights as full-timers. For more information refer to the section on part-time working on p 8.

### ***What are the advantages and disadvantages?***

Job sharing can increase flexibility when used to meet peak demand, for instance by both sharers being present when workloads are heavy. However, the employees must agree any changes to the contracted hours. There is greater continuity because one sharer can carry on with at least half the work if the other partner falls sick or takes holiday or maternity leave. In addition, two people can bring a wider range of skills, experience, views and ideas to the post.

Where full-time work does not suit personal needs, job sharing can be a way of retaining highly capable staff who might otherwise leave. It can be particularly useful for carers or parents of young children and make it easier for women to return to work after maternity leave.

Disadvantages can include the extra costs of induction, training and administration. There may also be problems if the individuals sharing a job perform differently and thus produce inconsistent output. Job sharers may also find it difficult to communicate with each other as they are not usually at work together. If one job sharer leaves, it may be difficult to find someone to complement the hours worked by the remaining sharer. If the job share involves managing or supervising staff, this may create problems with staff who find it difficult working for two managers. Sharing responsibility for a job can result in no-one taking responsibility for it. Job sharing also places added responsibility on supervisors to ensure that they allocate work properly and that the job sharers communicate properly with each other.

### ***How can job sharing be made successful?***

- seek agreement with trade union or other employee representatives before introducing schemes
- ensure that work is shared fairly between job sharers
- prepare job descriptions to help clarify responsibilities, to help determine whether job shares are feasible and to highlight any possible problem areas
- draw up a register of existing employees who are interested in job sharing
- when recruiting, choose candidates who appear compatible
- and have similar or complementary qualifications and experience. Consider arranging a meeting between job sharers before final selection
- involve the remaining job sharer in selecting a replacement when the other leaves
- give job sharers the same training as full-time staff
- consider supplementing face-to-face communication between job sharers with a log, in which one job sharer lists any outstanding work that the other needs to do
- make the terms and conditions of job sharers proportional to those of a full-timer.

### **Compressed working weeks**

#### ***What are compressed working weeks?***

Compressed working weeks do not necessarily involve a reduction in total hours nor any extension in individual choice over which hours are worked. The central feature is reallocation of work time into fewer and longer blocks during the week. Typically, working time is reorganised so that the same basic hours are worked in four and a half days a week, or nine days out of ten in a fortnight. Compressed working weeks may be a consequence of some flexitime schemes. Through starting early and/or finishing late, employees can build up additional hours which they take as a day or half-day away from work.

### ***What are the advantages and disadvantages?***

Compressed working weeks can help with recruitment and reduce overtime, labour turnover and absenteeism. It may be difficult, however, to schedule work and to provide sufficient cover within the compressed working period. In addition, where employees are highly interdependent, time off must be on a strict rota basis.

For employees, compressed working weeks can provide a longer weekend and increased leisure opportunities. Some employees, however, may find it difficult to adjust quickly to work after a long weekend and the longer daily work periods of compressed working weeks can increase fatigue.

### ***How can compressed working weeks be made successful?***

- consult managers, employees and their representatives
- carefully analyse the nature of the production process or service and the pattern of customer requirements
- plan carefully so there is sufficient staff cover
- consider whether the nature of the work makes compressed weeks unsuitable. For instance, where there are restrictions on the length of the working day or where the work is heavy and/or demanding this may affect the health, safety and welfare of employees
- take account of the provisions of the Working Time Regulations – see appendix 3 for brief details
- consider running a pilot scheme.

### **From shiftworking to flexible working year**

#### **Key Points: –**

- Shift work is often introduced in organisations with manufacturing processes which, for technical or economic reasons, must operate for long periods or even continuously
- Shift work is also common where services are provided for long hours or continuously
- Shift work can reduce unit costs, provide flexibility and may promote higher earnings for employees but it can also disrupt employees' social and domestic lives
- Payments in addition to the basic rate are common for shiftworkers
- Before introducing shiftwork, organisations should carefully consider the type of shift system to be used, whether shiftworking would be economic and how it should be introduced
- Under an annual hours system the period worked by employees is defined over a whole year rather than on a weekly or monthly basis
- Annual hours working can be applied to all employees, including day workers, white collar workers and part-timers: in practice it is often restricted to shiftworkers

- Annual hours can help an organisation to control working hours and overtime, and cope with periodic variations in demand: it may be resisted by those employees with high overtime earnings or shift allowances

## **Shiftwork**

### ***What is shiftwork?***

Shiftwork is a pattern of work in which one employee replaces another on the same job within a 24-hour period. Shiftworkers normally work in crews, which are groups of workers who make up a separate shift team. In some shift systems, each crew will regularly change its hours of work and rotate morning, afternoon, and night shifts.

Continuous shift systems provide cover for 24 hours, seven days a week. Non-continuous or discontinuous shift systems provide cover for less than the total hours available in a week – for example five 24 hour periods in seven days, or 12 hours out of 24.

### ***Why is shiftwork on the increase?***

Shiftwork is widespread throughout Europe. It is essential in some industries in which equipment, services or manufacturing processes must continue on a 24-hour cycle. Examples of this type of industry range from newspaper production and public utilities to hospital and emergency services. A development in more recent years has been the spread of shiftworking to industries such as telephone sales and banking. Other reasons for using shiftwork are:

- Economic reasons – the pace of change has quickened and so has the rate at which plant and equipment become out of date: shiftwork enables employers to make maximum use of plant, which can reduce production costs and increase output
- Social reasons – changes in living and working patterns have created a demand for goods and services outside traditional working hours: for example, retail outlets are commonly open 7 days a week and in some cases for 24-hour periods.

### ***What are the advantages and disadvantages?***

Shiftwork can reduce unit costs because capital equipment is operated more intensively and cheaper off-peak electricity can be used. Rotas in some shift systems can enable a more flexible response to peaks and troughs of demand. Shiftwork can provide higher earnings for employees and allows them to use shops and social facilities at times when they are less crowded.

On the debit side, shiftworking increases wage and labour costs and can disrupt employees' social and domestic lives. It can also upset employees' body rhythms and cause them to lose sleep. In addition, public transport facilities may not be available outside normal working hours.

### ***What are the legal aspects of shiftwork?***

The Working Time Regulations 1998 govern the hours people can work and prescribe special health provisions for night workers – see appendix 3 for brief details.

### ***What are the health and safety implications of shiftwork?***

There is no conclusive evidence about the effects of shiftwork on health, but disturbance of the body's rhythms can lead to digestive problems and lack of sleep. Some of these problems can be reduced if applicants for shiftwork are medically examined before being appointed (see appendix 3 for legal obligations under the Working Time Regulations 1998). In addition, shiftworkers should not work excessive overtime. They should also be provided with canteen facilities or hygienic surroundings in which to eat their food. There should be appropriate safety practices and access to medical facilities.

### ***What payments are made for shiftwork?***

There is a variety of ways of paying shiftwork premiums, but the following are the most common:

- flat rate allowances per hour, shift or week, in addition to basic day rates
- fixed percentage additions to the day work rates
- differential basic rates of wages with shiftworkers getting a higher rate than day workers
- paying a standard annual amount to all employees working that particular shift
- extra allowances for hours worked outside the normal daily hours.

### ***How can shiftwork be made successful?***

- involve employees and their representatives as early as possible
- consider carefully whether operating shiftwork is economic. The following factors favour the introduction of shiftwork:
  - low labour costs compared with capital costs
  - a high expected rate of depreciation of plant which will need replacing regularly – possibly because of rapid developments in technology
  - a projected reduction in production costs following the introduction of shiftwork
- consider what type of shift system to adopt (see appendix 2 for types of shift system). This will depend on a number of factors including:
  - the nature of the service or manufacturing process – for instance is 24-hour continuous working required?
  - pressure to reduce hours of work – some companies manage to reduce hours of work for shiftworkers by moving from four crew to five crew continuous working
  - local tradition – certain shift systems may be more readily accepted because they are commonly used in a particular locality or industry
- consider setting up a working party of management representatives and trade union or other employee representatives negotiate with representatives of recognised trade

unions to set shift premiums and other relevant terms and conditions of employment including health and safety and welfare provisions for shiftworkers

- find out whether there are enough suitable volunteers for shiftwork from the existing workforce
- find out whether suitable local employees will be available. Recruitment will generally be easier if there is a local tradition of shiftworking, or if shiftworking is common in the industry
- arrange a thorough medical examination for applicants
- plan a shift rota. Appendix 1 gives more information
- involve shiftworkers fully in communication and consultation arrangements
- make shiftworkers aware of grievance procedures and train shift managers and supervisors to handle grievances. If this is not done grievances may take longer to resolve because managers may not be available
- arrange adequate supervision for shiftworkers ideally by a shift manager if the numbers justify it. A lack of adequate management cover can make it difficult to maintain discipline on shifts
- train shift managers and supervisors to deal with disciplinary matters and give them the opportunity to attend appropriate courses during normal working hours
- develop the career prospects of shift managers and supervisors so there is no disadvantage compared with those not on shifts. This can be helped by having comprehensive appraisal systems and, where possible by rotating managers between shift and non shift working
- ensure senior managers demonstrate their interest in shiftworkers and visit shifts regularly, perhaps on a rota basis.

## **Annual hours**

### ***What is annual hours working?***

Under an annual hours system the period within which full-time employees must work is defined over a whole year. Typically, the annual hours an employee is contracted to work are split into two parts. The larger part consists of set shifts with the remaining shifts unallocated. In some systems the employee is paid for unallocated shifts and 'owes' the time to the company. The company holds these hours or 'payback' shifts in reserve and can ask employees to work them at short notice, to cover for colleagues or to cope with peak demand. The company then monitors the hours worked for each employee to identify any 'underspend' or 'overspend'. The company may not call back all the shifts it is owed – to the advantage of the employee. Annual hours can apply to all employees, including day workers and white collar employees, but in practice the system is often restricted to shiftworkers.

### ***How are annual hours calculated?***

A typical formula to calculate 'annual hours' is:

number of weeks per year, less annual leave and bank holidays, multiplied by the number of working hours per week.

The following example is based on a 39 hour week and five weeks annual holiday:

length of year: 52.00 weeks

deduct

(a) annual holidays: 5.00 weeks

(b) public holidays: 1.60 weeks

total working weeks = 45.4 x 39 hours per week

= 1770.6 annual hours

### ***Why introduce annual hours?***

An 'annual hours' system is usually considered suitable for one or more of the following reasons:

- to help reduce working hours
- to abolish, reduce or control overtime
- to cope with seasonal variations or other peaks and troughs in demand
- to maximise productivity and efficiency and to help introduce technological change
- to harmonise terms and conditions of employment.

### ***What are the legal aspects of annualised hours?***

The Working Time Regulations 1998 affect the hours people can work – see appendix 3 for brief details.

### ***What are the advantages and disadvantages?***

For employers, annual hours can provide greater employee flexibility, reduce overtime and maximise productivity and efficiency. The benefits for employees may include improved basic pay and progress towards salaried status.

One disadvantage is that those groups of employees who have high overtime earnings may resist the introduction of annual hours. Most annual hours agreements specify that employees can be asked to work extra hours at short notice, which can reduce their freedom to plan leisure time. In addition, the seasonal nature of certain businesses may mean that employees will work longer hours during the spring and summer months.

### ***How is cover built into the annual hours system?***

It will not always be possible to predict the required number of annual hours so it will be necessary to build cover into the system to take account of unexpected peaks in demand, holidays and absence. Where annualised hours apply to shiftworkers this can be achieved by three main methods:

- increase the number of shift crews. Some companies have developed five, six, or seven crew shift systems. Members of the extra crew on 'spare' duty cover for holidays and absence
- leave a number of unallocated hours or shifts. The employee is paid for these shifts and 'owes' the time to the company. The company holds these hours or 'pay back' shifts in reserve and can ask employees to work them at short notice
- use a limited amount of overtime.

### ***How can annual hours be made successful?***

- design the annual hours scheme to meet the specific needs of the organisation in consultation with employees and their representatives
- allow enough time to prepare carefully for the introduction of annual hours
- examine existing patterns of hours of work, overtime arrangements, payment schemes and production systems. Determine how the introduction of annual hours will affect them
- consult and communicate with managers and employees and agree the annual hours scheme with union or other employee representatives
- when designing the shift rota for annual hours take account of staffing levels, flexibility required between shift teams, cover arrangements for absenteeism and the need for an efficient time-keeping system. Suitable computer programmes can ease the planning of shift rotas
- agree payment systems that will even out fluctuations in weekly earnings and take account of changes such as reduced overtime potential
- agree holiday arrangements which will provide acceptable provision for employees and necessary cover
- consider lump sum payments to compensate employees for loss of overtime.

### **Flexible contracts**

#### **Key Points: –**

- Various types of contract may be used to provide greater flexibility
- Temporary workers including agency staff and sub contractors can provide greater flexibility: they can be used as cover for permanent staff or for a particular job that needs doing

- Some organisations find that temporary workers lack the motivation and commitment of permanent employees or that
- Permanent staff may resent it if agency workers are paid more
- The status of some sub-contract workers may cause difficulties particularly in determining whether a worker is an employee or self-employed
- 'Zero hours' contracts provide flexible working which may suit some people who want occasional earnings, but they can be misused

## **Temporary working**

### ***What is a temporary worker?***

A temporary worker is someone employed for a limited period whose job is usually expected by both sides to last for only a short time. Temporary workers may be employed directly by the employer or by private agencies. Agencies will recruit, select and sometimes train temporary workers and hire them out to employers.

Temporary workers are sometimes hired on fixed term contracts. A fixed term contract is a contract of employment for a definite period, set in advance. Employment ends when the contract expires and no notice need be given by the employer. Fixed term contracts sometimes provide that they can be ended by notice on either side before the expiry date of the contract. Termination by one side alone where there is no provision for early termination may leave the other open to liability for the remainder of the contract. Temporary workers not employed on fixed term contracts have the same rights to notice of termination as permanent employees.

Contracts may also be agreed which end on the completion of a particular task rather than on a specific date.

### ***What are the legal aspects of temporary working?***

UK employment law makes no distinction between 'permanent' and 'temporary' employees. To qualify for various employment rights, however, employees must have served a minimum period of continuous employment with their employer. Most temporary workers will have insufficient service but in certain circumstances, temporary workers may accrue enough continuous employment to qualify for employment rights, even when they have short breaks in their employment. (5) Some employment rights – such as the right not to be discriminated against on the grounds of race, sex or disability – have no minimum service qualifications.

It is possible for the parties to a fixed term contract to exclude statutory redundancy rights where the employee is engaged for two years or more. The written agreement of the employee is required. Section 18 of the Employment Rights Act 1999 removed the ability of anyone on a fixed term contract to waive unfair dismissal rights.

Organisations who are unsure of the law should seek legal advice when framing contracts.

### ***What are the advantages and disadvantages?***

Temporary workers can provide greater flexibility because the number employed can vary to take account of changes in demand for the product or service. Temporary workers can also

provide cover for permanent staff on holiday, maternity leave or sick leave, additional support during peak loads and the specialist skills to carry out specific projects. Some organisations use temporary fixed term contracts as a screening device for potential recruits to the permanent workforce. On the other hand, it is the experience of some employers that temporary workers may lack the motivation and commitment of permanent employees. Furthermore, organisations which use agency 'temps' are dependent largely on the screening and testing methods used by the agency. In addition agency workers can sometimes receive higher wages than their permanent counterparts, which can cause resentment amongst employees and trade unions.

### ***How can temporary working be made successful?***

- avoid using temporary contracts when the job is in reality permanent
- consider the likely cost of using temporary workers compared to permanent workers
- consult with line managers to determine their views on the possible effects of employing temporary workers
- seek to agree proposals to use temporary workers with recognised trade unions
- where temporary workers are recruited through an employment agency, contact several agencies to compare the services they provide, including their screening and testing methods
- provide temporary workers or the employment agency with job descriptions and information on company benefits, rules and regulations
- give temporary workers a written statement of their main terms and conditions of employment. This should explain clearly that the work is of a temporary nature. If the work is for a fixed term, the starting and finishing dates should be specified in the written statement, together with any conditions under which the contract can be terminated before the date of expiry
- provide induction training.

### **Sub-contracting**

Subcontracting is the use of a commercial contract to 'get the job done'. Sub-contracted workers range from permanent employees of large organisations – such as building, computer or catering firms – to small one person businesses.

### ***What are the advantages and disadvantages?***

It is easy to arrange contracts as and when a particular job needs doing. It is often cheaper to subcontract work to a contractor who can provide ready trained staff and expertise for a limited period. On the other hand, contract workers may sometimes not be as well motivated as directly employed staff and contract workers may have a different working 'culture' from those directly employed. The status of some subcontract workers – especially where self-employed workers are involved – may give rise to difficulties. Simply labelling workers 'self-employed' does not mean that they will be considered self-employed under the law. Many important rights and duties hinge on whether a particular individual is a 'worker' or an 'employee', including the right to claim unfair dismissal and the extent of an employer's duties under Health and Safety legislation. The Employment Rights Act 1996 says that an employee is someone under a contract of service or apprenticeship whereas an individual

who is self employed is under a contract for service. (6) Ultimately only the courts can decide the status of individuals and they may apply a number of tests including:

- the degree of control – the greater the level of operational control the employer has, the more likely the worker is to be an employee
- the extent to which the worker is integrated into the employer's organisation – that is, has the worker become 'part and parcel' of the organisation?
- the economic reality – that is, is the worker performing services as a person in business on his or her own account?

The court may also apply what is known as 'the multiple test' where they evaluate the overall effect of all the details of the relationship. This is a complex area of the law and there are many questions that the courts can ask. Where there is any doubt over the status of workers it is wise for organisations to seek legal advice.

### ***How can sub-contracting be made successful?***

- use sub-contractors when it is likely to be more efficient and effective than using permanent employees – for example when a one-off job needs to be done and permanent employees do not have the required expertise
- consult employees and their representatives on the use of sub-contract workers
- seek specialist advice if there is doubt about the status of temporary staff – for example, whether workers are employed or self-employed.

### **Zero hours contracts**

Zero hours contracts are arrangements where people agree to be available for work as and when required but no particular number of hours or times of work are specified. Zero hours contracts may suit some people who want occasional earnings but they may be misused – for example by employees being asked to clock off during quiet periods while remaining on the premises. There may also be difficulties for people claiming benefit if they are 'on call' even though no work is being done and no money earned.

### **Flexible places of work**

#### **Key Points: –**

- Teleworking offers flexibility over where work is performed:
  - it permits employees to work all or part of their working week away from their employers' premises
  - Teleworkers include homeworkers, mobile workers such as sales representatives and managers who spend a number of days a week away from their office base
  - Teleworking can provide flexibility for employers and employees and provide savings on office space and other facilities

- Teleworking is not suitable for all types of jobs or all types of people. Technological and other necessary equipment can be expensive. Managers may find it more difficult to manage some remote

## **Teleworking**

### ***What does teleworking mean?***

Teleworking permits employees to spend all or part of their working week at a location remote from employers' workplaces. Homeworking is a form of teleworking but there are several different categories:

- traditional mobile workers, like sales representatives and delivery drivers. They receive instructions and information via telephones, computers or fax machines at home or in their vehicles
- managerial and professional staff who spend working days away from their office base and also communicate via telephones, computers or fax machines from their home car or other remote location
- specialists or office support staff who carry out a range of duties from home or other remote locations and communicate via telephones fax machines and computers
- other workers who operate from local centres with computer and telecommunications facilities sometimes known as 'telecottages'.

### ***What are the advantages and disadvantages?***

Teleworking can reduce costs by providing savings on office space and other facilities. It can improve productivity as people are not interrupted by the day to day distractions of office life and politics. Employees have more freedom over where they live, how they organise their work and when they carry it out. Employers who help people with disabilities or caring responsibilities to work at home can benefit from the additional skills and expertise of workers who may not be available to attend the workplace. Teleworking also reduces or eliminates time spent on travelling and lowers absence and turnover rates.

On the debit side, remote working is not suitable for all types of job. Providing suitable technology can be expensive and some people may feel socially isolated. Despite improvements in technology, managers may find it difficult to communicate with and manage remote workers. Career development and training may suffer and health and safety issues and the recording of working time may also be problematic.

How can teleworking be made successful?

Plan teleworking carefully. Estimate the costs and benefits and how to evaluate the scheme. Communicate and consult with managers, employees and their representatives. Consider setting up a working party with representatives of those affected to examine the implications of teleworking. The following check list highlights some of the main points to consider:

- do changes to terms and conditions have to be agreed?
- are employees suitable for teleworking? They must be self motivated, self-disciplined, competent and able to work with little supervision

- are employees' homes or other available premises suitable for teleworking?
- what health and safety issues need to be considered? The Health and Safety at Work Act 1974 applies to home-based working as do the Health and Safety (Display Screen Equipment) Regulations and the Provision and Use of Work Equipment Regulations 1992(8)
- will company property be secure? Arrangements such as lockable cabinets and password protected computer files may be necessary
- should there be any restrictions to working times? Consider the degree of flexibility teleworkers will have over when they carry out work and whether they must be contactable at certain core times
- what equipment will teleworkers need? This may include ergonomically designed desks and chairs, filing space and IT equipment such as computers with suitable software, printers, fax machines and modems
- what telecommunications facilities will be required? Will a designated phone line, mobile phone or charge card be needed?
- should teleworkers be given an allowance to cover extra heating and lighting costs?
- will teleworkers need access to office space? Will teleworkers need workstations to 'plug into' when they attend the office (known as 'hot desking')?
- do teleworkers need advice about informing third parties of new teleworking arrangements – for example:
  - insurance companies (a homemaker's insurance company may need to be informed even when the employer insures equipment)
  - landlord or mortgage company
  - tax authorities (there may be capital gains tax implications if part of a home is used for business)
  -
- what arrangements should be made for effective management, development and communication through, for example, regular contact, clear targets, appraisals and access to training? Teleworkers may be kept informed by post and/or email (including details of vacancies and training courses) and by being involved in staff meetings. Teleworkers should be given a thorough briefing
- will it be possible to demonstrate that teleworkers (homeworkers/outworkers) are being paid at rates that meet the National Minimum Wage(9)?
- will teleworking be compulsory or voluntary? Will staff be allowed to return to office-based working if they wish?

## Flexible working lives

Key Points: –

- Career breaks are extended periods of unpaid leave and most frequently used for child care
- Sabbaticals are a form of career break or extended leave with pay which some large companies use to reward employees for long service
  - Employees taking career breaks other than sabbaticals are usually required to resign, but are given a commitment by employers that they will be allowed to return
  - Career breaks can help employers retain skilled and experienced staff and workers on career breaks can provide cover during busy periods or staff absences
  - There may be some problems in keeping skills up-to-date and re-employing returners if business is poor

## Career breaks

### *What are career breaks?*

**Career breaks**, sometimes called employment breaks, are extended periods of leave – normally unpaid – of up to 5 years, or more. Some employers set up schemes which are open to all employees, whereas others stipulate that career breaks must be for particular purposes. Child care is the most common reason for taking a career break. Most schemes require employees to resign with employers giving a commitment to re-employ participants at the same grades or levels when they return to work.

**Sabbaticals** are a form of career break or extended leave which some companies use to reward employees for long service. Employees are normally allowed to use sabbaticals for any reason they choose, which may include travel, voluntary work or the pursuit of a hobby or interest. Sabbaticals are often seen as a way for employees to ‘recharge their batteries’ with the aim that they will return refreshed and re-motivated. Employers may also develop employees by getting them to take on the duties of their seniors away on sabbatical.

### *What are the advantages and disadvantages?*

Career breaks can help employers retain skilled and experienced staff. They can provide a pool of trained, committed employees to provide cover during busy periods or staff absence. Possible disadvantages may be the time and cost of setting up a scheme, the difficulty of keeping skills up-to-date and of re-employing returners during a time of recession. In some industries and professions there may be a danger of losing accredited status through taking a career break. Many employees are unable to contemplate career breaks because of the loss of income.

### ***How can career breaks be made successful?***

- consult with managers, employees and their representatives when developing the scheme.
- determine eligibility requirements such as length of service, the number of breaks allowed and whether to restrict the reasons for a break. For instance are breaks allowed for:
  - care of children or sick or elderly relatives
  - education or training
  - working or travelling abroad
  - setting up a business?

### **Maintain contact with those on a career break by:**

- agreeing some paid work each year
- encouraging attendance on training courses, at meetings and social functions
- encouraging continuance of education and training through distance learning
- keeping employees on circulation lists for newsletters and circulars and encouraging the use of company information facilities
- making clear the terms under which returners will be re-employed after their career break
- providing induction/refresher courses to returners
- letters and phone calls from managers.

### **Conclusions**

Changing patterns of work can help to improve efficiency, job satisfaction and motivation and can attract recruits unable or unwilling to work at standard times. Changes to patterns of work should not be considered in isolation. Organisations should determine the effects of any changes on payments systems, work schedules, productivity, staffing, absence levels and employees' terms and conditions of employment.

Taking time to consult with managers, employees and representatives can achieve greater commitment to changing patterns of work and the smooth introduction of changes. Other important factors include:

- the full commitment of senior managers to introducing the changing patterns. They must be prepared to provide the time and money required for communication, consultation, negotiation and training
- the involvement of managers and union or other employee representatives from the outset

- the involvement of line managers as an essential link in the system
- passing appropriate information to employees and their representatives and seeking their views
- reviewing regularly the progress and objectives of changing patterns of work.

### **The Working Time Regulations 1998**

The Working Time Regulations (1998) govern the hours people can work. This appendix provides basic information only and is not an authoritative statement of the law. The full Regulations are available from The Stationery Office and can be ordered from bookshops(10).

### **Main provisions of the Working Time Regulations**

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

A worker's average working time must not exceed 48 hours for each seven-day period unless the worker has agreed with an employer in writing that the limit should not apply. Where the work involves special hazards or heavy strain, night work should not exceed eight hours in each 24-hour period. Employers are required to take all reasonable steps to ensure that workers do not exceed the 48 hour limit. Such steps would include enquiring whether the worker was working elsewhere (or requesting that they be notified on a worker getting other work) and, if they were, adjusting working arrangements accordingly.

#### **Length of night work**

A night worker's average normal hours of work must not exceed eight hours for each 24-hour period.

#### **Health assessment for night workers and transfer of night workers to day work**

Night workers must have the opportunity of free health assessment before taking up night work and at regular intervals. Whenever possible a night worker should be transferred to suitable day work if a medical practitioner confirms to the employer that they are suffering health problems connected with doing night work.

#### **Pattern of work**

Where the pattern of work involves un-interruptible or monotonous activities which puts the health and safety of a worker at risk (for example a single task on a continuous production line), an employer needs to consider granting regular breaks in order to reduce these risks.

#### **Daily rest**

An adult worker is entitled to not less than eleven consecutive hours rest (twelve hours for young workers) in each 24-hours.

The minimum rest period for young workers may be interrupted in the case of activities involving periods of work that are split up over the day or of short duration.

#### **Weekly rest**

An adult worker is entitled to an uninterrupted rest period of not less than 24 hours in each seven days or two uninterrupted rest periods each 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.

A young worker is entitled to a rest period of not less than 48 hours in each seven-day period. The rest period for a young worker may be interrupted if the activities involve periods of work that are split up over the day or are of short duration or reduced where this is justified by technical or organisation reasons, but not to less than 36 consecutive hours.

### **Rest breaks**

An adult worker is entitled to a rest break where the working day is more than six hours. The details of the rest break are to be set out in any collective or workforce agreement which applies. If no such agreement applies the rest break should be an uninterrupted period of not less than 20 minutes which the worker is entitled to spend away from the work station.

A young worker is entitled to a rest break of at least 30 minutes (consecutive if possible) spent away from the work station if there is one.

### **Holidays**

Workers are entitled to four weeks paid annual leave. This entitlement is not in addition to any annual leave given to a worker under an employment contract, nor additional to bank holidays which are governed by the contract of employment. This entitlement is subject to a qualifying period of 13 weeks continuous employment.

Workers are entitled to payment in lieu of leave which is untaken on the date on which termination of employment takes effect.

### **Exceptions**

The application of certain regulations may be excluded or modified by a collective or workforce agreement. In addition certain categories of workers are excluded from all or particular regulations including those employed in:

- air, rail, road, sea, inland waterway and lake transport
- sea fishing
- other work at sea
- 
- engaged in the activities of doctors in training, or specific activities of the armed forces, police or other civil protection services
- engaged in domestic service
- whose activities are such that their place of work and place of residence are distant from one another or whose different places of work are distant from one another
- engaged on security or surveillance activities requiring a permanent presence – for example, security guards
- engaged on security or surveillance activities requiring a permanent presence – for example, security guards
- who may be subject to a foreseeable surge of activity such as in agriculture, tourism and postal services

- affected by an unusual and unforeseeable occurrence beyond the employer's control, exceptional events or an accident or risk of accident.

## **Enforcement**

Employees not granted entitlements under the regulations or who suffer certain detriments (for example, for refusing to exceed the weekly working limit) may make a complaint to an Employment Tribunal.

The weekly limit on working time and certain limits on the activities of night workers are enforced under health and safety legislation.

## **Notes**

Wages must be at or above the minimum set by the National Minimum Wage Regulations 1998.

Detailed guidance is available in A Guide to Working Time Regulations available free of charge from the Department of Trade and Industry. Telephone 0845 6000 925.

If changes are made without agreement, employees may feel they have no alternative but to resign and claim constructive dismissal to an Employment Tribunal – ie that the change is so fundamental that the existing contract has in effect been terminated. The employee may also be entitled to claim damages for breach of contract at an Employment Tribunal (where their employment has ended) or to a County Court. Changes without agreement can be made only if these are allowed for in the contract or if the change is the custom and practice of the industry concerned. For instance, the contract may state that shift systems or hours of work may be altered to meet production needs.

The Sunday Trading Act 1994 . See Department of Trade and Industry Leaflet PL711 Rules governing continuous employment and a week's pay.

Section 23 of the Employment Relations Act 1999 provides for regulations to be issued which will extend employment rights to all workers other than the genuinely self-employed. Under the National Minimum Wage Regulations 1998 workers on 'stand-by-time', 'on call time' and 'downtime' must be paid the National Minimum Wage provided they are at the place of work and required to be there.

For more information see Homeworking (Guidance for employers and employees on health and safety) available from the Health and Safety Executive. Telephone 01787 881165.

Wages must be at or above the minimum set by the National Minimum Wage Regulations 1998.

Detailed guidance including all the provisions, derogations, records to be kept and changes to the 1998 regulations made by the Working time regulations 1999 are in Your Guide to the Working Time Regulations (ref: URN 00633) available free of charge from the Department of Trade and Industry orderline tel: 0845 6000 925. The full text is also available on the DTI website at [www.dti.gov.uk/er/work\\_time\\_regs](http://www.dti.gov.uk/er/work_time_regs).

## **Suggested further reading**

### **Dex, Shirley and McCulloch Andrew**

Flexible employment in Britain: a statistical analysis Equal Opportunities Commission  
Research Discussion

Series No 15 1995

### **Department of Trade and Industry**

A Guide to Working Time Regulations 1998  
Available free of charge Tel: 0845 6000 925

### **Hastings, Mark O W**

Flexibility and fairness: a survey of managers' attitudes to part-time employment and part-time employees

### **Institute of Management 1996**

Incomes Data Services  
Flexitime schemes

IDS Studies: Personnel policy and practice No 642, February 1998

### **Incomes Data Services**

Overtime

IDS Study 617, January 1997

### **Incomes Data Services**

Shiftworking

IDS Study 526, March 1993

### **Incomes Data Services**

Teleworking

IDS Study 616, December 1966

### **Incomes Data Services**

Temporary workers

IDS Study 579, June 1995

### **Industrial Relations Services**

Flexible working hours – a survey of practice  
Employment Trends 608 May 1996 (p 4-10)

### **Industrial Relations Services**

Still a flexible friend? A survey of flexitime arrangements  
Employment Trends 603

March 1996 (p 5-16)

### **Institute for Employment Studies**

An evaluation of homeworking in ACAS  
ACAS 1997

### **Institute of Personnel and Development**

Flexibility at work in Europe: strategies and practice  
Institute of Personnel and Development 1994

New ways to work, Changing times: a guide to flexible work patterns for human resource  
managers

New ways to work 1993