

Review of the Working Time Directive

RCN response to the second phase consultation of the social partners at European level under Article 154 TFEU

Introduction

With a membership of over 400,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

The RCN would like to reiterate our belief that the underlying principle of the Working Time Directive, namely the need to address the health and safety effects of long working hours and shift work, must remain central to any review. What's more, in the health sector, there is a growing body of evidence linking the health and wellbeing of health care staff with the quality and safety of patient care which we highlighted in our response to the first-phase consultation.

The majority of our members work some form of shift pattern and our most recent employment survey found that full time nurses work an average of 44 hours per week. Black and minority ethnic nurses and health care assistants tend to work longer hours and average 48 hours.¹ This indicates that the removal of the opt out for the nursing workforce would appear not to be a challenge for the majority of employers and would help protect vulnerable workers from pressure to regularly work in excess of what is considered safe.

Of significance to this consultation is the challenge within the health sector, of the ageing nursing workforce. Our employment survey found that there has been a gradual increase in the number of older respondents (aged 55 plus) approaching retirement, who are more likely to work part time. Again this reinforces the need for the removal of opt out and the increased opportunities for part time and flexible working this is likely to offer.

The study and impact assessment which support phase two of the consultation identifies significant challenges with compliance within certain sectors and member states. However, the principle within the Charter of 'every worker' must stand.

¹ RCN (2009) *Past Imperfect, Future Tense - Nurses' Employment and Morale 2009*. London: RCN

In response to your specific questions to the social partners:

1. Should changes to EU working time rules be limited to the issues of on-call time and compensatory rest, or should they address a wider range of issues, such as those listed in section 5.2?

We would like to see interpretation of paid annual leave following the Schultz-Hoff and Stringer rulings. A worker who is off sick should still be able to fully benefit from paid annual leave, especially if work has contributed or caused the illness or injury. Paid annual leave is a fundamental part of the working time directive as it contributes to the health, safety and wellbeing of the workforce. The current lack of interpretation leaves workers vulnerable, particularly those not covered by a collective agreement.

Following our earlier point on the gradual increase in the number of older nurses approaching retirement who are more likely to work part time, consideration should be given to the ageing workforce and the implications this has on workforce planning within different sectors. The removal of the opt out would help create employment opportunities and facilitate more part time working. This is also a health and safety issue and consideration should be given to the evidence pointing to a decreased tolerance to long working hours and shift work in older workers. The European Agency for Occupational Safety and Health recognise that older employees working shifts or at night may need a longer recovery time between shifts.²

2. Bearing in mind the requirements of Article 153 TFEU do you consider that:

- a) the options set out in section 5.1 regarding on call-time and compensatory rest,**
- b) some or all of the options set out in section 5.2 regarding other issues raised by social partners and the current review,**

could provide an acceptable overall framework for addressing the concerns set out in your replies to the first phase consultation?

Section 5.1 excludes discussions on the opt out which is fundamental to taking other discussions forward. The opt out and reference periods should form part of the review.

² European Agency of Occupational Safety and Health (2011) Hazards and Risks Associated with Older Workers http://osha.europa.eu/en/priority_groups/ageingworkers/index_html/hazards_html accessed 15th February 2011

Nurses and health care assistants have always been willing to adapt to situations that call for increased flexibility such as the H1N1 pandemic flu outbreak in 2009. The period of intensive activity and exceptional circumstances led to social partners within our public healthcare sector, the NHS, agreeing to amend the reference period within the collective agreement from 17 weeks to 12 months. Equally severe winter weather and travel restrictions in the UK during December 2010 saw a number of nurses working extended shifts to cover colleagues who couldn't get in and in some instances sleeping overnight in the hospital.

In common with employers, we would want to see some flexibility in the system for such circumstance but flexibility should be for objective reasons and not the default position. Without clear interpretation at a European level there is a risk that workers will be made more vulnerable. This is becoming increasingly important at a time when efficiency savings within the health sector are leading to staff shortages and increased pressure on our members.

On-call and compensatory rest continue to be important issues and in our experience, interpretation of the compensatory rest requirements and the SIMAP and Jaeger rulings continue to vary from organisation to organisation. What is clear and unsustainable for the health of the workforce and the safety of patients is that health care employers cannot continue to expect nurses and health care assistants who have been resident on-call all night or who have been called in from home at two in the morning to go without sufficient time to rest and recuperate and minimise the harmful impacts of sleep deprivation before their next period of work.

3. Are the EU social partners, at cross industry or sectoral level, willing to enter into negotiations on all or part of the issues raised in this communication with a view to concluding an agreement that would make it possible to amend the Directive by using the possibilities provided under Article 155 TFEU?

We are a member of EPSU and defer to their position as an EU social partner.