

Royal College of Nursing: response: the Retained EU Employment Law Consultation on reforms to the Working Time Regulations, Holiday Pay, and the Transfer of Undertakings (Protection of Employment) Regulations

With a membership of around half a million 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.

Introduction

The RCN appreciates the opportunity to respond to the Department for Business and Trade consultation on reforms to the Working Time Regulations, Holiday Pay, and the Transfer of Undertakings (Protection of Employment) Regulations.

Questions below are answered corresponding the numbering used in the consultation response survey online.

Working Time Regulations 1998 – consultation on record keeping

1. Do you agree or disagree that the Government should legislate to clarify that employers do not have to record daily working hours of their workers?

1.1 Strongly Disagree

1.2 The RCN is against legislating to specify employers do not need to record daily working hours of employees.

1.3 From a Health and Safety perspective, the RCN is concerned that a requirement not to record daily working hours could lead to nursing and health care staff working excessive hours in breach of the 48-hour limit and breaks not being taken during shifts or between shifts. The 2022 NHS staff survey found that a majority (over 77%) of respondents had been under unrealistic time pressures¹, leading to many staff unable to take breaks or working over their contracted hours.

1.4 Working excessive hours leads to fatigue, potentially affecting the health of nursing and social care staff, consequently leading to patient safety concerns. Nursing staff are already working extra hours, often through bank and agency contracts, in addition to their substantive working hours. This is to make ends meet and also to address gaps in staff rotas for employers.

1.5 In a 2022 RCN survey of nursing staff with almost 20,000 respondents², around 3 in 5 (61%) of respondents reported not being able to take the breaks that they were supposed to take. Of the respondents who said they worked additional time, most respondents worked between half an hour and an hour beyond their scheduled hours. With around 1 in 8 (12%) working two or more hours on top of

¹ NHS (2023). Working together to improve NHS staff experiences | NHS Staff Survey 2022. [online] www.nhsstaffsurveys.com. Available at: <https://www.nhsstaffsurveys.com/>.

² [Nursing Under Unsustainable Pressure | Publications | Royal College of Nursing \(rcn.org.uk\)](#)

their planned shift. Of those working in the NHS, only 10% reported as having been paid for the additional time.

1.6 Records will still need to be kept allowing staff to be paid for the hours they have worked.

1.7 In their current format, the Regulations do not specify what form records must take, allowing for flexibility and the possibility of using existing records maintained for other purposes such as pay. For example, Regulation 9 places a duty on employers to keep adequate records to show whether the limits and requirements are being complied with. Therefore, we do not believe legislation is necessary.

2. How important is record keeping under the Working Time Regulations to either enforcing rights (for workers) or for preventing or defending disputes (for employers)?

2.1 Very Important

2.2 Keeping records of hours worked demonstrates transparency and compliance with the regulations. This allows for checks and balances by employees, safety reps and regulators, for example, the Health and Safety Executive, and allows for bank working hours to be included with substantive job working hours. This is important for preventing or defending disputes.

Holiday Pay and Entitlement

9. Would you agree that creating a single statutory leave entitlement would make it easier to calculate holiday pay and reduce administrative burden on businesses?

9.1 Agree

9.2 The RCN agrees that the creation of a single annual leave entitlement of 5.6 weeks would be easier to calculate holiday pay and reduce the administrative burden on businesses, however the RCN would want to seek assurance from the government that paid bank holidays were included in this calculation as there is currently no requirement for this.

12. What rate do you think holiday pay should be paid at?

12.1 5.6 weeks of statutory leave at normal pay

12.2 The RCN strongly believes that holiday pay for statutory annual leave should be paid at normal pay. This would ensure that regular overtime and shift working enhancements are taken into account. This would not be the case if the basic pay only option was chosen.

13. Would you agree that it would be easier to calculate annual leave entitlement for workers in their first year of employment if they accrue their annual leave entitlement at the end of each pay period?

13.1 Agree

13.2 The RCN agrees with the government's proposal for workers to accrue their holiday pay entitlement at the end of each pay period, until the end of their first year of employment. This would simplify the annual leave entitlement and process for employees who are not paid under a 'standard month'.

13.3 However, there should be a mechanism in place whereby workers on irregular hours are able to plan annual leave in their first year of employment to ensure the health, safety and wellbeing of workers at work.

15. Do you think that rolled-up holiday pay should be introduced?

15.1 Yes, rolled up holiday pay should be introduced as an option to employers in relation to all workers.

15.2 The RCN agrees with the principal for rolled-up holiday to be paid at 12.07%, as this is the proportion of statutory annual leave in relation to the working weeks of each year (5.6 weeks of statutory annual leave divided by 46.4 working weeks of the year).

15.3 The introduction of rolled-up holiday pay would ensure that workers with irregular hours would receive their holiday pay regularly and up front.

15.4 The RCN is concerned that this practice will only benefit workers in specific categories e.g. those with irregular hours and we advocate a cautious approach because employees may be unable to take time off work and/or feel incentivised to work without taking a break if paid in advance for their holiday benefits. Working excessive hours leads to fatigue as outlined in para 1.3 above.

Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")

17. Do you agree that the Government should allow all small businesses (fewer than 50 employees) to consult directly with their employees on TUPE transfers, if there are no employee representatives in place, rather than arranging elections for new employee representatives?

17.1 No

17.2 The RCN disagrees with the proposal to consult with employees only, rather than consultant with employee representatives. Consultation should be consistent and transparent throughout and the best way to do this is through a collective consultation.

18. Do you agree that the Government should allow businesses of any size involved with small transfers of employees (where fewer than 10 employees are transferring) to consult directly with their employees on the transfer, if there are no employee representatives in place, rather than arranging elections for new employee representatives?

18.1 Yes

18.2 The RCN agrees that the government should allow businesses of any size involved with small transfers of employees (where fewer than 10 employees are transferring) to consult directly with their employees on the transfer, if there are no employee representatives in place, rather than arranging elections for new employee representatives.

19. What impact would changing the TUPE consultation requirements (as outlined above) have on businesses and employees?

19.1 Where there are between 10 – 50 employees, the RCN believes changing the TUPE consultation requirements would lead to a lack of transparency and consistency of approach. Collective consultation would ensure all employees are treated fairly and provided with the same information.

19.2 Where there are fewer than 10 employees, the RCN agrees that for employers should consult directly with their employees if there are no employee representatives in place.

19.3 Existing collective bargaining and consultation structures serve employees and employers well. However, the existence of such structures does not negate the need for employers to communicate directly with employees on key contractual changes, such as in a TUPE consultation. Therefore, to ensure the required level of consultation, the RCN recommends a dual approach be adopted by way of best practice.