

Working Time Regulations Policy (including secondary employment)	
Author (s)	HR Advisor
Corporate Lead	Director of Workforce
Document Status	Final
Date approved by JNCF	November 2017
Date ratified by SMT	November 2017
Date issued	November 2017
Review date	November 2020

Working Time Regulations Policy

Including secondary employment

If employees require particular assistance because of language or other reasons, these can be explained in confidence to HR so that appropriate support can be given.

CONTENTS

1. PURPOSE	3
2. TRUST'S APPROACH TO WORKING TIME REGULATIONS AND SECONDARY EMPLOYMENT	3
3. RESPONSIBILITIES	4
JOINT RESPONSIBILITIES	
MANAGEMENT RESPONSIBILITIES	
EMPLOYEES RESPONSIBILITIES	
WORKFORCE DEPARTMENT RESPONSIBILITIES	
4. WORKING TIME LIMITS	6
REFERENCE PERIODS	
NIGHT WORK	
REST PERIODS	
5. SECONDARY EMPLOYMENT	9
CURRENT EMPLOYEES	
NEW STARTERS	
RETRACTION OF PERMISSION TO UNDERTAKE SECONDARY EMPLOYMENT	
6. APPEALS	11
7. RECORDS	11
8. DISCRIMINATION AWARENESS	12
Appendix 1	DEFINITIONS OF WORKING TIME
Appendix 2	DEFINITIONS OF SECONDARY EMPLOYMENT
Appendix 3	DECLARATION OF SECONDARY EMPLOYMENT
Appendix 4	OPT OUT AGREEMENT

1. PURPOSE

This document sets out Leeds Community Healthcare NHS Trust's (Trust) standard Working Time Regulations and Secondary Employment policy and procedures. It has been drafted to comply with statutory requirements. This should be read together with other relevant Trust policies, procedures and local guidance.

The Policy and Procedures may be reviewed at the request of Management or Staff Side by giving four weeks' written notice with reasons for the review. This policy applies to all staff except medical and dental staff for who separate terms and conditions apply.

2. TRUST'S APPROACH TO WORKING TIME REGULATIONS AND SECONDARY EMPLOYMENT

The Working Time Regulations came into force in the United Kingdom on 1st October 1998. They were introduced as a health and safety measure and cover rest periods, working time limits, night work, secondary employment and annual leave. They control both hours of work, and the pattern in which work can be organised. Doctors in training are excluded from this policy. (see appendix 1 for definitions of Working time).

Employees should be aware that the Trust reserves the right to not accept an Opt Out Form (appendix 4) if it believes the health and safety of any staff or patients are likely to be affected.

Failure to comply with the Working Time Regulations will result in an investigation in accordance with the Trust's Disciplinary Policy and Procedure and is regarded by the Trust as misconduct. Contravening this policy could also be considered as fraud and this being the case; the Trust will refer the matter to the Local Counter Fraud Service.

3. RESPONSIBILITIES

3.1 JOINT RESPONSIBILITY

Good working relations are vital for the Trust to operate successfully and provide its essential services. Management, trade unions and employees accept the responsibility of working together on issues in good faith and with goodwill with the shared intention of facilitating good working relations. Both the Trust and staff side would wish to discourage any individual from exceeding the 48 hours per week maximum average.

3.2 MANAGEMENT RESPONSIBILITY

Management is required to manage and to act fairly and consistently and is responsible for ensuring that the policies and procedures are disseminated effectively and observed by all employees.

Managers have responsibility to ensure that patient care is not affected because someone is working above the maximum average weekly limit. If a manager is concerned it must be discussed with the member of staff and advice sought from the Workforce Department, where appropriate.

The line manager must be satisfied that the safety of the individual, his/her colleagues or patients are not put at additional risk by the individual's request to opt out. Advice may be sought from the Workforce Department and an appropriate risk assessment undertaken.

Managers are responsible for monitoring hours worked internally. If an employee also works on bank/reserve hours they should only work a maximum of full time hours plus one shift over a 7 day period

On receipt of a Secondary Employment Declaration Form (appendix 3) managers must meet with the employee to discuss the Secondary Employment with the employee.

Before granting permission to undertake secondary employment the Manager should consider the following:

- Potential conflicts of interest.
- The Working Time Regulations.
- The employee's current performance.
- The employee's attendance and capability in their role with the Trust and the potential impact secondary employment may have on attendance and performance.
- Health and Safety of individuals , colleagues and service users

It is the manager's responsibility to deal with any declarations in a timely manner.

3.3 EMPLOYEES RESPONSIBILITY

Employees have a duty to comply with the policies and procedures of the Trust. If an employee has any questions or concerns about these they should raise these with their line manager or the HR team.

Any employee who wishes to undertake secondary employment either for the Trust or with any other organisation is required to seek written permission from their line manager using the form found at Appendix 3. (See also Appendix 2 for definitions of Secondary Employment).

All employees will be required to sign a declaration form and an opt out form if appropriate as part of the appointment documentation or the form at Appendix 3 and 4 for existing employees.

Any individual who wishes to "opt out" because of secondary employment must seek permission from their line manager. This must be done by completing the form in Appendix 4 as appropriate and making a declaration of their secondary employment in writing, stating whether it is for a specific period or indefinitely. They must specify that they will give 7 days written notice if they wish to end the agreement to opt out.

Employees must complete a new Secondary Employment Declaration Form if the details of their secondary employment change.

Employees must adhere to the Working Time Regulations and take responsibility for the health and safety themselves and others.

Employees must ensure that their total working hours do not exceed the limit as set out in the Working Time Regulations unless an Opt out Form has been signed. Employees must comply with the required rest periods as set out in the Working Time Regulations and any secondary employment should not compromise this under any circumstances.

3.4 HR DEPARTMENT RESPONSIBILITIES

To work in partnership with Managers and Employee Representatives to ensure employees are treated fairly and consistently within the framework of the policy.

To advise managers of options available should an employee be managed under this policy.

To record on personal files any individuals who have opted out of the maximum working week due to secondary employment and the expiry date of the opt-out agreement.

Retain records showing compliance with health checks for night workers.

4. WORKING TIME LIMITS

4.1 Reference periods

A member of staff must not work more than an average of 48 hours per week, calculated over a 17-week reference period.

In exceptional circumstances for those health professionals providing continuous care relating to reception, treatment or care of patients, the reference period may be extended to a maximum of 26 weeks with the agreement of the relevant Trade Union and management representative.

The Trust has agreed that the reference period will be a rolling one, for all employees.

Young workers, those over the minimum school leaving age but under 18, may not work more than 8 hours a day or 40 hours a week. These hours cannot be averaged out, and there is no opt-out available

4.2 Night work

Night-time is defined by the period from 11.00 pm - 6.00 am.

It has been agreed that those staff who work on a 24-hour rotation which results in working regularly during night-time may be classed as night workers.

A night worker is someone who normally works at least three hours during night-time on a nightly basis.

Time worked as overtime on a night-shift is not normal work and therefore the employee would not be classed as a night-worker. A night worker should not exceed an average of 8 hours in 24 hours over a 17-week period.

Where night workers are identified by a medical practitioner to suffer from health and safety problems relating to the performance of night work the Trust should consider transferring them to suitable available day work.

A night worker is entitled to a free regular and confidential health-check by Occupational Health Services to check that they are fit to carry out night work. Paid time off will be given to employees to attend Occupational Health assessments.

4.3 Rest periods

Staff are entitled to daily and weekly rest periods and in work rest breaks.

- A daily rest period of not less than 11 consecutive hours in each 24-hour period during which the employee works.
- A weekly rest period of not less than 35 hours (including the 11 hours of daily rest) in each 7-day period. This may be averaged over 2 weeks ie 2 days' rest over a fortnight.
- A minimum uninterrupted break of 20 minutes if your daily working time exceeds 6 hours. The break is unpaid.
- Young workers are entitled to a break of 30 minutes if they work a 4½-hour period. They are entitled to a daily rest period of 12 consecutive hours in each 24-hour period and to 48 hours' uninterrupted rest in any 7-day period.

Please note that breaks are intended to be taken as rest periods during the working day. They cannot therefore be used at the beginning or end of the working day in order that employees may delay their start or finish early.

If employees can not take their daily and weekly rest periods, for business reasons and agreed with their line manager, they are entitled to compensatory rest.

Unless there are exceptional circumstances, equivalent periods of compensatory rest should be given. Exceptional circumstances would include a need to provide security or protect persons or property, a foreseeable surge in activity e.g. winter pressures, or unforeseen circumstances beyond the employers control, e.g. unexpected weather, MAJAX or pandemic which demand extra work to be carried out.

Compensatory rest should be taken as soon as is reasonably practicable, and normally within 2 weeks.

5. SECONDARY EMPLOYMENT

When an employee declares interest in secondary employment a meeting will take place to discuss the implications on the service and working time regulations before permission is granted.

Failure to adhere to this policy whilst on:

sick leave
bereavement leave
emergency domestic leave
compassionate leave
carers / dependent leave
emergency parental leave

could be considered as gross misconduct which could result in disciplinary action up to and including summary dismissal. Contravening this policy could also be considered fraud, in which case the matter would be referred to the Local Counter Fraud Service.

5.1 Current employees

Before granting written permission to undertake secondary employment the Manager should consider the following:

- Potential conflicts of interest (reference the Trust's Conflicts of interest policy)
- The Working Time Regulations
- The employee's current performance
- The employee's attendance and capability in their role with the Trust and the potential impact secondary employment may have on attendance and performance
- Health and Safety of individuals , colleagues and service users

5.2 New starters

During the recruitment process the recruiting manager must establish if candidates intend to continue with any secondary employment both inside and outside of the Trust.

If the successful candidate does intend to continue with any secondary employment the recruiting manager should discuss with the candidate the nature of the secondary employment and consider the following points before permitting the secondary work to continue should the candidate wish to take up the post with the Trust:

- Potential conflicts of interest (with reference the Trust's Conflicts of interest policy)
- The Working Time Regulations

- Health and Safety of individuals , colleagues and service users

Employees must not undertake any secondary employment whilst on sick leave from the Trust. This includes any work during “off peak” periods, eg weekends and evenings unless they provide a GP letter or fit note that states working whilst off sick will not be detrimental to their recovery and return to work. The letter / fit note must be sent to their line manager for consideration before any secondary employment is undertaken.

If an employee wishes to continue with voluntary work whilst off sick they must request permission in writing from their line manager. The employee should outline in the request the nature of the voluntary work they wish to undertake, the number of hours they intend to volunteer and confirm that no payment will be received for this voluntary work (excluding expenses).

The line manager must seek advice from their HR Advisor in this situation and advice from Occupational Health Services may also be beneficial. Permission should only be granted based on the fact that it is beneficial to the employee’s recovery and well being to undertake the voluntary work.

5.3 Retraction of permission to undertake secondary employment

There may be circumstances where it is necessary for the Trust to retract its permission for a member of staff to undertake secondary employment. Examples of these are outlined below.

5.3.1 Attendance / time keeping

Where attendance or time-keeping is of concern and is attributable to secondary employment the Trust reserves the right to retract any permission given to an employee to undertake secondary employment.

5.3.2 Capability / performance

Managers must monitor the performance of their staff. If performance falls below acceptable standards and the capability procedure has been invoked the Trust reserve the right to retract any permission given to an employee to undertake secondary employment if the secondary employment is deemed to contribute to the poor performance.

5.3.3 New conflict of interest

There may be times where a new conflict of interest has arisen that did not previously exist when a new member of staff was appointed or when permission was given by the Trust for a member of staff to undertake secondary employment. Employees have a responsibility to highlight any new potential conflicts of interest that arise or may arise with their manager. The manager must assess the risk of the potential conflict of interest and if anything can be put in place to prevent the conflict of interest (i.e. removing staff member from a certain project etc). If this can not be avoided and the risk to the Trust and service delivery is too high, permission to undertake secondary employment may be retracted.

6. APPEALS

The Employee reserves the right to invoke the grievance procedure if they feel that a decision to refuse or retract permission is unfair or without justification.

7. RECORDS

Management is responsible for keeping records of secondary employment, any changes which may affect this and documented reasons if permission is retracted. All such records should be copied to the HR team for filing on the employee's personal file.

8. DISCRIMINATION AWARENESS

The Trust expects the same standards of conduct of all employees. Managers should bear in mind the possibility that some employees may need assistance to follow or understand rules or procedures because of language or disability factors, for example. If such assistance is needed or requested, consideration should be given to providing it.

**DEFINITIONS OF WORKING TIME
(NOT EXHAUSTIVE)**

Working time is defined as when someone is:

“Working at their employer’s disposal and carrying out their activity or duties.”

It has been agreed that the following constitutes working time:

- | | |
|---------------------------|--|
| On-call: | Classed as working time from the point at which you are required to start work (e.g. called out or time spent on telephone) until the point you are required to stop. |
| Travel to allocated base: | Not classed as working time, however travel between bases during the working day would be classed as working time, unless your terms and conditions specify otherwise. Any travel in connection with business would be classed as working time. |
| Breaks: | Not classed as working time, except where individuals are <u>required</u> to work during meals. |
| Civic and Public duties: | If staff receive paid time off these would be classed as working time. |
| Trade Union duties: | If staff receive paid time off it would be classed as working time. Representatives should take some personal responsibility for ensuring that their contracted hours and trade union duties do not exceed an average of 48 hours per week. |
| Work related Study Leave: | Any period during which staff are receiving relevant training. This includes work experience provided pursuant to a training course or programme, and training for employment. It does not include non-job-related evening classes or day release courses. For further information please refer to the KSF and Related Matters policy. |

Working time for the Trust does not include:

- Travelling between home and work.
- Lunch or rest breaks when no work is done.
- Evening classes or day-release courses (non-job related)
- Time spent at home whilst “on call“, during which non-work related leisure activities can be pursued.
- Additional hours staff choose to do without being required by/ or without the agreement of their manager.

Please seek advice from your manager or workforce department if you are unsure if this exception applies to you.

Appendix 2

**DEFINITIONS OF SECONDARY EMPLOYMENT
(NOT EXHAUSTIVE)**

The term 'secondary employment' in this policy covers:

- Paid employment outside of the Trust
- Paid employment within the Trust in a different service
- Voluntary work outside of the Trust
- Self-employment
- Bank / Locum / Agency work outside of the Trust
- Bank / Locum work within the Trust
- Reservist occupations

**Leeds Community Healthcare NHS Trust
DECLARATION OF SECONDARY EMPLOYMENT**

PERSONAL DETAILS

Full Name:

Title:

Job title & Band:

Department:

Business Unit / Directorate:

Weekly working hours:

Pattern of work (e.g. 24/7 shifts,
8:30am – 5:00pm):

Days worked:

OTHER EMPLOYMENT / WORK DETAILS

I have other employment / work or I am considering other employment / work including bank/ locum / agency work. The details of which are below:

Organisation / Company / Agency:

Job title:

Description of work undertaken:

Type of work: (please circle)

Paid	Unpaid	Voluntary	Casual
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Hours per week:

Pattern of work (e.g. 24/7 shifts,
8:30am – 5:00pm):

Annual Leave entitlement:

Date commenced (if already in
secondary employment):

DECLARATION

I declare that the above information is correct and that secondary employment in this instance will not have a detrimental effect on my work at the Trust. I will inform my line manager if there are any changes to the above.

I understand that false information given with regard to this policy could be treated as gross misconduct or fraud and dealt with accordingly under the Disciplinary / Counter Fraud Policy. To prevent and detect fraud, I consent to the disclosure of relevant information from this form to and by the NHS Counter Fraud Service.

I also understand that I must not undertake any secondary employment during any period of leave as defined at Section 5 of the Trust's Working Time Regulations Policy without the express written authorisation of my line manager. To do so without express written permission could be considered fraud and will be dealt with under the Trust's Disciplinary / Counter Fraud and Anti-Bribery policies.

I have read and understand the Trust's Working Time Regulations Policy and I agree to comply with its requirements to declare secondary employment.

Employee Signature: _____

Print Name: _____

Date: _____

Authorising Manager
Signature: _____

Print Name: _____

Date: _____

If the application is not approved please state the reason for refusal: _____

Employees and managers should retain copies for their personal records. Please forward a signed copy to the HR team Department for the employee's personal file.

OPT OUT AGREEMENT

The Working Time Regulations define working time as when someone is “working, at his/her employer’s disposal and carrying out his/her activity or duties.”

This incorporates:

- Working lunches ie business lunches
- If you have to travel as part of your work
- If you are engaged in job-related training

You may agree to work more than 48 hours a week but cannot be forced or expected to work more than this limit. You cannot be dismissed or discriminated against for refusing to sign an opt out statement.

Should you wish to work more than the 48 hour week average, please sign the following opt-out agreement and return it to your manager. Your manager will then forward a copy of this to the workforce department.

Employee’s Name: _____

Job title: _____

Work telephone: _____

Manager’s name: _____

I agree that I may work for more than an average of 48 hours a week. If I change my mind, I will inform Leeds Community Healthcare NHS Trust, in writing, to end this agreement giving 7 days notice.

Signed: _____

Print name: _____

Date: _____

If you will be working more than 48 hours a week because of a second job please give details below:

Job title in second job: _____

Name & address of second employer: _____
