

Care Workers - what are your rights at work?

Care workers perform a vital service for people in need of support. Given the importance of their roles, care workers are often required to travel and work nights to offer their patients the support they require - which can make their working rights a little complicated.

In this article, we'll be covering everything you need to know as a care worker about your worker's rights.

Our Crunch advisors are only able to answer accountancy related questions. If you have an employment question, please either leave a comment below or phone the Acas Helpline on 0300 123 110.

Who counts as a care worker?

The definition of a care worker isn't as simple as you might think. A care worker can be defined as anyone who:

- Provides care during the day at a client's house/care home
- Provides care overnight by sleeping at the client's house or care home and who may be called on at any time during the night
- Is 'on-call' at their own home and who may be summoned to work at any time
- 'Live in' at the client's house for a period of time, providing a variety of services, some of which are during 'on-call' periods.

In these circumstances, it's often difficult to establish what hours they should be paid for and what rest breaks they should have.

You can check out more tailored information in our guide to languages at work and our guide to lone working.

For information about employing personal carers in your own home, Acas have a useful FAQ section here.

The Minimum Wage and sleeping time

Anyone defined as a 'worker' (including employees and Agency Workers) is entitled to the National Minimum Wage (NMW), regardless of whether they have a written contract or not.

There are different Minimum Wage rates for different age groups of workers – see our main NMW guide for full details. We've updated this guide to take into account new National Minimum Wage Regulations that came into force on 6th April 2015.

The National Minimum wage must be paid for all the time when you're:

- At work when required to be working (even if work isn't possible because for example, machinery breaks down, materials have not arrived, work isn't available)
- Travelling on business during normal working hours – you should be paid for all travel time in connection with your job (not from your home to work) including travelling time from one assignment/client, waiting for public transport connections, waiting to collect goods or start a job and travelling from work to training (not travel from home to training), except if you're on a rest break
- Training (or travelling to training) during your normal working hours, either at the workplace or somewhere else. This also applies to workers required to undertake training before starting work for an employer

The NMW must also be paid for all the time when you're on standby or on-call time at your place of work.

Sleeping time

However, the NMW gets complicated when you factor in 'sleeping time'.

The law relating to whether the NMW needs to be paid during 'sleeping' time whilst on-call and not working is complex and case law is changing constantly. However, in March 2021 the Supreme Court settled the position and you can read more in our guide to ['Sleeping on the job'](#).

Generally, a sleep-in is a night shift where you sleep at the workplace, so you are available to support people during the night. A waking night shift means you must stay there overnight and work as you would during the day, so there is usually no ability to sleep.

A worker who lives in their employer's home and shares in the household chores and leisure activities may not be entitled to the NMW if they're living with and being treated as part of the family, and aren't paying the employer for the provision of meals or accommodation. It's debatable whether carers would fall into this category.

When doesn't the National Minimum Wage need to be paid?

The National Minimum Wage does not need to be paid for time when you are:

- Being paid less than your normal pay, e.g. if you get half pay while on sick leave
- On any unpaid leave your employer allows you to take
- On-call at home or at another location, but not at work and not working
- Travelling between work/appointments and home.

For information if your employer declares short-time working, [check out our article](#).

How do you calculate your hourly rate?

The pay that should be taken into account when calculating your average hourly rate of pay is (during a pay reference period):

- Your total gross pay (basic salary, any bonus or commission or incentive payments received or earned in the period)
- The only 'benefit in kind' that can be taken into account when calculating the NMW is when your Employer provides you with accommodation. The NMW may be 'offset' by some of your accommodations value. From October 2014 this is £5.08 per day. For more details about how this works please see the [Direct Gov page here](#)
- Benefits in kind that do not count towards the NMW include meals, fuel, car allowances, employers contributions to pension funds, medical insurance, childcare vouchers, luncheon vouchers
- Salary sacrifice schemes (e.g. childcare vouchers) are excluded from the calculation as are loans and salary advances, pension payments and redundancy payments
- Repayment of expenses are not included
- Expenses for travel to a temporary workplace are not included.

However, any premiums that are paid for overtime or shift work, weekend or bank-holiday working, or on-call/sleep-in shifts generally doesn't count towards calculating your salary for the NMW.

Special allowances paid above standard pay, e.g. for working in dangerous conditions, working unsocial hours, geographical payments (i.e. London Weighting), for performing special duties do not count (unless they are consolidated into the workers standard pay or they related to the worker's normal duties).

The government run a Pay and Work Rights Helpline which can advise you about the NMW – on 0800 917 2368 – they also deal with complaints from workers who are being paid below the threshold.

Your employer must keep records that show they have paid the NMW for three years, and you have the right to inspect these records if you've reasonable grounds to believe you have not been paid the NMW; you may complain to an Employment Tribunal if you're not allowed to see these records.

Workers also have a right not to be subjected to any detriment caused by an act of their employer because the worker had taken action to enforce their statutory right to be paid the NMW.

The National Minimum Wage Regulations are enforced by the HMRC and their compliance and enforcement officers, who can prosecute employers for not abiding by the NMW. Enforcement can be initiated either by a complaint by a worker or a third party or where the HMRC is targeting a low-paying sector. Care Providers are such a sector.

HMRC Compliance officers can carry out inspections at any time without reason. From February 2014 the fines for employers who don't pay their workers the National Minimum Wage increase from £5,000 up to £20,000. The Small Business, Enterprise and Employment Act (approved by Parliament in March 2015) will allow for the maximum £20,000 penalty for non-payment to apply for each worker who has not been paid the NMW (not just one fine per non-compliance notice). No date has yet been set. Employers can also be prosecuted in the criminal courts. The potential penalties for Care Sector Employers who fail to pay the NMW will soon become greater.

Travelling time

You should be paid for all travel time in connection with your job (not from your home to work) including travelling time from one assignment/client, waiting for public transport connections, waiting to collect goods or start a job and travelling from work to training (not travel from home to training), except if you're on a rest break. This includes time waiting to meet someone in connection with your work.

If you need information on mileage allowances then please look at the [HMRC website](#). If you're paid less than the tax-free mileage amount, you're entitled to Mileage Allowance Relief. This means that if your employer pays you less than the maximum rate per mile for work journeys, you'll be entitled to additional tax relief.

In the draft statutory guidance to the Care Act 2014, in June 2014, the government said that: "When commissioning care contracts, local authorities should assure themselves and have evidence that service providers deliver services through staff who are remunerated so as to retain an effective workforce. Remuneration should be at least sufficient to comply with the NMW legislation... including remuneration for any time spent travelling between appointments".

The BBC reported on 13th March 2015 that MiHomeCare staff were being paid less than minimum wage. MiHomeCare is one of the largest care providers in the UK and an internal company document seen by the BBC confirmed they had not been paying its staff the minimum wage. The BBC also reported the practice of 'Clipping' which means that care appointments are scheduled back to back and there is no travel time scheduled between visits. As a result, visits are clipped, or cut short. The company were nervous about the practice of clipping being made public. [You can see the BBC's news article here.](#)

In February 2016, law Firm Leigh Day successfully negotiated a settlement from MiHomeCare for one carer, Caroline Barlow. Caroline had taken legal action against her ex-employer after she was not paid for time spent travelling to and from appointments. Leigh Day argued that as she was not being paid for her travel time, she was being paid less than the National Minimum Wage which constituted an unlawful deduction of wages. The Company settled Caroline's claim for her travel time. Leigh Day believes "there are potentially thousands more care workers, working for MiHomecare, and other care providers, who are being paid less than the National Minimum Wage". [You can read more details here.](#)

Rest periods and rest breaks

The Working Time Regulations entitle all (with a few exceptions, see below) workers and employees to:

- A minimum Daily Rest Period of 11 hours uninterrupted rest between finishing your job and starting the next day
- A Weekly Rest Period of 24 hours uninterrupted rest within each seven day period; or at the employer's choice a Fortnightly Rest Period of 48 consecutive hours within each 14 day period
- The weekly rest period should not include any part of the daily rest period
- A break of 20 minutes if your daily working day is more than six hours long
- If you're an Agency Temp, the employer you are working for (not the Agency who employs you) is responsible for you receiving these minimum rest breaks
- The first two type of rest periods are generally unpaid. The 20 minute break may be paid or unpaid, depending on what it says in your contract of employment. For more information on rest breaks please see the DirectGov website [here.](#)

Certain 'special case' workers are exempt from these rest break provisions and can be legitimately asked to work through their rest-breaks if:

- You're a shift worker who may not be able to take your daily or weekly rest periods between shifts. Shift workers are defined as those engaged in activities involving periods of work that are split up over the day and those who work according to a certain shift pattern where workers 'succeed' each other at the same workstations. The shift pattern may be continuous or discontinuous but will involve the need for workers to work at different times over a given period of days or weeks
- There is a genuine need for continuity of production/service around the clock, eg. hospitals, residential institutions, care workers. This exemption is likely to apply to some care workers
- Where the work takes place in different places distant from each other, where it's difficult to set a work pattern. Care workers who are required to travel to different appointments during their working day may fall into this exemption
- The work is affected by unusual or unforeseeable circumstances beyond anyone's control, or where work is affected by an accident or risk of an accident
- There is a Collective or Workforce Agreement in place that excludes these obligations – but the worker must have been fully consulted with to ensure these are valid. There are detailed rules relating to these agreements and advice should be sought before entering into such an agreement.

In these circumstances, if you can't receive your rest breaks you must be offered an equivalent period of 'compensatory rest' wherever possible. This compensatory rest should be given immediately after the end of the work period where possible. If this isn't possible for objective reasons, the employer should give you "such protection as may be appropriate in order to safeguard the workers health and safety". An important case in 2012 confirmed that interrupted rest breaks can still count as compensatory rest – details are here.

In 2014, in an unreported case (so we only know the name of the claimant not the care home he worked for), an Employment Tribunal found that a care service provider was in breach of the WTR for not incorporating daily rest breaks and daily rest periods into a support worker's shift pattern and for failing to offer compensatory rest. The Care Home employed approximately 150 staff with 25 managers.

The claimant, Mr Hood, claimed that there had been a number of occasions when he had not been permitted to take a rest break and that he had not been granted a full daily rest period an average of three to four times per month in a year. The care home's staff handbook stated that rest breaks away from the service user were not to be taken during a shift. The care home argued that it was uneconomical to provide support to cover the occasions when Mr Hood was not granted his daily rest period. The Tribunal agreed that the service the care home provided fell into the category of services that was exempt; however Mr Hood had not been offered compensatory rest periods.

The Tribunal found it difficult to understand why the home couldn't organise shifts so as to allow daily rest periods for its employees, as the home allowed employees who smoke to take a break during their shift and for that break they were covered by a manager. The Tribunal felt a manager could also cover for rest breaks and that these rest breaks could be easily incorporated into the worker's shift.

Department for Business, Innovation and Skills ruling

The Government Department for Business, Innovation and Skills (previously BERR) has published guidance that says a worker, even if they fall into one of these categories, must have a right to a minimum of 90 hours rest per week. Compensatory rest does not necessarily need to come out of time that would otherwise have been working time. It is likely that carers will be covered by compensatory rest provisions in many cases.

Domestic servants employed in a private household are excluded from a number of the Working Time Regulations, except daily and weekly rest breaks. It's debatable whether carers could be classified as "domestic servants," as the definition of "domestic servant" has not been tested in the Courts.

In addition, there's also the principle of Unmeasured Working Time. This applies to a worker whose working time isn't measured or predetermined and where the worker has control over the number of hours they work. These exempted workers are excluded from a number of the WTR, including all rest break provisions and the 48 hour maximum weekly working hours (see next section). Unmeasured working time generally applies to company directors (and specifically those with autonomous decision-making powers), managers, family workers and religious workers.

It's debatable whether this can be applied to most care workers, particularly if they don't have the autonomy to control the number of hours they work, or if they have a fixed number of normal hours, or on-call hours.

For full details about the Working Time Regulations see our [main article here](#) (as this article does not carry all the details).

Working hours

The legislation states that you cannot work for more than 48 hours per week, which is normally measured over a 17 week 'reference period'.

However, this '17 week reference period' can be amended where:

- There is a valid collective or workforce agreement in place the reference period can be extended up to a maximum of 52 weeks, provided that objective or technical reasons or reasons concerning the employer's organisation justify this extension
- Workers can have a 26 week reference period if they do work that involves the need for continuity of service or production e.g. hospital and care workers. This is likely to be applicable to many care workers.

For full details see our [WTR Guide](#) here. Here's the important information you need to know about the weekly working limit:

- If you're on a PAYE contract for a fixed period (employee or worker), that's under the 17 or 26 week reference period (whichever your employer is using), your 'reference' period for calculating your working hours will be the actual length of your contract
- This 48 hour per week limit also applies if you have more than one job, i.e. the total amount of combined working hours you do should not exceed 48 per week. If it does, each Employer should ask you to sign an Opt-Out (see below)
- If you're an [Agency Temp](#) then the employer you're working for (not the Agency that employs you) is responsible for ensuring you do not work more than 48 hours per week
- The 'reference' period takes into account any statutory holiday, sick leave, maternity/paternity/adoption/parental leave and any Opt-Out's (see below) in place. The reference period is extended by the number of days on any of the above

- Domestic servants who work in a private household are generally excluded from the weekly working time limit. As mentioned above, it's debatable whether care workers fall under this exemption
- Those who have unmeasured working time (see previous section) are exempt from the weekly working hours limits. Again, it's debatable whether care workers fall under this exemption.

Opt-Outs

In many industries Workers can be asked by their employers to voluntarily sign an Opt-Out Agreement which is legal, i.e. you opt out of the 48 hour limit and agree that you can work for more than 48 hours per week.

The Opt-Out is not a condition of your employment and it must remain optional and voluntary. Therefore, even if you've signed your contract with an Opt Out in place, you have the legal right to opt back in to the 48 hour limit at a later date – you have to give your employer a minimum of seven days written notice by law to do this (check your contract in case it requires a longer time scale to Opt back in, as this is allowed).

You should not be subjected to any detriment by refusing or proposing to refuse to sign an Opt-Out agreement. If you are an employee and are dismissed because you refuse to sign an Opt-Out clause then this could be an automatically unfair dismissal and you could potentially make a claim to an Employment Tribunal.

The number of hours you work per week can be averaged by your employer over the applicable reference period (or your contract length), rather than measured in one week, and the first 20 days holiday you are legally entitled to (see below) cannot be used to reduce your average number of hours worked. However, Daily and Weekly Rest breaks and the Opt Out, the maximum in any week you should work is 78 hours – unless you choose to forego your rest breaks (see our main guide to the WTR for more details).

Calculating your working hours

To calculate your working hours you include your:

- 'Normal' weekly working hours (any period during which you are working or at the employers disposal and carrying out their activities or duties)
- Job-related training
- Job-related travelling time (including where this an integral part of the job)
- Business/working lunches
- Time spent working abroad (for a UK company)
- Paid and some unpaid overtime (see below)
- Time spent on-call at the workplace (either working or during 'sleep' time – whether you are asleep or actually working where 'sleeping' is permitted). However, please note the NMW Regulations aren't clear on this issue. There has been much case law on the WTR and whether on call time is considered to be working time. The current position is that on call time constitutes working time if the worker is required to be in the workplace, rather than at home and even if the worker is asleep for the entire period time
- Time spent on-call elsewhere while actually working.

The Working Week does not include:

- Breaks when no work is done (e.g. lunch breaks)
- Normal travel to and from work
- Time spent travelling outside of normal working hours (i.e early meeting at a client's premises that requires travel the night before)
- Time on-call spent away from the workplace (unless you are actually working)
- Unpaid overtime where you have volunteered to, for example, stay late to finish something off
- Paid or unpaid holiday.

Travel time as working time

The European Court of Justice (ECJ) decided in September 2015 that travel time does count as working time. This applies when a worker does not have a fixed place of work but is required to travel from home at the beginning of the day to the premises of one his customers, and to return home from the premises of another existing customer – following a list or route that the employer has determined for the worker.

NOTE – THIS IS NOT RELATED TO THE MINIMUM WAGE BUT ONLY TO TRAVEL TIME.

Night working

There is extra protection under WTR for people classified as night workers.

- Night time is generally defined as the period between 11pm and 6am
- You're a night worker if you regularly work at least three hours during the night time
- As a night worker you should not work more than an average of eight hours in each 24 hour period, excluding overtime (which is calculated over the appropriate reference period which is usually 17 weeks for night workers)
- If your job involves special hazards or heavy physical or mental strain you cannot work more than eight hours in each 24 hour period (i.e. no overtime can be worked) and your working hours cannot be averaged over any reference period
- It may be possible for a worker and an employer to enter into a workforce agreement. Such an agreement could modify or exclude the limits on night work. For example, it could amend the meaning of "night time." These agreements are potentially very helpful to employers who are engaging live-in carers. However, a workforce agreement won't always be appropriate or even possible in every situation and there are a number of hurdles; specialist advice should be obtained on them.

Those who have unmeasured working time (see above) are exempt from the maximum length of night work under these provisions, as are Domestic Servants in Private Households.

If you're a night worker, your employer must offer you a free health assessment before you start working nights and at regular intervals after that.

Holidays

All 'workers' are entitled to a legal minimum of 28 days (5.6 weeks – pro rata'd if you're part-time) paid leave each year. The important things you need to know are:

- Your employer has no legal obligation to ensure you have taken your statutory holiday entitlement
- You start building up your holiday entitlement as soon as you start work
- Holiday entitlement cannot be counted as weekly rest days, it is completely separate
- If you're an Agency Temp then the Agency that employs you (not the employer you are working for) is responsible for ensuring you receive your statutory minimum holiday entitlement
- Bank and public holidays can be included in these 28 days; at the moment there's no statutory right to take bank holidays off (for more information see our [bank holidays guide](#))
- The simplest way to calculate your holiday entitlement is to multiply the number of days you work each week by 5.6. If you work part-time, irregular or freelance hours you can calculate your entitlement on this [DirectGov page](#). The holiday entitlement of 5.6 weeks is equivalent to 12.07% of the hours worked over a year
- For our updated advice about holiday entitlement during sick leave, or sickness during holidays [see here](#).

For full details about the Working Time Regulations see our [main article here](#) (as this article does not carry all the details).

Calculating leave for shift workers – it's often easier to work this out by the number of shifts you get off – e.g. if you work 4 x 12 hour shifts on and then have four days off, the average working week is 3.5 x 12 hour shifts. So, 5.6 weeks holiday is $5.6 \times 3.5 = 19.6 \times 12$ hour shifts holiday entitlement = 235.2 hours. There is a shift calculator you can use [here](#), which may be useful. Please note that the statutory paid holiday entitlement is capped at 28 days. So, if you work six days a week, you're not entitled to more than 28 days holiday under statutory entitlement (your Employer may give you more) – e.g. 5.6×5 days per week = 28 days but 5.6×6 days per week = 33.6 days.

How much pay should you receive for a week's holiday

Check out our "[How to calculate holiday pay when staff receive overtime and commission payments](#)" for more information.

Holiday entitlement during sick leave and sick leave during holidays

See our guide to [holiday entitlement and sick leave](#) for full details.

Zero hour contracts

In early April 2018 the Welsh Government introduced new requirements for employers of care staff who look after people in their own homes. Employers will need to now:

- Give care workers, who are employed on a zero-hours contract, a choice of contract after three months - they can choose to continue on a zero-hours contract or make alternative contractual arrangements
- Ensure that time allocated for travel is separate to caring so that 'call-clipping' (shortening of care sessions) does not happen.

In addition, a register of domiciliary care workers will be set up (inside the existing Social Care Wales' workforce register).

Care standards

If you would like more advice/information about these sorts of issues then the Care Quality Commission may be able to help. Their website is www.cqc.org.uk.

You can read information about [lone-working here](#).

Our Crunch advisors are only able to answer accountancy related questions. If you have an employment question please either leave a comment below or phone the Acas Helpline on 0300 123 110.

If you are an Employer and need ongoing professional help with any staff/freelance issues then talk to Lesley at The HR Kiosk – a Human Resources Consultancy for small businesses – our fees are low to reflect the pressures on small businesses and you can hire us for as much time as you need.

Please note that the advice given on this website and by our Advisors is guidance only and cannot be taken as an authoritative or current interpretation of the law. It can also not be seen as specific advice for individual cases. Please also note that there are differences in legislation in Northern Ireland.

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