

Working Time Regulations Policy

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REVIEW DATES AND DETAILS OF CHANGES MADE DURING THE REVIEW

Minor Changes

WTD Breach Letters updated

Reference to pro rata for part time workers inserted

KEY WORDS

Working Time Regulations (WTR), Working Time Directive (WTD), European Working Time Directive (EWTD), On-calls, Shifts, Rest Requirements.

1. INTRODUCTION AND OVERVIEW

This policy provides an overview of the main areas of the Working Time Regulations (WTR) in relation to employees' maximum working hours, rest periods, rest breaks whilst at work, annual leave and working arrangements for night workers. It also sets out the roles and responsibilities of staff in relation to the regulations. The aim is to ensure that UHL employees are not working excessive hours and have adequate rest in line with the rules and regulations of the WTR.

- 1.1 The Working Time Regulations (1998) aim to protect all workers from the risks of working long hours, without appropriate rest periods, which could affect their health and safety.
- 1.2 There is a legal obligation for employers to ensure that the Working Time Regulations are adhered to and implemented.

2. POLICY SCOPE

- 2.1 This policy applies to all employees of the Trust (permanent, fixed term and temporary staff). Agency or contract workers are also included but responsibility and liabilities under the regulations lies with the body that is responsible for paying them (i.e. the Agency).

3 DEFINITIONS AND ABBREVIATIONS

- 3.1 Working Time Directive (WTD), Working Time Regulations (WTR), European Working Time Directive (EWTD)

4 ROLES

- 4.1 It is everyone's responsibility to ensure that continuity of care and safety of patients remains the first priority. In an emergency situation, if an employee is not able to achieve 11 hours of total rest, provision for 'compensatory rest' will apply (please refer to Compensatory Rest Guidance). This does not remove the Service's duty to plan for the rest provisions necessary to comply with the Regulations.

4.2 Human Resources

- 4.2.1 The Executive Lead for this Policy is the Director of People and Organisational Development.

- 4.2.2 The Human Resources Generalist Team are responsible for the following:

- 4.2.3 To provide advice to managers and workers on the interpretation and application of the Regulations.

- 4.3 **Line Managers** (with responsibility for creating and publishing rosters) are responsible for the following:

- 4.3.1 Ensuring compliant work patterns are in place for all staff groups and taking appropriate action to resolve any issues of non-compliance.

- 4.3.2 Keeping records of opt-out agreements, compensatory rest and night work.

- 4.3.3 Identification of 'special hazards' for night workers by ensuring a risk assessment has been carried out.

- 4.3.4 Ensuring all night workers are offered annual health assessments to ensure they have no health issues that are affected by night work (as defined in section 5.11 of the policy).

- 4.3.5 Providing training to new Managers to use the Electronic Rostering system to identify legislation breaches.

- 4.3.6 Highlighting to Senior Managers and the Human Resources Generalist Team in the event that there has been a repeated breach of legislation in an area or by an individual.

- 4.4 **Employees and other 'workers' (agency, contract workers and honorary staff)** are responsible for the following:

- 4.4.1 Informing their line manager if they have more than one job. If the cumulative hours add up to more than 48 hours per week (in line with the reference period in section 8), the employee should complete an opt-out agreement if appropriate (please refer to Appendix 1).

4.4.2 Informing their line manager if there are difficulties preventing them from taking rest breaks, daily or weekly rest periods, or from taking compensatory rest.

4.5 **The Occupational Health Department** is responsible for the following:

4.5.1 The provision of annual health assessments for all night workers at the individual night workers request.

4.5.2 Providing advice should a night worker be identified as having a health issue that is being affected by night work.

4.5.3 Provision of advice on risk assessments to identify 'special hazards' for nightworkers.

5. POLICY IMPLEMENTATION AND ASSOCIATED DOCUMENTS – WHAT TO DO AND HOW TO DO IT

5.1 The **Regulations** provide the following basic level of protection for workers:

- Maximum average working time of 48 hours a week, averaged over a 17-week reference period. The reference period for doctors in training is 26 weeks. In certain circumstances the average reference period for all staff can be extended by agreement to 26 weeks, this is in exceptional circumstances (e.g. outbreak of flu).
- Entitlement to a minimum rest break of 20 minutes (unpaid) if the working time exceeds 6 hours.
- Entitlement to a minimum daily rest period of 11 consecutive hours between each duty period.
- Entitlement to a minimum weekly rest period of at least 24 hours or 48 hours in a two-week period
- Maximum average normal working hours of eight hours in each 24-hour period for night workers (refer to section 5.11 of this policy for further information on night workers), normally calculated over a 17-week reference period.
- Free annual health assessments both for existing night workers and those being assigned as a night worker.
- Entitlement to a minimum of 28 days paid leave for full time workers, pro rata'd for part time workers (this can include bank holidays).

5.2 WHAT IS WORKING TIME?

5.2.1 Working time is defined as "Any period during which a worker is working at his or her employer's disposal and carrying out his or her activity or duties".

5.2.2 For time to be 'working time' both elements of the description detailed in section 6.1 must be satisfied. For example, working time **does** include periods of:

- Travelling time between Trust sites once at work.
- Stand by or on call once the worker has been contacted.
- Resident on-call (including sleeping on site), if required by the employer.
- Contractual overtime.
- Job-related training that is directly related to the job.

5.2.3 Working time **does not** include:

- Routine travel between home and work
- Rest breaks and meal breaks when no work is done.
- Stand by or on call, but otherwise free to pursue own activities and not interrupted (i.e. staff on call at home).
- Training such as non-job-related evening classes or non-job related dayrelease courses.

5.2.4 Staff should respect their colleagues' right to take a break without interruption from phone calls and beeps, unless an emergency arises, and where possible arrangements should be made to handover such devices for the duration of the break.

5.3 WHAT IS CLASSED AS WORKING TIME WHEN ON-CALL?

5.3.1 When a worker is on call at his or her place of work (i.e. resident on-call), for example, and required to sleep on site by the employer, then that time is classed as working time. Guidance issued by the Department of Health in *HSC 1998/204* states that time spent sleeping by any staff that is required to be on call at their workplace as part of their duties will be regarded as working time.

5.3.2 If a worker is working on a non-resident on call duty and able to carry out their normal duty from home, but is voluntarily sleeping on site, then this will only be classed as working time from when they are required to undertake work-related activity. Working time will therefore begin when the individual receives a call to go to work, or are contacted to give advice over the telephone. Working time will end when the work-related task is complete, for example at the end of the telephone call, or if required to go to work, when the worker returns home.

5.4 AVERAGE HOURS

5.4.1 The Trust will take all reasonable steps to ensure that its employees do not work more than an average of 48 hours per week over a 17 week reference period (26 week for trainee doctors), unless there are exceptional circumstances. For employees on Health Roster the average hours worked are automatically calculated over the defined reference period and breaches are highlighted.

5.4.2 An employee may be required to work more than 48 hours in any one week as long as the average of 48 hours over the reference period is not exceeded.

5.4.3 For reasons of health and safety, no employee of the Trust should work excessively long hours or for prolonged periods of time. Employees must inform their manager if they are doing any further work (either for the Trust or as external employment) or feel that they are working excessive hours. Managers should take steps to ensure that they reduce the average hours of work for such an employee to an acceptable level.

5.5 OPT OUT

5.5.1 An individual employee may choose to agree to work more than 48 hours average working week by completing and signing the Trust's working time opt out form (Appendix 1). This is voluntary on the part of the individual employee and they can decide at any time (usually by giving one month's notice) that they no longer wish to work in excess of 48 hours per week.

5.5.2 No employee can be forced to opt out should they not wish to do so.

- 5.5.3 As a Trust, in line with our duty of care and patient safety, we would not expect any member of staff to work more than an average of 60 hours per week over a 17 week reference period. Junior Doctors in Training can work up to 56 hours per week by completing this opt out form. The 56-hour working week is averaged over a 26 week reference period, to include work carried out across all employments and locum work. Note that the maximum 72 hours of work in every 168 hours will still apply.
- 5.5.4 In addition Junior Doctors in Training cannot opt out of the hours of work for rostered commitments; however they may choose to opt out of the 48 hours, if they choose to carry out additional locum work.

5.6 REST PERIODS AND REST BREAKS

5.6.1. The Regulations contain a number of provisions governing workers' entitlements to rest breaks during the working day, daily rest periods and weekly rest periods. Employees cannot opt out of the rest Regulations.

5.6.2 Rest breaks

5.6.3 Employees are entitled to a minimum uninterrupted 20 minute rest break away from their work station during the working day if their daily working time is more than 6 hours. This break is unpaid and should be taken during working hours, not at the beginning or end of the working period. If an unpaid lunch break is taken during working hours, then providing this is for at least 20 minutes, that break will be sufficient to meet this requirement. For UHL staff a minimum 30 minute rest break is considered to be the normal requirement and expectation.

5.6.4 Trainees Doctors employed on the 2002 Terms and Conditions of Service (TCS) are entitled to a 30 minute paid break after approximately 4 hours of work, in line with their contract of employment. Junior Doctors employed on the 2016 TCS must take a 30-minute paid break for a shift rostered to last more than five hours, and a second 30-minute paid break for a shift rostered to last more than nine hours.

5.6.5 Managers should ensure that staff are given the opportunity and it is an expectation that this break will be taken.

5.7 Daily rest periods

5.7.1 Employees are entitled to a minimum daily rest period of not less than 11 consecutive (see comment above) hours in each 24 hour period. In exceptional circumstances where this is not practicable because of the contingencies of the service, or if the full rest cannot be taken because the worker is changing shifts, daily rest may be less than 11 hours.

5.7.2 In these circumstances managers should ensure that a period of equivalent compensatory rest is provided.

5.8 Weekly rest periods

5.8.1 Employees are entitled to an uninterrupted rest period of at least 24 hours in each seven day period or 48 hours in each 14 day period. This is in addition to the daily rest period.

5.9 COMPENSATORY REST

5.9.1 Compensatory rest is a period of rest the same length as the period of rest, or part of a period of rest, that a worker has missed.

- 5.9.2 Provision for compensatory rest is given to protect the health and safety of staff and patients. Compensatory rest must be taken if it is needed for this reason.
- 5.9.3 There is no requirement for compensatory rest to be paid time; the basic principle is that an employee should not be paid twice for work undertaken.
- 5.9.4 All staff are entitled to compensatory rest. Please refer to further to the Trust's Guidance on Compensatory rest for Medical Staff and On-call Arrangements Agreement for Agenda for Change staff on INsite.

5.10 EXCEPTIONS TO THE REST REQUIREMENTS

5.10.1 The exceptions in the Regulations allow rest to be taken in a different pattern from that set out in the regulations in a situation of continuation of service needs and/or patient care. This would be in exceptional circumstances due to on call commitments, shift working or the nature of the work carried out.

5.11 NIGHT WORKERS

5.11.1 The regulations contain provisions for 'night workers', which are the length of night work and health assessments for night workers.

5.11.2 Night workers are defined as those who normally work at night (including regular rotating shifts, but excluding those who only occasionally work night). Night work is defined as at least three hours of work taking place between the hours of 11pm and 6am.

5.11.3 A night worker's normal hours of work must not exceed eight hours for each 24 hour period, excluding overtime, averaged over a 17 week reference period (minus the entitlement of weekly rest days).

5.11.4 The formula for calculating average night hours is:

$$\text{Number of hours worked during the reference period} \div \left\{ \begin{array}{l} \text{Number of days during} \\ \text{the reference period} \\ \text{(usually 119 days)} \end{array} \right. - \left. \begin{array}{l} \text{Weekly rest entitlement} \\ \text{of 24 hours x 17 (usually} \\ \text{102 days)} \end{array} \right\}$$

5.11.5 An example is provided below:

Step 1: Multiply the number of weeks in the reference period (17) with the number of hours worked each week: 17 weeks x (4 shifts x 12 hours per week) = 816 hours.

Step 2: In a 17 week period there are 119 days (17 x 7), minus the weekly rest entitlement of 24 hours x 17, therefore the number of days you could be asked to work is: 119 days – 17 days = 102 days.

Step 3: To calculate the daily average working time, the total hours is divided by the number of days you could be required to work: 816 hours divided by 102 days = 8 hours.

5.11.6 Managers must take all reasonable steps to ensure that this limit is complied with in the case of each night worker in their area.

5.11.7 If the work involves “special hazards or physical or mental strain”, the 8 hour limit applies to each 24 hour period and must not be averaged over a reference period. A risk assessment must be carried out by the line manager.

5.12 YOUNG WORKERS

5.12.1 Young workers are those employees aged under the age of 18 years. Special provisions that must apply to employees within this category are:

- In work rest period of 30 minutes for shifts of 4.5 hours or longer
- Daily rest entitlement of 12 hours every 24 hour period
- Weekly rest period of 48 hours per week
- Should not work between the hours of 10pm and 6am

5.12.2 Please also refer to the Trust’s Health and Health and Safety of Young People at Work (Employment and Work Placement) Policy and Procedure. Trust Ref: B52/2006.

5.13 ANNUAL LEAVE

5.13.1 All Trust employees, due to national NHS terms and conditions, have a contractual annual leave entitlement that is greater than that required by the Working Time Regulations. Please also refer to the Trusts Annual leave policies listed below.

5.14 RECORD KEEPING

5.14.1 Line Managers must keep records of all hours worked by staff for a minimum of two years. In particular managers must:

- Maintain adequate records to show the weekly working time limits on working time and night work have been complied with and that the work health assessments have been satisfied. This includes keeping adequate records of times when compensatory rest must be provided.
- Maintain records of employees who have opted out of the 48 hour limit.

5.14.2 Failure to maintain appropriate records may lead to the Trust facing formal action taken by the Health and Safety Executive.

5.15 SANCTIONS IN THE EVENT OF BREACHES OF THE REGULATIONS AND TRUST GUIDANCE

5.15.1 Please refer to the flow chart in Appendix 2.

5.15.2 Where the policy is not adhered to, the circumstances should be investigated with support from the Human Resources Generalist Team, and possible outcomes could include:

- Review of staffing levels, ability for employees to adhere to the regulations
- Formal discussions and letter reminding the manager and/or employee of the regulations and Trust Policy

5.15.3 Repeated breaches should be managed via the Trust’s Disciplinary procedure to be followed.

6 EDUCATION AND TRAINING

6.1 This policy will be cascaded via the CMG Medical and Management Leads to all Staff.

6.2 The latest copy of this policy will be available on Insite.

7 PROCESS FOR MONITORING COMPLIANCE

Element to be monitored	Lead	Tool	Frequency	Reporting arrangements Who or what committee will the completed report go to
Rest Breaks, hours worked, night shifts Compliance with WTR for staff not on E Rostering.	Line Manager.	Monitoring via rotas templates and rosters.	On-going.	Please follow the flow chart in Appendix 2 using duty rosters for breach information.
Rest Breaks, hours worked, night shifts Compliance with WTR for staff on E Rostering.	Line Manager.	Managers will be alerted about non-compliance when rostering.	On-going.	Please follow the flow chart in Appendix 2.

8 EQUALITY IMPACT ASSESSMENT

- 8.1 The Trust recognises the diversity of the local community it serves. Our aim therefore is to provide a safe environment free from discrimination and treat all individuals fairly with dignity and appropriately according to their needs.
- 8.2 As part of its development, this policy and its impact on equality have been reviewed and no detriment was identified.
- 8.3 The Trust recognises the diversity of the local community it serves. Our aim therefore is to provide a safe environment free from discrimination and to treat all individuals fairly with dignity and appropriately according to their needs.
- 8.4 As part of its development, this policy and its impact on equality have been reviewed and no detriment was identified.

9 SUPPORTING REFERENCES, EVIDENCE BASE AND RELATED POLICIES

- The Working Time Regulations 1998
- Compensatory Rest Guidance for Medical Staff (B to add once approved)
- Non-Medical Staff Annual Leave Policy (B22/2013)
- Junior Medical Staff Annual Leave Policy(B22/2018)
- Senior Medical Staff Annual Leave Policy(B35/2004)
- Medical Staff Rostering Policy (B7/2019)
- Non-Medical Staff Rostering Policy (B5/2013)

Queries in relation to this Policy should be initially through the Human Resources Generalist Team.

10 PROCESS FOR VERSION CONTROL, DOCUMENT ARCHIVING AND REVIEW

- 10.1 Review details must be described in the Policy and must give details of timescale and who will be responsible for reviewing and updating the document.
- 10.2 The updated version of the Policy will then be uploaded and available through INsite Documents and the Trust's externally-accessible Freedom of Information publication scheme. It will be archived through the Trusts PAGL system and on the Medical HRNetworkDrive.

The Working Time Regulations, 1998, 1999 and the
 Working Time (Amendment) Regulations 2001 & 2003
**WORKING TIME REGULATIONS OPT OUT AGREEMENT
 FOR 48 HOUR AVERAGE WORKING WEEK (NOT REST REQUIREMENTS)**

Name of Employee **Assignment No.**
 (Please print)

Job Title..... **CMG/ Directorate**..... **Site:**.....

This agreement is made between, (“I”, “me” or “my”) and the University Hospitals of Leicester NHS Trust (“the Trust”) under Regulation 4 of the Working Time Regulations 1998 and 1999. This agreement will apply from

1. I understand that the Working Time Regulations serve to limit the average number of hours I work each week to 48 hours, measured over a reference period of 17 weeks or 26 weeks for trainee doctors.
2. As a Trust in line with our duty of care and patient safety we would not expect any member of staff to work more than an average of 60 hours per week over a 17 week reference period. Junior Doctors in Training can work up to a 56 hours average working week by completing this opt our form. The average working week of 56-hours is averaged over a 26 week reference period this is to include work carried out across all employments and locum work.
3. I agree that as from the date of this agreement the 48-hour weekly limit specified in the Working Time Regulations 1998 shall not apply in my case for any working time undertaken by me, whether paid or otherwise by the Trust
4. I understand that the Trust will maintain records that I have signed this agreement, and may need me to keep a record of my working hours, which I will do when required. If requested at any time, I will produce the record to the Trust.
5. I confirm I am entering into this agreement voluntarily. I understand my responsibilities in relation to maintaining health and safety at work and not to undertake working hours in such a way as to put myself, other staff, the Trust, patients or their family or others at risk of injury or detriment.
6. This agreement could be terminated by the Trust in writing to me or by me in writing to my manager. Both parties will usually provide a minimum of 1 month’s notice.

Employee Signature: **Date:**.....

Employer Signature (Line Manager): **Date:**.....

Name of Line Manager:.....

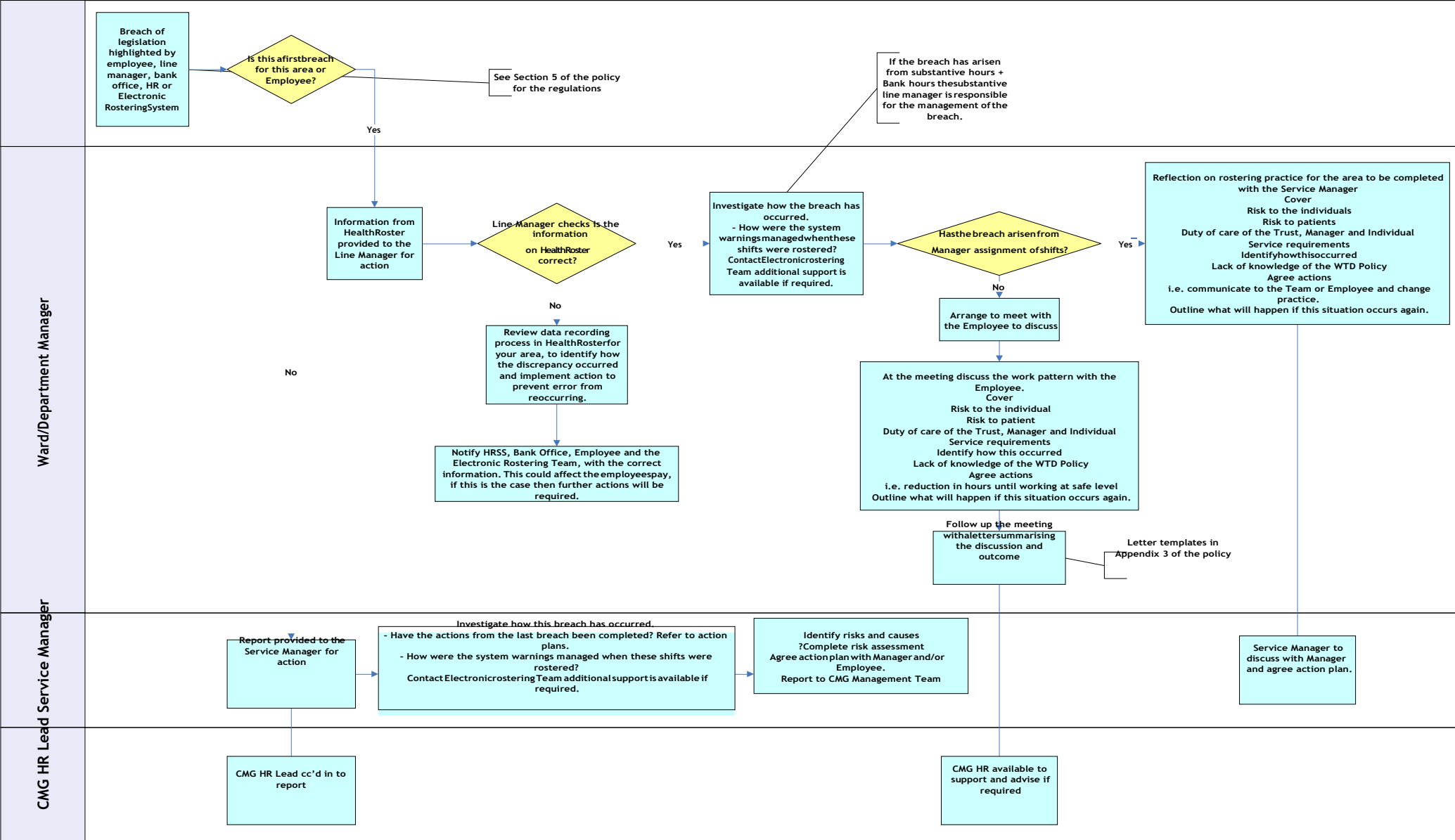
The original should be placed in the Employee’s Personal File.

Acopy of this form should be sent to: **ESR Administration, Leicester General Hospital.**

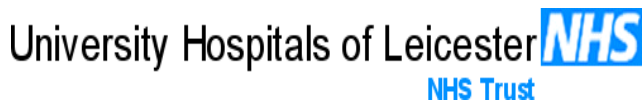
For Workforce Information Use Only: Received by:

Date:

Managing WTD and Break Legislation Breaches



WTD Breach Template letter – Management letter



Date

Personal & Confidential

Dear *[insert name of employee]*,

Re: Breaching the Working Time Directive

I am writing to invite you to an investigatory meeting to discuss a potential breach in the Working Time Directive, in line with the Trust's (WTD) policy.

I believe that there may have been a breach of the WTD on [DATE] and would like to discuss this further with you.

I would like to meet with you on [INSERT DATE] at [INSERT TIME] at [INSERT LOCATION]. The aim of the meeting is to discuss and clarify your understanding and responsibilities of the WTD.

I would be grateful if, on receipt of this letter, you can confirm directly with myself whether you are able to attend this meeting by calling me on [INSERT NUMBER].

Yours sincerely

Ward Manager
(Name and Ward)

WTD Breach Template – Management follow up letter to staff member

Date

Personal & Confidential

Dear *[insert name of employee]*,

Re: Breaching the Working Time Directive

Thank you for attending the meeting with me on (DATE) regarding a potential breach in the Working Time Directive, in line with the Trust's WTD policy.

Summarise the discussion

- *Risk to the individual*
- *Risk to the patient*
- *Duty of care of the Trust, Manager and Individual*
- *Service requirements*
- *Identify how this occurred?*
- *Lack of WTD knowledge*

Agreed Actions with timeframes

IF INFORMAL ACTION:

I have attached a copy of the Trusts' WTD Policy for your future reference and remind you that future breaches of the WTD will be dealt with in accordance with the UHL Disciplinary and Improving Performance (Capability) policies. .

IF FORMAL ACTION:

Due to the seriousness of this breach, I informed you the decision has been made to formally investigate this matter under the UHL Disciplinary Policy and procedure. You will shortly receive a letter outlining the process and allegations, and will be invited to a formal investigation meeting to discuss this further. An appropriate manager will be appointed to lead the investigation. You have the right to be accompanied at any formal meetings by a Trade Union/Professional Body representative or a colleague not acting in a legal capacity and not involved in this matter.

Please also be advised of the support available from the Trust, which you can access directly to support your health and wellbeing:

- **Occupational Health** who provide confidential and impartial advice to staff on aspects of the relationships between work and health (Tel: LGH - 258 4930, LRI - 258 5307, GGH - 250 2393)

- **Amica** which is a free and confidential staff counselling and support services, (Tel: 2544388)
- The '**Wellbeing at Work**' project offers discounted and free activities and therapies to help you achieve a healthier lifestyle. Further information is available from the Wellbeing pages on Insite or email wellbeing@uhl-tr.nhs.uk

If you have any questions relating to this matter, please do not hesitate to contact me
Yours sincerely

Ward Manager
(ENTER NAME AND WARD)