

How many hours do your workers work?

Working Time – Recording Hours/Opt-Out Agreement Employment Law Simplification Review

We have created the attached flow chart, which we hope will help employers understand and meet their obligations in relation to two aspects of the Working Time Regulations which were highlighted in the Employment Law Simplification Review.

- Record keeping
- Format of an opt-out agreement

It is based on existing guidance but presented in a way which should help you to identify what record keeping is required. It will also signpost you to more detailed guidance on working time record keeping and an example of an opt-out agreement form which you might use.

You should note that workers can agree to work beyond the 48-hour weekly limit but workers must not be forced to work more than 48 hours on average over a 17 week period.

Your payroll records should be enough to satisfy maximum record keeping requirements on working hours. In many cases – for example, when employees are paid hourly or clock in and out – records of hours worked which are already kept for other purposes should also satisfy the working time statutory requirement. There are additional record keeping requirements covering working hours for young workers and where work involves special hazards or night work.

Further information can be found on the [Business Link](#) web site.

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<u>More than 48 hours a week</u>	<u>48 hours or less a week</u>
<p>Workers can agree to work beyond the 48-hour weekly limit as set out in the Working Time Regulations 1998.</p> <p style="text-align: center;">↓</p>	<p>You need to keep records which would allow you to demonstrate that weekly limits are complied with.</p> <p style="text-align: center;">↓</p>
<p>Workers <u>must not</u> be forced to work more than 48 hours on average over a 17 week period.</p> <p style="text-align: center;">↓</p>	<p>It is for employers to determine what records need to be kept for this purpose. You may be able to use existing records maintained for other purposes e.g. pay, or you may have to make new arrangements.</p> <p style="text-align: center;">↓</p>
<p>Agreement to work beyond the 48-hour weekly limit must be in writing and signed by the worker ('opt-out' agreement).</p> <p style="text-align: center;">↓</p>	<p>In general, no running total is required of average working week.</p> <p style="text-align: center;">↓</p>
<p>For an example of an 'opt-out' agreement form see below.</p> <p style="text-align: center;">↓</p>	<p>Only occasional checks on working hours are necessary for those working standard hours and who are unlikely to reach the 48-hour weekly limit.</p> <p style="text-align: center;">↓</p>
<p>You need to keep an up-to-date list of workers who have agreed to work more than 48 hours a week on average.</p> <p style="text-align: center;">↓</p>	<p>You will need to monitor those workers close to the 48-hour weekly limit.</p> <p style="text-align: center;">↓</p>
<p>You do not need to record how many hours are actually worked but you must ensure your workers can take their rest as they cannot opt-out of rest breaks.</p>	

Further guidance on record keeping can be found on the BERR website:
www.berr.gov.uk/employment/employment-legislation/employment-guidance/page28979.html#Section_8

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Example of opt-out agreement

I (*name*) agree that I may work for more than an average of 48 hours a week. If I change my mind, I will give my employer (*amount of time – up to three months*) notice in writing to end this agreement.

Signed.....

Dated.....