

ADDITIONAL EMPLOYMENT POLICY

POLICY OWNER: HEAD OF HUMAN RESOURCES

ISSUE DATE: MAY 2009

STATUS: FINAL

FIRST REVIEW DATE: MAY 2011

1. Introduction

- 1.1 Whilst the Council recognises that employees may engage in other employment in addition to their job with the Isle of Wight Council, it is important that other work does not adversely affect any employee's performance or attendance, or breach the terms of the working time regulations.

2. Policy Statement

- 2.1 This policy applies to all employees and prospective employees of the Isle of Wight Council. When the policy is in force, all current employees will be asked to sign the notification form at Appendix 1 in their PDR process. Managers have a responsibility to consider the impact of any other work currently in place and must decide whether a referral to occupational health is necessary to consider any contravention of the Working Time Regulations. Guidance on the Regulations is set out in Appendix 2. Failure by an employee to notify us of additional employment will be treated as a disciplinary offence which may result in dismissal. In addition this form will be sent to all current employees upon changing their role within the council.

- 2.2 The purpose of this policy is to:

- a) Ensure that employees do not engage in other work that may conflict with or affect their performance or attendance under their Contract of Employment with the Council. There will be a phasing in of the policy towards current employees and the policy will be discussed in PDR's.
- b) Prevent employees and/or the Council contravening legislation on working time/hours, including total hours worked, breaks between shifts and annual leave.

- 2.3 Some employees will have Contracts of Employment, which may contain more specific provisions about additional employment. In such cases, these will apply in addition to the provisions of this policy.

- 2.4 This policy covers paid employment, unpaid employment and voluntary work outside the Council. It also covers Bank/Locum/Casual work or when an individual is considering taking on an extra job or work within the Council.

- 2.5 There is separate guidance in relation to certain roles such as school governors and magistrates in the Special Leave Policy. Nothing in this policy is intended to contradict anything in the Special Leave Policy.

3. Procedure

Pre Appointment

- 3.1 The Notification/Application for Additional Employment pro forma (Appendix 1) will be incorporated in the standard job application form.
- 3.2 Appointees will be asked to disclose any existing work which will continue after commencing employment with the Council including paid employment as well as unpaid and/or voluntary work on the form.
- 3.3 The form must be completed will be detached by the HR Department following receipt of the application form so that it is not considered as part of the application process.

- 3.4 The return of the form will only be forwarded to the relevant line manager where the successful applicant has disclosed that they will continue with additional employment. The line manager will consider if the additional employment needs to be discussed with the proposed appointee and whether any parameters needs to be established to ensure that there is no adverse impact on/implications for their job/s with the Council. If so, these will need to be discussed with the appointee prior to their offer being progressed further. The manager must also consider whether a referral to the Occupational Health Department is necessary. If a referral is considered necessary, the Line Manager will discuss this with the employee prior to making a referral.
- 3.5 Where it is agreed to progress the offer, HR will record the additional employment on the employee's personal file within 5 working days of the information being received.

Post Appointment

- 3.6 Where an individual is considering taking up either an additional job/work outside the Council or an additional post within the Council, they must request permission to do so from their line manager first by completing the pro forma at Appendix 1. If the employee works in more than one department, the employee will request permission from their main manager and notify them of their other managers. The main manager will consult with the other managers prior to granting permission.
- 3.7 On receipt of the pro forma the line manager should meet with the employee to discuss the proposed additional employment and potential impact on their current employment, performance and/or attendance. This meeting should take place within 10 working days of receiving the request.
- 3.8 The line manager should consult with HR, consider all the factors and decide if the additional employment would be detrimental to the employee's role in the Council or to the Council or not. A decision should be made and communicated to the employee within 3 working days of the meeting. Approval should not be unreasonably withheld.
- 3.9 Where approval is granted and the person takes up the additional employment, the line manager must inform HR so that additional employment can be recorded on the HR file within 5 working days of the information being received.
- 3.10 In addition, the line manager must consider whether an Occupational Health appointment is necessary where there are concerns over the Working Time Regulations. If a referral is considered necessary, the Line Manager will discuss this with the employee prior to making a referral.
- 3.11 If a request for additional employment is rejected, and the individual is dissatisfied with the decision they can appeal using the Council's Grievance Procedure. Employees should not commence the additional employment during this time unless their appeal is successful.
- 3.12 It is the responsibility of the employees to notify their line manager in writing immediately if the additional employment ceases or changes (e.g. number of hours worked, pattern of shifts).

4. Employee Responsibilities

Council Employment

- 4.1 If an employee is leaving one post within the Isle of Wight Council to take another post within the authority, they must ensure that any outstanding leave is taken or carried over and they will not be entitled to pay in lieu of the untaken leave.

Sickness

- 4.2 Employees should seek guidance from the HR Department regarding additional employment where they are unfit for work with the Council. They should normally refrain from their additional employment if they are on sick leave from the Council and the additional work is of:
- the same nature;
 - a similar nature; or
 - where attending their additional employment would be detrimental to their recovery.

Working Time Regulations

- 4.3 Employees must ensure that their total working hours do not exceed the limits and that they comply with the required rest periods within the Working Time Regulations. Guidance in relation to these Regulations is attached as Appendix 2
- 4.4 Where there is evidence of an employee acting in breach of the Working Time Regulations, the matter will be investigated in accordance with the Council's Disciplinary Procedure as such a breach would be regarded by the Council as misconduct. If the breach of the regulations arises because of a failure by the Line Manager to observe the regulations then the manager may be subject to disciplinary proceedings.

Capability/Performance

- 4.5 If an employee's performance falls below the required standards or targets, the manager will need to take the appropriate action under the Council's Capability Procedure.

ISLE OF WIGHT COUNCIL
Notification of/Application for Additional Employment

Personal Details and Isle of Wight Council Employment

Full Name: Title:

Job Title:

Department:

Directorate:

Hours of work per week:

Pattern of hours (eg 24/7 shifts, 8.30 am – 5.00 pm):

Days worked:

Declaration

I will have no other employment/work once I commence in my new post with the Isle of Wight Council.

Signed: Date:

Other Employment/Work Details (N.B. You must include any other work done for IWC)

I have other employment/work or I am considering other employment/work including Bank/Casual/Agency, the details of which are below:

Organisation/Company/Agency:

Job Title:

Description of work undertaken:

.....

.....

Type of work: Paid Unpaid Voluntary Casual
(Circle as appropriate)

Hours per week:

Pattern of hours:
(eg 24/7 shifts, 8.30 am – 5.00 pm)

Annual leave entitlement: days/hours

Date commenced:
(if already in additional employment)

Declaration

I have read and understand the Council's Additional Employment Policy, and I agree to comply with its requirements.

Signed: Date:
(Employee)

Office use only

Name of Manager forwarded to:

Date forwarded:

Date discussed with employee:
(if applicable)

Similar to post at Isle of Wight Council YES NO

Decision:
(Please tick appropriate box)

Request approved

Request rejected

Comments:

Date employee informed of decision

Working Time Regulations – Guidance

1. What are the Working Time Regulations?

The Working Time Regulations implement the European Working Time Directive, and certain aspects of the Young Workers Directive, into UK law. They came into force on 1 October 1998.

The Regulations were adopted as a health and safety measure, as it had become apparent that working for too long, without sufficient rest periods, was damaging to worker's health. Accordingly, there are now restrictions on worker's daily, nightly and weekly working hours and protection for those who are required to work beyond these limits.

The legislation enables employers to be fairly flexible in the way they organise working time, recognising that adjustments need to be made to reflect particular service needs. However, because this is a health and safety initiative, there will still be a need to bear in mind the general duty of care that the Council, as an employer, owes to its employees in addition to these regulations.

2. Who do the Regulations apply to?

The Regulations apply to 'workers'. An adult worker is a person aged 18 and over, whilst a "young worker" is aged 15-17 inclusive, so long as they are over compulsory school age.

The term 'worker' is much broader than simply 'employee'. It includes not only those employed under a contract of employment but also anyone who performs work for another party under a contract for services.

3. What do the Regulations Provide?

The Regulations provide that all workers must be entitled to:

- a. A rest break during the working day
 - an adult worker is entitled to a rest break of at least 20 minutes where the working day is longer than 6 hours
 - a young worker is entitled to a rest break of at least 30 minutes, where the working day is longer than four and a half hours
 - this break should be uninterrupted and the worker is entitled to spend it away from the work station
- b. A daily rest break
 - an adult worker is entitled to a rest break of 11 consecutive hours per 24 hour period
 - for young workers this is a break of 12 consecutive hours
- c. A weekly rest break

- an adult worker is entitled to a rest break of 24 consecutive hours per 7 day period. For young workers this is a break of 48 hours
 - for adult workers, working time can be averaged over 14 days, meaning that within a 14 day period, a worker can receive one 48 hour break or two separate 24 hour breaks
- d. A free health assessment, if the worker is a 'night worker'
- 'night workers' are entitled to receive a free health assessment before being assigned to night work
 - they are also entitled to regular assessments thereafter
 - If a manager considers that or is notified that the worker has developed health problems due to the night work, s/he must consider re-deployment to suitable daytime work
 - Employers must ensure that no young worker employed by him works during the restricted period. (*The restricted period is the period between 10 p.m. and 6 a.m. or if the contract provides that the worker starts after 10 p.m. then the period from 11 p.m. to 7 a.m.*)

Additionally, employers must ensure that:

- e. The maximum working week is 48 hours on average, including overtime. Young workers must not work for more than 8 hours per day or more than 40 hours per week.

the calculation of weekly working time is averaged over 17 weeks

- if any of the special circumstances (*see paragraph 6b*) apply, the weekly working time is averaged over 26 weeks
 - an individual can agree to work beyond the average 48 hours week, providing he or she consents in writing. Managers must not put any pressure on workers to consent to waive their rights under the Working Time Regulations. (If you have an employee who wishes to opt out of the 48 hour working week, please inform an HR Advisor, who will send the letter to the employee (*Appendix 3*)).
 - an individual who has made such an agreement may terminate it or the employer may terminate the arrangement by giving notice. Such notice period must not exceed 3 months.
- f. Night workers must not work more than an average of 8 hours per 24 hour period
- a night worker is a person who, on the majority of days on which he works, works 3 hours or more during night time
 - night time is the period covering the hours 12.00 am – 5.00 am and must be for a minimum of 7 hours
 - the calculation of the length of night work should be averaged over 17 weeks

- g. Night workers, whose work is physically or mentally onerous, have an absolute working time limit of 8 hours per 24 hour period

4. Annual Leave

All Isle of Wight Council workers are entitled to a minimum of 4 weeks annual leave in each leave year in addition to bank and statutory holidays or days in lieu if the bank holiday is worked. This more than meets the requirements laid out in the Working Time Regulations. Annual Leave must not be replaced by a payment in lieu unless the employment has been terminated. Leave will be pro rata if a worker starts after the date the leave year runs from.

A worker CANNOT waive their right to annual leave and managers should ensure that leave is taken.

5. Record Keeping

Records of the following must be kept for at least two years:

- details of anyone who regularly works beyond 48 hours a week, and a copy of their signed agreement to do so, for monitoring purposes to ensure compliance
- any collective agreements which affect any of the Regulations
- any special agreements about what constitutes night working
- any workers who perform physically or mentally onerous duties at night, offers of health assessments for night workers and details of any assessments which are carried out

6. Are There Any Exceptions to These Provisions?

In particular circumstances, the provisions outlined above do not apply. These include the following situations. If in any doubt please check with Human Resources:

- a. Where working time is not measured
- where a worker's working time is not measured or predetermined, or can be determined by the worker personally, then the only provisions which apply to them are the entitlement to annual leave and the provision of rest breaks for monotonous work.
- b. Special circumstances

The regulations set out a number of circumstances in which the provisions relating to breaks in the working day, daily rest, weekly rest and night working do not apply. The exceptions which relate to local government workers are as follows:

- where there is a need for continuity of service or production, for example, residential carers in social services or probation hostels or household refuse collection and incineration

- where there is a need to provide security to protect persons or property requiring a permanent presence, for example, caretakers in schools, or emergency call-out housing teams
- where there is a foreseeable surge in activity for agriculture, tourism or postal services, for example, where winter maintenance activities are carried out
- where work cannot be interrupted on technical grounds
- where there are unusual or unforeseen circumstances beyond the employer's control, for example, if extreme unexpected weather conditions demand extra work to be carried out or if there is an accident or imminent risk thereof
- where a persons' place of work is distant from his home, or the different places of work are distant from one another

NOTE: If any of these exceptions apply, the worker must be afforded compensatory rest. This means that the worker should be offered a rest period, equal to that which they were deprived of, as soon as possible after the interruption occurred.

In the following circumstances, the worker's entitlement to 11 hours' daily rest and 24 hours' weekly rest can be disapplied, although again they should be offered compensatory rest:

- where shift workers change shifts at the end of a cycle and cannot take the full rest between the end of one shift and start of another
- where workers' activities are split up over the day, for example, cleaners and caretakers

c. Where a relevant agreement can be reached

If a collective agreement is reached with trade unions, or a workforce agreement where trade unions are not recognised, to disapply any of the provisions (with the exceptions of the 48 hour week and annual leave), this can affect departure from the basic entitlements/duties. However, compensatory rest must be provided, as noted above.

d. Individual agreement

Any worker who is prepared to work more than an average of 48 hours per week, must agree to do so in writing. Once the agreement is made, he will have to give notice if they wish to withdraw from it. The notice will be at least 7 days and can be up to 3 months. Equally, the employer can give notice to end such agreement. (*see model agreement letter – Appendix 3*).

7. Call-Out/Standby/Sleeping-In

a. Standby arrangements raise two main questions:

- Is the period of call-out, etc classed as working time?

- Time which a worker spends on standby duties, where he is not at the workplace, but is available to work, does not count as working time. Clearly any time when the worker is actually called out will be regarded as working time.
 - Sleeping-in is classed as working time.
- b. What happens when a worker is called upon, and this interrupts the daily rest break?

The problem here is that the worker is not receiving his daily rest entitlement. There are various solutions:

- call-out, standby and sleeping-in duties are likely to operate because there is a need for continuity of service or possibly a need to protect persons or property. If so, the worker might fall into one of the exceptions, in which case the provision can be disapplied. However, compensatory rest needs to be offered
- it may be possible to reach a collective or workforce agreement, in which those undertaking call-out duties agree to waive their entitlement to a daily rest period. Once again compensatory rest must be offered

8. What Happens if the Regulations are Breached?

In relation to the 48 hour limit, and the 8 hour shift for night workers, line managers will need to show that all reasonable steps are being taken to comply with the Regulations. If the Regulations are breached a criminal offence may be committed for which a fine could be levied and the worker a right of redress to an employment tribunal. If that transpires that a person is, in fact, working in breach of the Regulations, it will be necessary for the worker's hours to be rearranged. Line managers will need to ensure that they do not breach the worker's contract in so doing.

9. Health and Safety Enforcement

If the Council breaches the Regulations, and fails to comply with a prohibition or improvement notice served upon it, it may be committing a summary or indictable offence. If a summary offence is committed, the employer may be fined up to the statutory maximum and managers face 6 months imprisonment. If it is an indictable offence, there is no ceiling on the fine which may be imposed, and there is a possible prison sentence of up to two years.

10. Workers' Remedies

The Regulations provide a remedy for employees but importantly also for workers, who were not previously protected by employment legislation.

Workers have a right not to suffer any detriment for refusing to comply with working arrangements which breach the Working Time Regulations, which would include refusing to work otherwise than in accordance with the regulations or refusing to sign an agreement to work for more than 48 hours. The Employment Rights Act 1996 has been amended so that it is automatically unfair to dismiss an employee for asserting his right to work in accordance with the Regulations.

Dear

RE: AGREEMENT TO OPT OUT OF REGULATION 4(1) OF THE WORKING TIME REGULATIONS 1998 (AS AMENDED)

The Working Time Regulations 1998 (as amended) stipulate that no worker's working time, including overtime, shall exceed an average of 48 hours for each seven days unless the worker has given written agreement to do so.

I am now informed that you wish to opt out of the 48 hour week and so would request that you sign and return the attached copy of this letter signifying your agreement to work in excess of an average of 48 hours per week.

This agreement is for (_____ months*) / (an indefinite period but will be reviewed after 12 months*).

This agreement can be terminated by either your manager or by you at any time by giving one/two* (**must not exceed 3 months**) month's notice in writing, and your workload will be rearranged accordingly.

Please do not hesitate to contact me if you have any enquiries in relation to this agreement.

Yours

HR advisor

I have been made aware that I am not required to exceed 48 hours work on average per week, but I wish to opt out of this regulation.

I am over the age of 18 and agree to this situation for (_____ months*) / (an indefinite period but will be reviewed after 12 months*).

I understand that I may terminate this agreement at any time without prejudice to myself by giving one/two* month's notice in writing to my manager.

Print Name:

Signed:

Dated:

* **Delete as appropriate**