

Guide for Foundation Doctors on Working Hours and Monitoring

Your employer must ensure that you, as a junior doctor, can work safely and effectively without excessive workloads that might compromise patient care. To facilitate that, they must ensure that both your contractual and actual working hours comply with the New Deal and EWTD requirements.

What is EWTD?

The European Working Time Directive (EWTD), Directive 2003/88/EC, is a directive of the European Union to protect the health and safety of workers in the European Union. It lays down minimum requirements in relation to working hours, rest periods, annual leave for all workers and working arrangements for night workers. The original Directive, Directive 93/104/EC was enacted in UK law as the Working Time Regulations, which took effect from 1 October 1998. The EWTD originally did not apply to doctors in training (junior doctors) but the Amending Directive, Directive 2000/34/EC removed this exclusion. WTD has no effect on pay.

What is the New Deal?

The New Deal details government regulations on working patterns and conditions for doctors in training. It was introduced in 1991 and sets standards on hours, work intensity, the nature of work, food and accommodation. The New Deal is also closely linked to the quality of training. The junior doctors' contract makes the New Deal legally binding. Monitored hours worked, under New Deal regulations, plus the unsocial nature of rotas determine pay bands.

What do the New Deal and WTD say about hours?

Please see the next page for a summary of the New Deal and WTD guidelines on duty hours and rest periods. Please note that your contract has to be compliant with these regulations. If your contract requires you to work outside the regulations, the contract will be illegal.

Will my hours be monitored?

Yes. Ongoing monitoring will take place a minimum of twice a year (for a minimum period of two weeks), and more frequently where problems with compliance are identified or where the minimum return rate of 75% is not achieved as outlined in the regulations. Non-typical periods are usually avoided: e.g. bank holidays, examination periods.

Why is monitoring important?

Effective and accurate monitoring of junior doctors' hours and working patterns underpins any attempt to identify areas of concern, establish good working practices and implement appropriate solutions. For example, your rota may show that you should have worked 8 hours, but actual monitoring shows that you worked 10 hours. If that is the case, your employer has to investigate the reasons for your extra hours and take any steps necessary (e.g. your employer may need to review your duties to ensure you are not spending your time on carrying out inappropriate duties) to ensure your actual working hours comply with your rota hours.

What happens if I do work outside my contracted hours?

All junior doctors are required to work and rest in accordance with their contracted working hours and rota template **at all times**. Should you have to work outside your contracted hours or be unable to achieve adequate rest on a regular basis, then you must contact your Supervising Consultant and rota coordinator so that this can be investigated.

Is monitoring compulsory?

Yes. It is compulsory for local education providers to monitor hours, and for doctors to cooperate with monitoring arrangements. Monitoring of junior doctors hours of work and rest periods forms part of the Junior Doctors New Deal Contract and the Improving Working Lives for Junior Doctor accreditation framework.

During periods of monitoring where you are having to work outside your contracted hours or are unable to achieve adequate rest you must, similarly, discuss this with your Supervising Consultant and rota coordinator giving the reason why your contracted hours or rest breaks cannot be achieved.

Please note that it will constitute a breach of contract if your employer requires you to work outside these criteria, or for you yourself to work outside them.

Similarly, falsification of hours monitoring (for the benefit of either you or your employer) is fraud, and a breach of health and safety legislation.

Fraud is defined as "criminal deception". If you undertake to supply false information deliberately during the monitoring then you risk prosecution through the courts as well as censure from the General Medical Council. It is essential that you think of the monitoring process in exactly the same way as completing expense claims. The consequences of wilful dishonesty could be very serious.

Where an individual junior or group of junior doctors in a rota fails, without good reason, to meet their contractual responsibility to supply monitoring data, they shall receive a written notice of their contractual obligation to co-operate, and be required to participate in a further round of monitoring.

Persistent failure to comply with monitoring arrangements will represent a breach of contract and may result in disciplinary procedures being exercised.

Can I request re-monitoring?

Yes. Your employer and you yourself can both request re-monitoring, which must be undertaken within a reasonable period of time. This may arise where, for example, you can produce well founded reasons why your hours of work or work intensity are not adequately reflected in the results of the monitoring, or where the results vary substantially from the anticipated outcome, or following a major organisational change, or in cases of contractual dispute. Re-monitoring will take place with the same set of doctors wherever possible.

What should I take into account to arrive at an accurate record of my hours worked?

- Days on which you are on leave should be excluded from the calculation.

Actual working time

- Always enter your actual start time and end time for the day.
- All time spent resident will be counted as work, even if sleeping. For example, if you are in the hospital, and your bleep is on, you are working, regardless of whether you are touching a patient or in the mess. It also means that doctors resident on-call but asleep will count as working.
- Similarly, periods of formal study leave at the place of work, or teaching, count as work.

Rest

- Rest is different from natural breaks. You usually do not get rest on full-shift patterns. This is normal practice, but you should get natural breaks instead. Rest is a term that applies more to old-style on-call and partial shift rotas.
- In the unlikely event that you were not working, not in a meeting, not in teaching, not available, and with your bleep not on, then fill in that time as rest. However, expect to see no blocks filled in as rest, since it is unlikely that you would not be contactable at any point during the working day.
- Non-resident rest does not count as working time and this is the difference between 'duty' and 'actual' hours.

Natural breaks

- A natural break is at least a 30 min continuous break after approximately every 4 hours on duty, without an interruption requiring you to do something, and meeting the absolute requirement of no more than 5 hours work without a break.
- A single one-hour break cannot count as two natural breaks, and two 15-minute breaks cannot count as one natural break.
- Being bleeped during a natural break is acceptable unless the doctor has to act on the call, or unless the bleeping is repeated and therefore disruptive to the break.
- Note that for the purposes of hours calculation, **natural breaks count as work, not rest**. Note that for a shift lasting 5 hours, zero breaks is acceptable; a shift from 5-9 hours must have at least one break; a shift from 9-13 hours must have two breaks; a shift from 13-14 hours must have three breaks; a shift over 14 hours is automatically non-compliant. Both the total number of breaks per shift and the never more than 5 hours continuous without a break rule must be met. For monitoring purposes, **the natural break rules must be met on 75% of duty periods** for the rota to be compliant.

A Summary of the New Deal & WTD Guidelines on Duty Hours and Rest Periods.

Working Time regulations apply in parallel to the New Deal. For each parameter, where there are differences, the more stringent (i.e. the more favourable to the doctor) of the requirements will apply.

Maximum hours worked									
New Deal					WTD				
Irrespective of the number of duty hours and working pattern, no junior doctor should be expected to actually work more than an average of 56 hours per week, although they may be on duty for longer.					Irrespective of the number of duty hours and working pattern, the maximum average hours worked per week should be:				
N.B. Maximum consecutive duty days – all working patterns = 13 days					58 from 01.08.04, 56 from 01.08.07 and 48 from 01.08.09				
Working pattern	Maximum average duty hours per week			Maximum continuous duty period (hours)		Minimum period off duty between duty periods (hours)		Minimum continuous period off duty (hours)	
	New Deal	WTD		New Deal	WTD	New Deal	WTD	New Deal	WTD
		2007	From Aug 2009						
Full Shift	56	56	48	14	13	8	11 (Although 11 hours total rest should be achieved every 24 hours, a derogation allows for all or part of this rest to be taken as compensatory rest, which must be taken before the next duty period)	48 + 62 in 28 days	one of 24 hours in each 7 day period or two of 24 hours in each 14 day period or one of 48 hours in each 14 day period
Partial shift	64	56	48	16	13	8		48 + 62 in 28 days	
Resident 24hr partial shift	64	56	48	24	13	24 (20 if midday start)		48 + 62 in 28 days	
Non-resident 24 hr partial shift	64	Silent*	Silent*	24	Silent*	24 (20 if midday start)		48 + 62 in 28 days	
Resident On-Call	72	56	48	32 (56 @ weekend)	13	12		48 + 62 in 21 days	
Non-resident On-Call	72	Silent*	Silent*	32 (56 @ weekend)	Silent*	12		48 + 62 in 21 days	
<ul style="list-style-type: none"> Maximum number of continuous duty days for all working patterns is 12 days, followed by a minimum of 48 hours off duty. Average of no more than 8 hours work in 24 hours for night workers. 									

* Where Working Time regulations are silent on aspects of the above, New Deal limits will apply.

Summary of New Deal rest periods - HSC 1998/240. (All targets to be met on 75% of duty periods)*

Working pattern	Natural breaks	Minimum total rest during duty period	Minimum continuous rest	Timing of continuous rest
Full Shift	✓	Natural breaks	30 minutes break after approximately 4 hours continuous duty	30 minutes break after approximately 4 hours continuous duty
Partial shift	✓	Natural breaks if no out of hours duty. Otherwise, one quarter of the out-of-hours duty period, e.g 5pm – 9am (Mon - Fri) = 4 hours 9am - 9pm (Sat - Sun) = 3 hours	Frequent short periods of rest are not acceptable	Any time during the duty period
24 hr partial shift	✓	6 hours	4 hours	Between 10pm and 8am
On-Call	✓	One half of the out-of-hours duty, e.g. 5pm - 9am (Mon - Fri) = 8 hours Sat and Sun weekend = 24 hours If 6 hours rest is achieved between 5pm – 9am, 8 hours can be achieved by paid compensatory rest	5 hours	Between 10pm and 8am

*WTD: Minimum 20 minute break when working time exceeds 6 hours and a right to four weeks paid leave per year