



Overtime

Overtime is usually classed as hours worked over an organisation's regular full time requirement. When a worker has fixed working hours, overtime would be any additional hours worked.

An employer may offer overtime to cope with an increase in demand for their products or services. For example to satisfy a large customer order, or during staff shortages. It can be compulsory or voluntary. A recognised system of paid overtime is more common with hourly paid staff than salaried staff.

Whether a worker is required to work overtime depends on the employment contract. Details should be set out in their contract of employment or the staff handbook.

Is overtime compulsory or voluntary?

Is there a limit to how much overtime can be worked?

Pay when working overtime

Overtime for part time workers

Impact of overtime on holiday calculations

Is overtime compulsory or voluntary?

Overtime can be compulsory or voluntary. It will depend on the terms and conditions of the contract whether overtime is:

1. voluntary
2. compulsory and guaranteed
3. compulsory but non-guaranteed.

1. Voluntary Overtime

Voluntary overtime is where there is no obligation on an employer to offer overtime and no obligation on the worker to do overtime if it is offered. A worker should not be subject to any detriment for turning down voluntary overtime.

For example: Several workers are absent from work due to sickness. This leaves their employer short-staffed. The employer offers overtime to their colleagues so they continue to meet customer demand. The workers are able to choose whether or not to work the extra hours as there is nothing in their contract to say they must do so.

2. Guaranteed Overtime

Guaranteed overtime is overtime that an employer is contractually obliged to offer and a worker is obliged to accept.

For example: An employer knows they need to fulfil an order from a particular customer on the last Sunday of every month. The contracts of employment include that staff will be scheduled to work overtime on this particular day each month and they will be obliged to work it.

3. Non-Guaranteed Overtime

Non-guaranteed overtime does not have to be offered by an employer. However, when it is offered, the worker must accept and work it.

For example: An employer knows that their business is likely to be busier at certain times of the year but does not know how much overtime they will need their employees to work. The employer includes in its contracts of employment that, if needed, workers will have to work extra hours during the busy periods.

An employer who wants to rely on either guaranteed or non-guaranteed overtime should clearly set out in the terms and conditions of employment that the overtime is compulsory.

If a worker refuses to work overtime they are obliged to work, the employer may view this as a breach of the contract and a disciplinary matter.

Is there a limit to how much overtime can be worked?

All working hours, including overtime, are governed by the Working Time Regulations. These state that a worker:

must not work more than 48 hours per week on average, though a worker may choose to "opt out" must be allowed at one day off each week or two days off in a fortnight should have 11 hours uninterrupted rest in a 24 hour period is given at least a 20 minute break if their shift lasts more than six hours.

There are some exceptions to these rules depending on the nature of the work that is being done.

Different rules apply for 16 and 17 year old workers. They cannot work more than 8 hours per day or 40 hours per week. Young workers cannot sign an opt-out agreement and must have two days off per week.

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Pay when working overtime

There is no legal right to receive an additional payment or be paid at a higher rate for any overtime worked. An employer should clearly state in the employee's terms and conditions of employment what, if anything, will be paid for working additional hours.

An employer may offer a higher rate of pay than normal for overtime as an incentive for staff to work the hours. While overtime may be worked for no additional pay, a worker's hourly rate must not fall below the **National Minimum Wage**.

Alternatives to paying staff for working overtime

As an alternative to pay, an employer may offer **time off in lieu** to workers who have worked above their contracted hours. Time off in lieu means that any overtime hours the individual works, they can take off from work in addition to their annual leave.

Both employer and worker should ensure that they keep detailed records of how much overtime has been worked and how much additional time off has been taken.

The agreement for taking time off should be set out in a written agreement and include:

1. When leave can be taken
2. The authorisation process for booking the leave
3. What happens if the contract ends before all accrued overtime is used.

Employers should consider how much leave is allowed to accrue as the running of the business could be affected when workers look to take this time back.

An employer also needs to ensure that working additional hours to take the time back at a later date does not take their worker below the **National Minimum Wage** for that Pay Reference Period.

Overtime for part time workers

Part time workers should not be treated less favourably than full time workers. If a full time worker receives extra or an enhanced rate of pay for overtime, a part time worker should receive the same rate of pay after working the same amount of hours.

Unless the contract says differently, there is no obligation on an employer to pay a part time worker an overtime rate until they have worked the same amount of hours as their full time counterpart.

Impact of overtime on holiday calculations

Recent court decisions have indicated that all overtime worked should be included when calculating a worker's statutory holiday pay entitlement. The only exception to this is overtime that is worked on a genuinely occasional and infrequent basis.

These court decisions apply to the four weeks of annual leave which are required under European law. All workers in the UK must receive an additional 1.6 weeks of leave by law, and some receive more as part of their terms and conditions of employment. Many employers choose to apply the judgments to this extra annual leave. Doing this is not a legal requirement but can help to keep their processes simple and understandable.

As all court decisions are case specific an employer may want to take legal advice as to how these decisions will impact on their organisation.

Apprenticeship Funding Bands for more information visit - <https://www.gov.uk/government/publications/apprenticeship-funding-bands>

Temperature in the work place -HSE are reminding employers about the need for the temperature of a workplace to be reasonable.

There is no law for a maximum temperature at work. However, there is a legal requirement to:

- A) Maintain a comfortable temperature
- B) Provide clean and fresh air

If the nature of the work results in extreme temperatures, then advice should be sought on dehydration, heat stress and cold stress.

HSE release figures for work-related fatal injuries for 2017/18 -

The Health and Safety Executive (HSE) has released its annual figures for work-related fatal injuries for 2017/18, as well as the number of people known to have died from the asbestos-related cancer, mesothelioma, in 2016.

The provisional annual data for work-related fatal injuries revealed that 144 workers were fatally injured between April 2017 and March 2018 (a rate of 0.45 per 100,000 workers). Although this represents an increase of nine fatalities from 2016/17, there has been a long-term reduction in the number of fatalities since 1981 and the number has remained broadly level in recent years. The new figures show how fatal injuries are spread across the different industrial sectors: 38 fatal injuries to construction workers were recorded, accounting for the largest share of any industry. The annual average rate over the last five years in construction is around four times as high as the all industry rate. 29 fatal injuries to agricultural workers were recorded. This sector continues to account for a large share of the annual fatality count. It has the highest rate of fatal injury of all the main industry sectors, around 18 times as high as the all industry rate. 12 fatal injuries to waste and recycling workers were recorded. Despite being a relatively small sector in terms of employment, the annual average fatal injury rate over the last five years is around 16 times as high as the all industry rate. 15 fatal injuries were recorded in both the manufacturing and the transport and storage sectors. Both industries have an annual average rate of fatal injury around 1.5 – 2 times the rate across all industries over the last five years.

The three most common causes of fatal injuries continue to be due to; workers falling from height (35), being struck by a moving vehicle (26) and being struck by a moving object (23), accounting for nearly 60 per cent of fatal injuries in 2017/18.

The new figures also highlight the risks to older workers; 40 per cent of fatal injuries in 2017/18 were to workers aged 60 or over, even though such workers made up only around 10 per cent of the workforce.

In addition, there were also 100 members of the public fatally injured in incidents connected to work in 2017/18 with just over half of these fatalities occurring on railways.

Mesothelioma, contracted through past exposure to asbestos and one of the few work-related diseases where deaths can be counted directly, killed 2,595 in Great Britain in 2016. The current figures are largely a consequence of occupational asbestos exposures that occurred before 1980. Annual deaths are expected to remain broadly at current levels for the rest of the decade before beginning to decline.