

Briefing Note

Legal provisions relating to rest periods within hours of work

Guidance in Conventions on the definition of hours of work

Provisions on 'hours of work' and rest periods in Conventions and Recommendations

1. The Hours of Work (Industry) Convention, 1919 (No. 1) and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) prescribe:
 - Article 2 of Convention 30 provides that : 'For the purpose of this Convention the term hours of work means the time during which the persons employed are at the disposal of the employer; it does not include rest periods during which the persons employed are not at the disposal of the employer.'
 - Maximum 'hours of work' must not exceed 8 hours in the day and 48 hours in the week (does not apply to managers)
 - Article 2 of Convention No 01 (and Article 3 of Convention no. 30) allows the averaging out of working hours over several weeks, in general, provided that the daily amount does not exceed 9 hours (Convention No. 1) or 10 hours (Convention No. 30.) Averaging is also acceptable in shift work, provided that the average over a period of three weeks does not exceed 48 per week (and in some other defined circumstances).¹
2. The Reduction of Hours of Work Recommendation No. 116 introduces the notion of 'normal hour of work', which are defined for the Recommendation as, 'the number of hours fixed in each country by or in pursuance of laws or regulations, collective agreements or arbitration awards'. Where they are not defined in this way, according to the Recommendation, normal hours of work means, 'the number of hours in excess of which any time worked is remunerated at overtime rates or forms an exception to the recognised rules or custom of the establishment or of the process concerned.'
3. Paragraph 1 of The Forty-Hour Week Convention, 1935 (No. 47) promotes:
 - the principle of a forty-hour week, without reduction of standards of living
 - the adoption of appropriate measures to achieve that objective.
4. Rest breaks are the intervals that workers are allowed to take in order to rest, eat, drink, pray or satisfy other important needs during the working day. The issue of rest breaks is not covered by Conventions Nos 1, 30 and 47. However, sectoral instruments such as the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153), and the Nursing Personnel Recommendation, 1977 (No. 157), provide for mandatory breaks.

¹ Paragraph 12(2) of the Reduction of Hours of Work Recommendation No. 116 sets out maximum reference as the basis on which hours of work are averaged to allow a more flexible approach to fixing a limit to normal hours of work per week.

What limits on hours of work are set in national legislation²

5. The CEACR noted in 2018: ‘... the Committee wishes to emphasize the importance of the eight-hour day and the 48-hour week as a legal standard for hours of work in order to provide protection against undue fatigue and to ensure reasonable leisure and opportunities for recreation and social life for workers. The Committee recalls that when fixing limits to working hours governments should also take into consideration the health and safety of the workers and the importance of work–life balance.
6. In relation to statutory limits set for **weekly hours of work**, the national legislation in a majority of countries establishes a weekly limit on normal hours of work. In Asia, China and Japan set a 40-hour working week, Cambodia, Philippines, Thailand, and Bangladesh set the limit at 48 hours and Singapore, Sri Lanka set the limit between these two levels.
7. 87 out of 119 countries reporting to ILO in 2017 set both daily and weekly normal hours of work. In many cases, the daily limit is set at eight hours a day, while in only a few cases is the working day prescribed by legislation longer than eight hours.
8. The legislation in the majority of countries contains a definition of hours of work that reflects the **definition in Convention No. 30, article 2**³, including Antigua and Barbuda, Brazil, Burkina Faso, Ecuador (section 61 of the Labour Code), El Salvador, Islamic, Republic of Iran, Oman, Serbia, Bangladesh, Belgium, Plurinational State of Bolivia, Burundi, Luxembourg.
9. The Conventions set a double limit –daily and weekly – on hours of work and this limit is cumulative, not alternative.⁴

Are rest periods during the working day included within the definition of working hours?

Defining rest breaks during the working day

10. Rest breaks are the intervals that workers are allowed to take in order to rest, eat, drink, pray or satisfy other important needs during the working day. The issue of rest breaks is dealt with in sectoral instruments such as the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153), and the Nursing Personnel Recommendation, 1977 (No. 157), provide for mandatory breaks.
11. Rest breaks at regular intervals during the working day are essential to minimize the build-up of fatigue, and it has been recognized that frequent short breaks can help to reduce work-related stress. The legislation in the vast majority of countries acknowledges the importance of breaks during the working day and contains specific provisions calling for at least one rest break. In

² Text represents summary of relevant sections of the General Survey concerning working-time instruments Information and reports on the application of Conventions and Recommendations Report of the Committee of Experts on the Application of Conventions and Recommendations, 2018, Report III (Part B), International Labour Office, Geneva

³ ‘the time during which the persons employed are at the disposal of the employer; it does not include rest periods during which the persons employed are not at the disposal of the employer.’

⁴ See Syrian Arab Republic – CEACR, Convention No. 1, direct request, published in 2016.

some countries, the legislation provides for the possibility of more than one daily break. For example, in the Syrian Arab Republic, hours of work must include one or several meal and rest breaks totalling no less than one hour. In other cases, the national legislation provides for the total amount of rest time that can be taken at once or divided into several breaks. For example, in Germany the Hours of Work Act provides that hours of work shall be interrupted by rest periods, fixed in advance, of at least 30 minutes if working hours last between six and nine hours, and of 45 minutes, if hours of work are more than nine hours in total. These rest periods can be divided into breaks of at least 15 minutes each.

12. Additional breaks are envisaged by the legislation in certain countries due to the specific nature of the work or particular working conditions, such as very hot or cold weather. For example, in the Russian Federation, employees working in cold seasons in the open air or in closed unheated buildings, as well as loaders engaged in loading and unloading, are entitled to special breaks to warm up and rest, which are included in working time.
13. National law and practice vary greatly in terms of the length of rest breaks, which range between ten minutes and three hours. In the majority of countries, however, the required breaks last between 15 minute and one hour. A break is often granted after a maximum period of continuous work, normally of five or six hours. For example, in India, no worker shall work for more than five hours before having a break of at least half an hour.
14. The national law and practice in a few countries provides for additional rest breaks at the start of or during overtime. For example, in Indonesia, companies that call on workers to undertake overtime are required to provide the opportunity for adequate rest.
15. The CEACR 2018 noted the indication by the Federal Chamber of Labour that in Austria two conditions have been developed in practice for a break to be recognized as a rest break in accordance with the legislation: (1) it must occur at a time that is predictable for employees, or be chosen freely by them within a specific time period; and (2) the rest break must be genuine free time, meaning that employees may spend this time as they wish.

The inclusion of breaks within hours of work

16. Convention 30 provides: 'For the purpose of this Convention the term hours of work means the time during which the persons employed are at the disposal of the employer; it does not include rest periods during which the persons employed are not at the disposal of the employer.'
17. The legislation in the majority of countries contains a definition of hours of work which, in a substantial number of cases, reflects the definition in Convention No. 30.
18. Although most countries indicate that hours of work do not include rest periods, some countries include rest periods in hours of work and hours of work include some breaks and exclude others. For example, in Poland, workers whose daily working time is six hours or more are entitled to a rest break included in their hours of work; by means of a collective agreement, labour regulation or the employment contract, workers may also be entitled to an additional break not included in their hours of work. In Ethiopia, while short rest breaks during working hours are included in regular hours of work, meal breaks are not.

Requirement to be at the disposal of employer

19. In the majority of countries, the requirement of being at the disposal of the employer is supplemented or replaced by the need to perform actual work. For example, in Ethiopia, the Labour Proclamation defines normal hours of work as the time during which a worker actually performs work or is available for work in accordance with the law, collective agreement or work rules. In Denmark, working time is the period during which workers are working and are at the employer's disposal and carrying out their activity or duties.
20. In the United States, the time spent wearing and changing protective clothing and/or sanitation and safety equipment, is considered as working time. Similarly, in 2012 the Federal Labour Court of Germany established that the time spent on putting on and taking off corporate clothing is considered as working time. In France, the Labour Code provides that when the wearing of work clothes is required by law or regulation, collective agreements, rules of procedure or by the work contract and when the dressing and undressing must be carried out at the workplace, the time spent for these activities is compensated, either financially or with time off. In Brazil, the legislation establishes that changing of clothes or uniform is not considered as working time, unless it is compulsory to do such changing of clothes or uniform in the company.
21. National legislation generally considers rest breaks as being included in hours of work if the employee remains at the disposal of the employer, or when the rest break is taken at the work premises, for instance in establishments where production is continuous and where the worker cannot leave the workplace due to the nature of the work (on call.)

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