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Remembering rest periods in law: Another tool to limit excessive working hours

Naj Ghosheh

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Inclusive Labour Markets, Labour Relations
and Working Conditions Branch

***Remembering rest periods in law: Another tool to limit
excessive working hours***

Naj Ghosheh

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1. Introduction

“In the future, working hours will be short and vacations long. Our grandchildren will work around three hours a day and probably only by choice”

“Economic Possibilities for Our Grandchildren,” 1928,

John Maynard Keynes

In the 1920’s Keynes predicted that working hours would change in the future. He based this prognostication on the fact that the nineteenth century had unleashed a wide array of technological innovations such as electricity, petrol, and mass production. Based on this he suggested the global economy would grow and that with even greater technical improvements the fifteen hour work week would become the norm. Since that time many others have made predictions that labour-saving devices would liberate people from the demands of working long hours. Yet, while Keynes may have anticipated what would become globalization in the current era, it is now clear that he and others were very much mistaken about the shortening of working hours and the types of rest available to workers.

In the modern world globalization and technology have if anything increased demands on workers. Laws addressing working hours have acted as somewhat of a barrier to long hours, but often do not address the predictability or variability of working hours. Working long, variable, or unpredictable hours occurs as a result of enterprise demands, the type of employment contract or the need for overtime wages due to a low enterprise or minimum wage. In addition, for many workers information technologies (e.g. mobile phones, internet connectivity) can intrude on designated rest periods (e.g. evenings, weekends, holidays). All of these pressures may lead workers to ignore their physical and mental wellbeing by working through rest periods. Rest periods, which are designated in many countries’ national labour laws, are vitally important to ensure the health and wellbeing of workers. While workers and employers acknowledge legal limits on working hours to a degree, they often ignore legal provisions on rest periods. This can lead to the deterioration of individual workers’ wellbeing, problems with health and safety in the workplace, and a lack of work-life balance.

Research on working time legislation exists (Messenger et al., 2007), but little has been done to examine the specific provisions about rest periods in and how they can supplement national working time legislation.¹ This paper seeks to fill this lacuna. First, it will examine national legislation on weekly working hour limits and identify some key issues that affect a worker’s ability to get rest. Subsequently, it will examine the specific provisions on rest periods in international standards and national legislation, focusing on four key areas: rest periods during the work day, daily rest, weekly rest, and annual leave. It will then conclude with some final observations.

¹ The term “working time legislation” used in the paper comprises international labour standards and national labour legislation on working hours. In this paper, rest periods in international standards and national legislation are identified separately from “working time legislation” to provide clarity for the reader.

2. Working time legislation

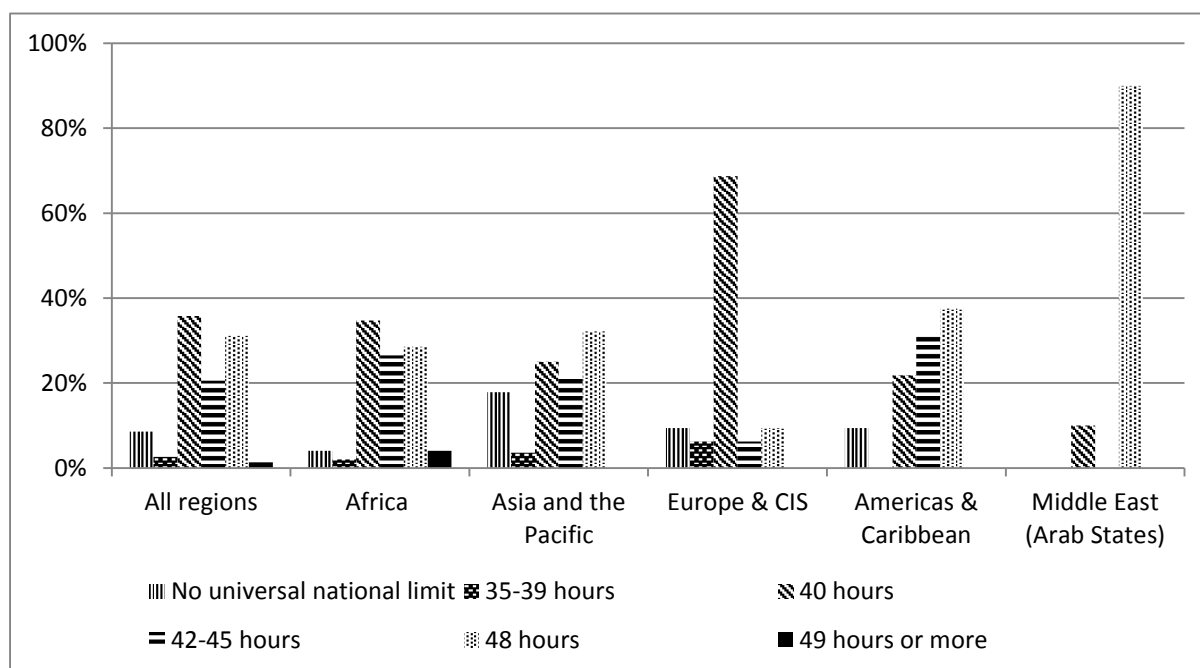
2.1 International standards and national legislation on working time

2.1.1 Normal working hours

The principle of the 8 hour day and the 48 hour week has been a key demand of workers from before the ILO was founded in 1919 (ILO, 1958). For this reason the first international labour standard, the ILO Hours of Work (Industry) Convention, 1919 (No. 1), was on working time. This standard established the principle of working 8 hours per day and 48 hours a week for workers in manufacturing. Subsequently, the ILO Hours of Work (Commerce and Offices), 1930 (No. 30) was adopted which established the same principle for workers in offices and commercial undertakings. These international labour standards have formed the basis of national legislation on daily and weekly working hours in many countries across the world.

However, this is not the end of the story, as overtime can change the balance of working hours, both legally and in practice. In order to better understand this, it is important to understand the difference between normal weekly working hours and maximum weekly hours as established in national legislation. Normal weekly working hours set an upper limit for the number of hours that may legally be worked during the day and the week, not including overtime hours (Clerc, 1989).

Figure 1. Normal weekly hours limits in law by region, 2012



Source: ILO Working Conditions Law Report, 2013

Many countries around the world legislate for normal weekly working hours, but level of normal working hours can vary, as is demonstrated by the analysis in the ILO Working Conditions Laws Report (ILO, 2013; see graph below). Globally, the largest proportion of countries (36 per cent) set the universal limit (applying to all workers) for weekly working hours at 40 hours per week (ILO, 2013). However, 31 per cent of countries set this limit at 48 hours per week (ILO, 2013). Europe has the most countries with a normal weekly

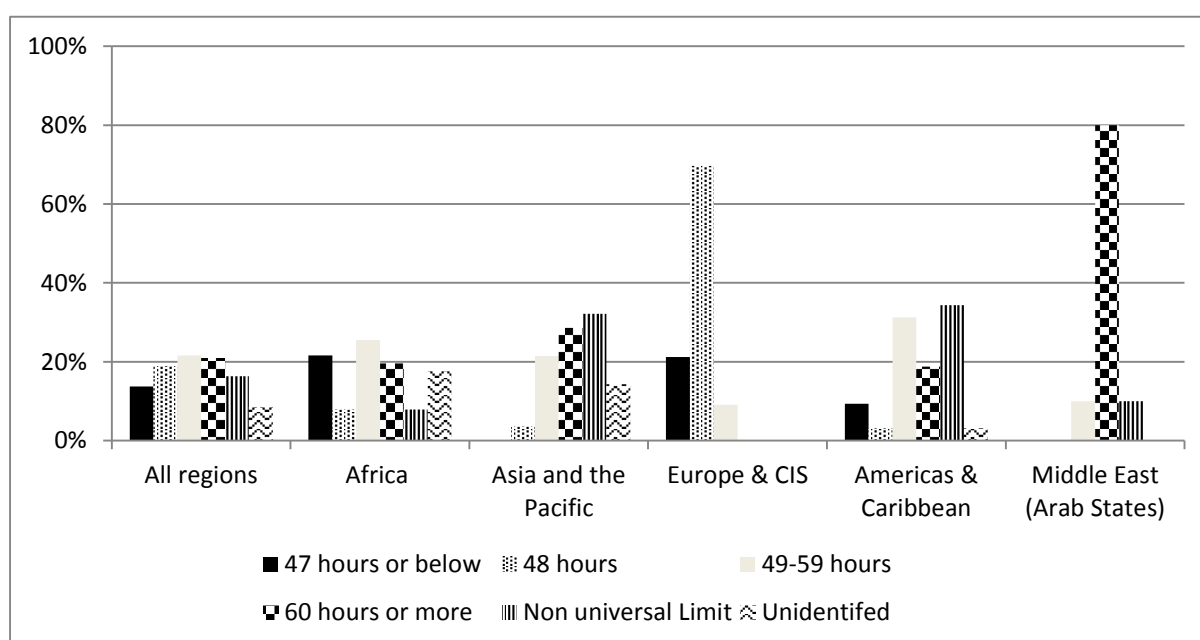
working hour limit of 40 hours, while the Americas and the Caribbean account for the highest proportion with a normal weekly working hour limit of 48 hours. In some countries, there is no universal national limit. For example, countries such as India and Pakistan, which address labour law by sector of the economy, there are variations in normal weekly working hour legislation.

2.1.2 Maximum weekly working hours

Maximum weekly working hours normally refer to the maximum amount of working hours that can legally be worked during a given period (the day or the week). Normal working hours plus any overtime hours worked in excess of them together must not total more than the maximum working hours set in the law. Some legislation allows averaging of working hours over a month or a year so long as the weekly maximum working hours limit set is not exceeded. However, consistency between legal provisions within the labour law can be an issue in some countries. The problem is that the legal limits on overtime hours may be set so high that, when combined with normal working hours, they do exceed the maximum weekly working hour limit provisions set in labour law. Such contradictory provisions can lead to problems of interpretation for workers and employers. Under these circumstances, legislation on maximum working hours may not be enough to ensure the worker's wellbeing and work-life balance.

International labour standards establish 8 hour days and 48 hour workweeks, but they are caveated. ILO Convention No. 1 allows shift work for up to 56 hours on average in a week (Article 4), while ILO Convention No. 30 allows up to 10 working hours per day (Article 4). ILO Convention No. 30 stipulates that the hours of work do not include rest periods (Article 2). In this context, it is worth noting that, at the time of writing, ILO Convention No. 1 has been ratified by 52 member countries and ILO Convention No. 30 by only 30 member countries. While numerous ILO member states do use these ILO standards to frame working hour laws in their national labour legislation, exceptions are often made that create challenges because no absolute limit on working hours is created, because the limit is set at a level that undermines worker wellbeing or because rest periods during working hours are not taken into account.

Figure 2. Maximum weekly hours by region and country, 2012



Source: ILO Working Conditions Law Report, 2013

Many countries around the world legislate for both normal weekly working hours and maximum weekly working hours. The limit set for the maximum weekly working hours differs greatly between countries and regions of the world. For example, Brazil and Canada have maximum weekly working hour limits of 48 hours or less, while Angola, Indonesia, Turkey, and Argentina have maximum legal working hours of between 49 and 59 hours. Bangladesh, Bolivia, and Egypt set legal maxima at 60 or more hours and some countries, including Congo, Jamaica, Myanmar, and Yemen set no universal limit on maximum working hours.² Regionally, as Graph 2 demonstrates, Europe is the region with the most countries that have maximum working hours of 48 hours per week, while the Middle East³ and the Asia-Pacific region have the most countries with legislation permitting more than 60 working hours per week.

2.2 Modern times: Working hours that are too long, too short, too uncertain, and what about technology?

It is clear that legal limits on normal and maximum weekly hours in national legislation can vary greatly. This, in combination with a number of other variables, means that workers may not be able to access the rest periods they need to remain healthy and maintain work-life balance. Some of these variables will now be considered in detail in order to highlight why greater attention should be paid to legal rest periods.

2.2.1 The problem with overtime

There are many issues surrounding overtime hours. On the one hand, overtime hours may be welcomed by workers if they are paid an overtime premium for their work and enterprises benefit from being able to assign overtime hours in peak periods. On the other hand, frequent and substantial overtime working hours can virtually negate the effect of working time legislation and may have negative consequences for workers' health and wellbeing. In addition, workers who rely on an overtime premium may become dependent on the extra income and could suffer material losses during periods of economic downturn. Finally, workers may not always have a choice whether to accept or decline overtime hours and they may also not always receive advanced notice.

Research has demonstrated the health problems associated with overtime, in terms of sick leave taken and accident rates in the workplace. A study examining workers in Europe over a 60 month period found that accumulated overtime was causally related to an increase in lost days of work due to illness and in accidents involving workers (Deloitte for the European Commission, 2010).

The use of overtime is prevalent in many industries and countries around the world. Regionally, countries in Asia not only allow long hours, but also an extensive use of overtime. Few countries have such a long established reputation for the extensive use of overtime as Japan. It has been a world leader in long working hour culture and much of it is due to overtime. According to the Japanese Working Life Profile 2014 (Japan Institute for Labour, 2014), in 1970 the average number of annual scheduled hours per worker was 2,039, but the average number of total hours worked annually per worker was 2,239 hours. Overall, the average number of hours scheduled and worked has gone down in recent years, but it is still among the highest in world. In 2013 the average number of scheduled hours per

² No universal limit means that while labour law may define normal weekly working hours, it does not clearly define or limit overtime hours. In practice, this means there is no functional maximum working hour limit.

³ The Middle East does not include Iran or Israel.

year was 1,662 and the average number of total hours worked per year was 1,808. What these figures show is the persistence of a significant number of overtime hours. According to research in Japan approximately 85 per cent of workers work overtime (Ogura, 2014). In fact, the average full-time worker in Japan worked 173 hours of overtime in 2014, which is 7 hours more than in 2013 (Yamazaki, 2015). The extent to which overtime has been used has in extreme cases led to death. *Karoshi* is the Japanese term for death from overwork. The basis for *karoshi* deaths is thought to be excessive stress and poor diet, leading to heart attacks, strokes, and organ failure. Lack of rest is also a factor. What makes excessive overtime possible is that Japan has no universal labour legislation stipulating maximum weekly working hours or overtime hours. Other countries in the region such as Korea (which also has one of the highest amounts of overtime hours in the world) and China (which shows a growing use of overtime and long hours; Nie, 2015) are beginning to recognise the negative effects of excessive overtime hours on workers' health and work-life balance.

A factor of note that influences the use of overtime is wages. If wages are too low or there is no minimum wage workers may feel the need to work overtime hours in order to have enough income to live and support their family. This may lead them to work beyond their physical ability to do so. The stipulation of a minimum wage with overtime premia in national law may be important in providing workers with some choice as to whether overtime wages or rest is more important to them at a particular time or as a general rule.

If overtime is needed in an enterprise, worker discretion is an important, yet possibly neglected variable. In some cases employers make overtime mandatory and workers who refuse can be fired. Employers may require workers to perform overtime hours, even in excess of legal limits, in order for the worker to remain employed. In some salaried professions,⁴ moreover, overtime is assumed to be "part of the job". All these problems are compounded if overtime is unscheduled or required on short notice. In sum, overtime demands can place a huge burden on workers which can have serious negative consequences for their health and relationships (EPI, 2015).

Generally speaking, limiting overtime by establishing maximum daily and weekly thresholds on working time is a way to avoid excessively long working hours (ILO, 2013, p. 10). However, the problems identified above still occur in countries with maximum hour and overtime limits, exposing the limitations of relying solely upon working hour legislation. A different way to limit overtime may be to ensure that rest periods are addressed and enforced in national labour legislation. Rest provisions in labour law can act as a supplement to legal normal weekly working hour and overtime limits to ensure that workers can effectively protect themselves from working excessively long maximum working hours without recovery time. Utilising legal rest periods may be important to limit overtime, but it can also play a role in limiting the unintended consequences of irregular and unpredictable scheduling of working hours.

2.2.2 Working time and rest issues for workers with irregular schedules and on non-standard contracts

It is well known that shift work can be demanding, but irregular work scheduling in itself can have significant negative consequences for workers. Irregular work scheduling can impact hourly and salaried workers as well as those who have irregular work hours. Research in the United States has found that irregular work scheduling impacts family life

⁴ In some countries, legal provisions may exclude certain workers from the coverage provided in the working time provisions in the labour law.

and produces stress (EPI, 2015). Irregular work scheduling can also impact workers' ability to utilise legislated rest periods, particularly daily and weekly rest in the short term and annual leave in the long term.

Ironically, the working hours and rest periods of workers employed on non-standard contracts may be affected as well. While worker flexibility, which assumes rest periods, is often the rationale for working under these contracts, flexibility may not be the reality for many workers. For example, workers employed on zero hour contracts, a form of non-standard contract, are not guaranteed working hours during any given week. This creates significant stress for these workers as they do not know when or if they will work, resulting in an inability to predict weekly income with any consistency (De Stefano, 2015). While a growing body of research has begun to identify the main issues with work and pay under zero hour contracts, the irregular work scheduling involved can also affect the rest that workers on these contracts are able to get. The lack of predictable working hours and income means that workers on zero hour contracts may not be able to get proper rest in anticipation of a call regarding if or when they are required to work. This also means that workers cannot plan the time they are not working to maximise rest opportunities in the way workers with more predictable work and rest schedules can. Thus, zero hour workers may end up in an unsettled situation of neither getting sufficient paid work nor sufficient rest. Further research is needed on these issues, in particular on rest periods for workers on non-standard contracts.

2.2.3 The influence of information technology on long hours and rest

The impact of modern information technology on workers has been a mixed blessing, at best. Portable computing equipment such as laptops, tablets, or mobile phones can improve a worker's productivity by allowing them to work from different locations outside of the workplace. This is useful for workers who travel for work or whose work often takes them away from the workplace. However, this technology has become increasingly pervasive and in some cases invasive. Scientific research in the United States has found that backlit displays, usually found in computers and mobile phones, can cause melatonin suppression and delayed sleep (Figueiro, 2011). The physical impact of these devices can have a negative impact on workers' daily rest rhythms, especially for those who use these devices in the evening or at night to address work issues. Furthermore, a Gallup Poll study found that workers who leverage mobile technology more often outside of work are much more likely to be stressed on any given day (Gallup, 2014). The stress of being "plugged in" may also take its toll on workers' well-being if they feel compelled to "keep in touch with the office" or to work during weekends, holidays, or annual leave days. Research in the United States has found that some workers feel so compelled to stay connected to work that they will use technology to keep in touch with their workplace during weekends, vacations and even sick days (APA, 2013). The need to work during these rest periods can create severe stress and disturb work-life balance (Daly 2014). Thus, while the technology was meant to assist workers to be more productive during normal working hours, it can also increase enterprise demands, resulting in a lengthening of work days and work weeks. Legislation limiting working hours alone may not properly address this problem. A more substantive approach would be to factor in and to properly enforce legislation on rest periods.

3. Rest periods: What is needed?

It is clear that workers need to get proper rest, but the question is how this can be achieved. There is no one type of legal rest period that covers all dimensions of rest a worker may need. Rather, there are four types of rest that are instrumental in protecting the physical and mental wellbeing of workers: daily workplace rest breaks, daily rest (a period away from work, normally at night), weekly rest (a day or days off, usually at the weekend), and annual leave. These will now be explored in more detail.

3.1 Daily workplace rest breaks

Daily workplace rest breaks are needed to address the fatigue that can accumulate while working, especially in work that is either physically or mentally demanding. These breaks are provided for workers' individual wellbeing and safety, as well as to guarantee safety in the workplace. The issue of workplace rest breaks is not a new one. Research in the late 19th and early 20th century identified their importance. In the 1920's researchers like Graf were able to demonstrate that the optimal length of a workplace rest break hinged on the type and intensity of the work (Graf, 1922, 1927). In fact, it is better for workers to have short pauses for rest during the course of a workday than to try to obtain all the necessary rest away from the workplace (Rohmert, 1960; Deloitte for the European Commission, 2010). These early studies suggested that rest breaks during the work day were important in mitigating the mental and physical demands of work. These early studies showed that rest breaks play an important role in mitigating the effects of both mental and physical work.

Modern research has highlighted the importance of workplace rest breaks by examining the link between rest breaks and injuries in the workplace. A study by Tucker, Folkard, and MacDonald examined shifts of 8.55 hours which were interrupted by a break every two hours (Tucker et al., 2003). They concluded that the accident risk was twice as high at the end of the work period compared to the beginning and that rest breaks at regular intervals reduced the accident risk. This has been confirmed by more recent research. A study on the effects of rest on time to injury in the United States found that longer accumulated rest breaks resulted in longer time to injury compared with those who did not have rest breaks (Arlinghaus et al., 2012). Similarly, research in China found that workers with rest breaks were able to work longer into their work shift without an injury than workers who had no rest break (Lombardi et al., 2014). It has also been noted that if workers cannot take scheduled breaks, there is a risk of impairments from errors in the workplace (Mitra et al., 2008). Having workers self-schedule rest breaks is not sufficient to prevent these problems as breaks tend to be postponed and consequently may be taken too late to make up for the worker's fatigue (McLean et al., 2001).

So far, the focus has been purely on short breaks during the workday, but other types of breaks can be important as well. Meal breaks are critically important for the health and wellbeing of workers, and should be considered as indispensable when scheduling work. A study in the United States found that 35 per cent of nurses reported rarely or never taking a meal break during their shift (Witkoski and Dickson, 2010). In addition, in places where the work area is not suitable for a meal break, there is a need for workers to be able to eat in a place other than at their workstation, taking into account concerns regarding their health, hygiene, and the ability to enjoy a mental and physical separation from their work.

3.2 Daily rest

Daily rest is normally categorised as the period between one period of work and another period of work. It usually refers to the time off work between workdays. However, with shift work and the increasing use of overtime noted above it is important to ensure that workers have enough time to leave work and to obtain a proper period of sleep before returning to work.

Research has noted that shift work is notorious for creating sleep related fatigue in workers, which can impact on daily rest. Sleep problems are prevalent among shift workers and there is evidence that shift work negatively influences fatigue and sleep (Sallinen and Kecklund, 2010). In Norway research uncovered that nurses who have less than 11 hours of rest between shifts report problems with insomnia and fatigue (Eldevik et al., 2013). Owing to the necessity of shift work in health care, problems with obtaining proper rest are common in this profession. Other professions where shift work is the standard note similar complaints. For example, police officers often report sleeping problems. In one study in the United States 28.5 per cent of over 4,000 police officers surveyed reported excessive sleepiness and a further 26.1 per cent reported falling asleep while driving at least once a month (Rajaratnam, 2011). Worse still, some police officers have a code of silence about this and accept fatigue as part of the job. A similar pattern emerges in the financial services, which must monitor global financial markets at varying hours of the day, making sleepiness and fatigue a serious concern for workers, even at the highest levels. In 2011, the chief executive of Lloyds Banking Group in London, England quit after 8 months due to fatigue and exhaustion (BBC, 2011).

Lack of sleep due to shift work has individual implications for workers, but can also have implications for the workplace and the community at large. Extreme worker fatigue has in many instances had disastrous consequences. Workers at the Chernobyl nuclear reactor in what is now the Ukraine had been working 13 hours or more before the explosion of the core in 1986 causing nuclear contamination across the continent. The story was similar at 3 Mile Island in 1979 where sleep deprivation led to the most serious nuclear accident in the United States. In the case of the Exxon Valdez disaster in 1989 off the coast of Alaska, the crew had put in a 22 hour shift loading oil onto the ship and the mate in charge at the helm slept only briefly in the 16 hours prior to the crash. These examples suggest the need to ensure that all workers get some form of daily rest so that they can adequately perform their jobs, to protect themselves, but also their community and the environment.

3.3 Weekly rest

Weekly rest is another important rest period workers need. Having a weekly rest day or days is important for workers to recuperate away from the workplace. This period of 24-48 hours normally takes place at the end of the workweek. As with workplace rest breaks during the day, working through a weekly rest period can affect a worker's mental and physical wellbeing and can pose problems for workplace safety.

There is limited research available on the link between worker fatigue and the implications of weekly rest days, but the available studies indicate that weekly rest days can prove quite important for workers in recuperation and in being physically aware in the workplace. A study by Tucker et al. found that if workers have a 24-hour period of rest between 12-hour shifts they showed increased alertness during the shift, a slightly reduced rate of fatigue, and they enjoyed longer periods of sleep (Tucker et al., 1999). In Sweden it was suggested that weekend rest was important for doctors to detach and disengage from thinking about work (Tucker et al., 2013). It should also be noted that 24 hours of rest may

not be sufficient for workers who work extended irregular hours or long work shifts as they may need more time to adequately recover from fatigue (Akerstedt, 2000).

Weekly rest days are not only important to address worker fatigue, but also to address work-life balance issues. Young doctors have noted that that working on-call during weekends can lead to work-life imbalances (Tucker et al., 2013). Shift workers who are scheduled to work on the weekend have also expressed concern that they are not able to engage properly with their families (Correctional Services Canada, 1995). Weekly rest should generally fall during times that family and social events take place, as this allows workers proper rest as well as contributing to their work-life balance.

3.4 Annual leave

Having an extended rest period away from work is also essential to ensure workers' wellbeing. Annual leave refers to a period of days taken away from the workplace to rest and recuperate. Annual leave for workers is a comparatively recent phenomenon which did not become prevalent until the 1950's. The privilege of annual leave used to be limited to white collar workers, but has become more common for other types of workers too. The main issue affecting workers is their ability to take annual leave.

Researchers have investigated the need for annual leave and have drawn some noteworthy conclusions. Certain medical studies have linked serious heart problems to a lack of vacations. A 9-year mortality study found that a greater frequency of annual vacations for middle-aged men at high risk of coronary heart disease could reduce mortality attributed to heart disease (Gump and Matthews, 2000). A study of middle-aged women found that a lack of vacations was one variable that may have contributed to their heart attacks (Baker et al., 1992). Recent research has also suggested that employee health and wellbeing may improve during short vacations due to detachment from the workplace (Bloom et al., 2012).

However, accessing annual leave in a manner that allows for beneficial rest may not always be straightforward. Two factors have significant impact on workers' ability to enjoy annual leave. The first is presenteeism. This occurs when a worker finishes their work but feels obliged to stay in the workplace so that the employer believes they are fully committed to the organisation. This is an extremely problematic factor for many workers around the world. For example, in Japan, where, as noted above, death by overwork is an acknowledged issue, researchers have found links between presenteeism and subsequent absence due to mental illness and depression (Suzuki et al., 2015). Japanese workers are reluctant to take time away from work. The Japanese Ministry of Labour found that workers generally take only 9 of the 18.5 days of annual leave available to them (Japan Times, 2015). This has become such a problem that the Japanese Government is considering adding national holidays to the calendar, as enterprises tend to close on these days, ensuring that workers are not in the workplace. Americans too have issues with taking annual leave. The Society for Human Resource Management in the United States surveyed 234 organisations and found that while 62 per cent offered accrued vacation time from the first day of employment, only 35 per cent of workers took advantage of it (SHRM, 2008). Visibility and availability in the workplace have become bywords for firm loyalty, severely undermining a worker's ability to utilise annual leave.

The second factor is a function of modern telecommunications. Workers are not only under pressure to be visible in the workplace but to be accessible even when they are away from it. While, as noted, this may cause problems for daily and weekly rest, it can also affect a worker's annual leave time. Bloom's research highlighted that improved worker health and wellbeing during vacations can be undermined if the worker continues to work (Bloom

et al., 2012). This combination of physical absence and mental connection can create serious problems for workers, especially when they should be enjoying leisure time or time with friends and family.

4. International standards on rest

For the reasons noted in the previous section the issue of legislating proper rest for workers becomes important. The importance of rest periods for workers to maintain mental and physical wellbeing has been recognised in both United Nations human rights and International Labour Organisation instruments.

Rest has been recognised as a fundamental human right by the United Nations. On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. The 30 articles that make up the Universal Declaration cover a number of important human rights. Article 24 states: “*Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.*” This article acknowledges that rest is a fundamental human right, thus providing human rights based approach to ensure adequate rest.⁵

The ILO has also addressed rest in international labour standards in terms of workers’ rights. With regard to the four different forms of rest outlined above, different approaches have been taken. For example, international standards exist for weekly rest, which are meant to apply to all workers in an establishment. Article 2 of the Weekly Rest (Industry) Convention, 1921 (No. 14)⁶ stipulates that a weekly period of 24 (consecutive) hours should be extended to all workers in industry in a manner that takes into account national traditions for establishing the most appropriate day. Workers in offices and commerce had to rely on the Weekly Rest (Commerce) Recommendation, 1921 (No. 18), which only suggested that a weekly period of rest be created for these workers, but did not mandate it. It was not until 1957 that the needs of office and commerce workers were addressed by the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).⁷ Article 6 of this Convention No. 106 addressed the specific shortfall, using almost identical wording to that found in ILO Convention No. 14. This extended the mandated 24 hours of rest to more workers. Functionally, weekly rest for a minimum of 24 hours has been mandated in many Christian countries on Sundays and in Muslim countries on Fridays, in accordance with religious tenets. In addition to mandating 24 hours of weekly rest, the ILO Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103) recommended 36 hours of weekly rest, which, wherever possible, should be an uninterrupted period.

Annual leave is also addressed by international labour standards. Originally paid leave was addressed by the ILO Holidays with Pay Convention, 1936 (No. 52). This standard addressed a number of issues: it established a right to holidays for a vast number of categories of workers (by industry); it permitted six days of paid leave after one continuous

⁵ It is worth noting that Article 23 of the Universal Declaration on Human Rights deals with the right to work. It states: (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.

⁶ At the time of writing ILO Convention No. 14 has been ratified by 120 member countries.

⁷ At the time of writing ILO Convention No. 106 has been ratified by 63 member countries.

year of service; it forbade allowing workers to relinquish a paid leave right; and it required employers to keep a record of information concerning leave, including how many days were taken and how much was paid for the leave days. However, in 1970 the ILO Holidays with Pay Convention (Revised), 1970 (No. 132)⁸ replaced ILO Convention No. 52. The modern Convention changed the application of the standard by category of worker and replaced it with a universal application to all workers, as well as extending the period of paid leave to 3 weeks for one year of service, which should comprise a period of at least two consecutive weeks. Convention No. 132 maintained that a period of service could be required before having access to leave, but suggested a maximum period of 6 months. Convention No. 132 further stated that annual leave days were not to be used for sick leave or maternity leave. It finally reinforced that payment for leave days should be in accordance with normal or average remuneration. These protections are fundamental to ensure that paid annual leave is properly applied and is useful for workers.

Two other forms of rest exist that are not explicitly identified in international labour standards. The amount of time for rest periods during the work day (e.g. 15-20 minute pauses in work or meal breaks) are not explicitly addressed in any ILO standard.⁹ This is unusual for such an important issue. It was perhaps assumed by ILO constituents in the early days of the ILO that rest periods at work were best left to collective bargaining or workplace determinations (as long as the normal work day was 8 hours and the normal work week 48 hours).¹⁰ While international standards are silent, most countries have accounted for rest periods during the work day in national labour legislation.

The issue of universal daily rest for workers is also not addressed by any specific international labour standard. Yet daily rest can be viewed as a derived right, if it is taken as the period not defined as working hours in international standards. For example, ILO Convention No. 1 stipulates limits on working hours of 8 hours per day and 48 hours per week. ILO Convention No. 30 provides similar rights, but also allows daily working hours to go up to 10 hours as long as the total does not go over 48 hours per week. Thus, the hours that are not to be worked constitute a derived rest period of variable length. The only standards that specify minimum rest periods are the ILO Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153) and the ILO Maritime Labour Convention, 2006 (MLC, 2006), which stipulate a minimum of 10 hours of rest per night.¹¹ However, they only refer to two sectors of the economy. Nevertheless, as with rest breaks, national labour legislation in many countries does address daily rest in specific terms beyond individual sectors.

⁸ At the time of writing ILO Convention No. 132 has been ratified by 36 member countries.

⁹ Article 8 (1) (b) of ILO Convention No. 1 stipulates that “*every employer shall be required-b) to notify in the same way such rest intervals accorded during the period of work as are not reckoned as part of the working hours*” and Article 11(2)(b) of ILO Convention No. 30 states “*Every employer shall be required to notify in the same way the rest periods granted to the persons employed which, in accordance with Article 2, are not included in the hours of work.*” Thus, while these standards require employers to provide workers with information on rest breaks, they do not stipulate the amount of time required for the rest breaks.

¹⁰ See ILO Hours of Work (Industry) Convention, 1919 (No. 1) and ILO Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).

¹¹ ILO Convention No. 153 stipulates that the daily rest of drivers shall be at least 10 consecutive hours during any 24-hour period starting from the beginning of the working day (Article 8). Regulation 2.3, Standard A2.3, Paragraph 5 of the ILO Maritime Convention states that “The limits on hours of work or rest shall be as follows: (ii) 72 hours in any seven-day period; or (b) minimum hours of rest shall not be less than: (i) ten hours in any 24-hour period; and (ii) 77 hours in any seven-day period.”

4.1 Transnational standard: European Union Working Time Directive

Other than international labour standards, one transnational standard on working time (including rest periods) has been part of the corpus of European Union Law since 2003. The EU Working Time Directive (2003/88/EC) established principles on working time and rest that must be implemented in the national legislation of the 28 member states. The core of this Directive is contained in the European Charter of Fundamental Rights, which provides, in Article 31(2), that “every worker has the right to limitation of maximum weekly working hours, to daily and weekly rest periods, and to an annual period of paid leave” (Commission, 2010). Article 5 of Directive 2003/88/EC very specifically states that all workers should have adequate rest periods and that rest periods must be broken down into units of time. This is an important statement of legal intent regarding rest periods. Perhaps most importantly, it designated the specific units of time that must be used to determine rest periods, thus negating any lack of clarity or vagueness that may have existed in the national laws of the EU member states prior to the approval and implementation of the Working Time Directive.

The Working Time Directive has been contentious in member states. While governments in some countries believe that work and rest periods are important for their workforce, they are more critical when it comes to certain essential professions (such as public services), where they believe more flexibility is needed. Article 22 of the Working Time Directive does permit member states to allow workers to work more than 48 hours per week, provided that the worker has given their individual agreement and general principles of worker health and safety are applied. Some member states have embraced this option more generally than others. For example, in the United Kingdom workers can opt out of the 48-hour limit and work longer, for a certain period or indefinitely (GOV.UK, 2015). For this to happen, a British employer must put the arrangement in writing for each individual worker, who must agree to it. In some British industries, such as finance and banking, the opt-out is written into all worker contracts, which means opt-out is activated when the worker commences their employment.

The main concern about opt-outs from the Working Time Directive is that they circumvent the rest periods that workers need to recuperate and remain productive. This is particularly the case for rest periods during the day, daily rest, and weekly rest. Even where such rest periods do take place, they may not take place at scheduled times. For example, daily rest breaks at work may be postponed or not taken and compensatory days for working at a weekend may not be given on a day when a worker could use them to engage in social activities or be with their family. This can lead to stress and serious work-life problems for workers (Tucker et al., 2013).

5. National legislation on rest periods

Rights to rest periods are part of national labour legislation in many countries, sometimes influenced by international labour standards. First, such national legislation provides a baseline right in law for workers that can be used to prevent fatigue and to hold an employer responsible for scheduling working time in accordance with legal norms. Secondly, provisions concerning rest periods in national law can be used as a baseline to improve on the rights found in the workplace. This is often the case with collective bargaining or in certain professions that may choose to offer more rest periods (such as more annual leave) to workers as an employment incentive. This section will examine national legislation in over 140 countries as compiled in the ILO Working Conditions Laws Database

on Working Time¹² to determine what patterns exist for different forms of rest and what this might mean for workers and their physical and mental wellbeing.

5.1 Daily rest periods at the workplace in national labour legislation

While the need for daily rest is not specifically identified in international labour legislation, most countries around the world do so in national labour legislation. Periods for rest or meal breaks (which are combined in the graph and analysis below) have often been included in labour law.

In countries where the law provides for rest breaks at work there is often a threshold amount of working time that a worker must perform before being able to take the break. While the amount of time is not always stated explicitly in the legislation, when it is stipulated the threshold is usually between 4 and 5 hours of work. With regard to the amount of time provided for the rest break itself, there are variants in labour laws depending on the total length of the workday. These “escalator clauses” stipulate that if working hours rise, so does the amount of time per rest break. For example, in Turkey the law provides that a worker gets 15 minutes of rest for up to 4 hours of work, 30 minutes for between 4 and 7 hours, and 1 hour if work exceeds 7.5 hours. Countries with variations of this clause include Serbia, Hungary, Japan, Libya, Ireland, and Switzerland. Finally, legislation in some countries only allows rest breaks if the workday exceeds a certain number of working hours. Thus, in Finland, Iceland, Slovakia, Latvia, Belgium, Cyprus, and the Czech Republic legislation provides that rest breaks must be provided if the workday exceeds 6 hours. Each system has its advantages, but neither provides additional rest breaks during the overtime period. As overtime extends the working day, building on accumulated fatigue, overtime periods should include rest breaks, especially if overtime hours exceed 3 hours and are added to an 8-hour workday.

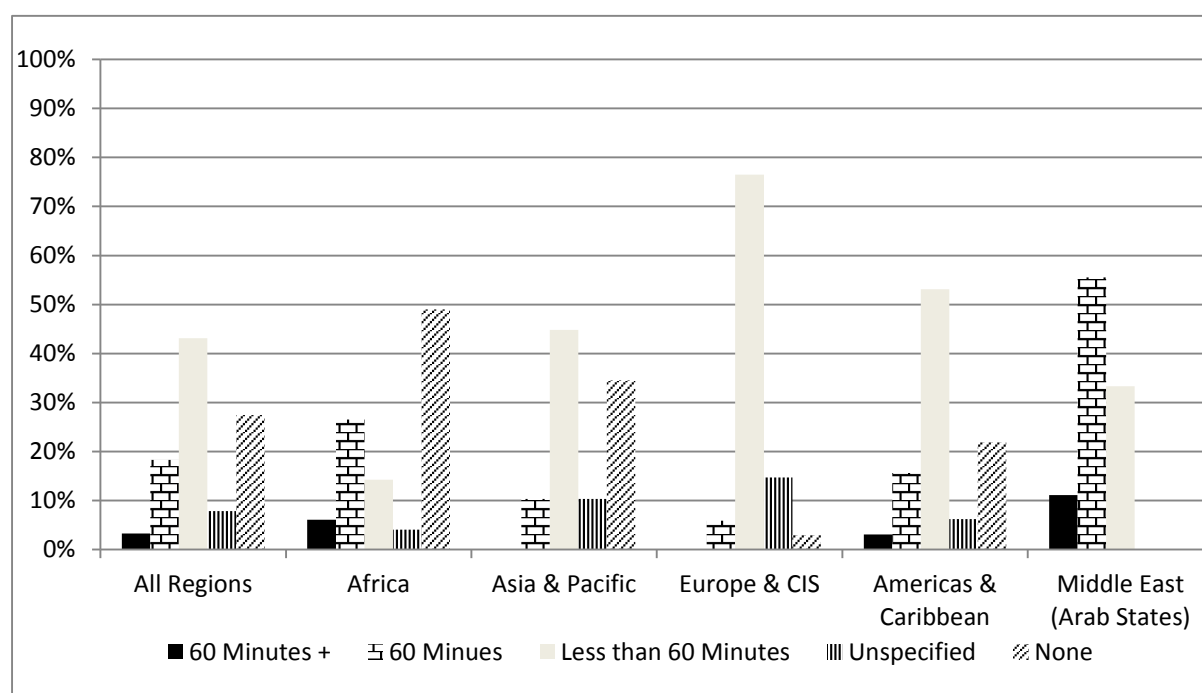
When a worker gets rest breaks during the day it is important that the amount of time is sufficient to allow for some recuperation. Some national labour legislation can be slightly vague on this issue, leaving a fair amount of discretion for employers. From what can be discerned in national laws it would appear that the amount of time stipulated for rest breaks ranges from over 1 hour down to unspecified.¹³ Based on the data in graph 3 (see below), 43 per cent of countries examined in this study legally specified rest periods during the work day of less than 60 minutes in total. Less than a fifth of national legislation provides 60 minutes (18 per cent), while even fewer countries provide more than 60 minutes (3 per cent). Perhaps most surprisingly, slightly over a fifth of countries (27 per cent) do not have specific provisions for rest breaks during the workday.

In regional terms, the legislation in Middle Eastern countries provides for the longest breaks (11 per cent provide 60 minutes or more; 56 per cent provide 60 minutes). Legislation in most American and Caribbean countries (53 per cent) provides less than 60 minutes rest per workday. Significantly, nearly half of the countries in Africa (49 per cent) do not have any provision in legislation to address rest breaks during the workday. In the absence of such a provision it becomes a matter either for collective bargaining or employer discretion to determine whether workers receive rest breaks and, if so, how long these rest breaks are.

¹² <http://www.ilo.org/dyn/travail/travmain.home>

¹³ Unspecified refers to break times, but no specific amount time is listed in the legislation.

Figure 3. Amount of total rest periods for workers during the workday (including meal breaks)



Source: ILO Working Conditions Laws Database

5.2 Daily rest periods in national labour legislation specifications

As noted earlier, the daily rest period is a period of consecutive time a worker is away from the workplace during a 24-hour cycle. It can take place during the night or during the day (if a worker is on the night shift) and it can be defined in law implicitly (e.g. hours not defined as daily working hours, including overtime) or explicitly (by stipulating a specific number of hours a worker has to be given for daily rest).

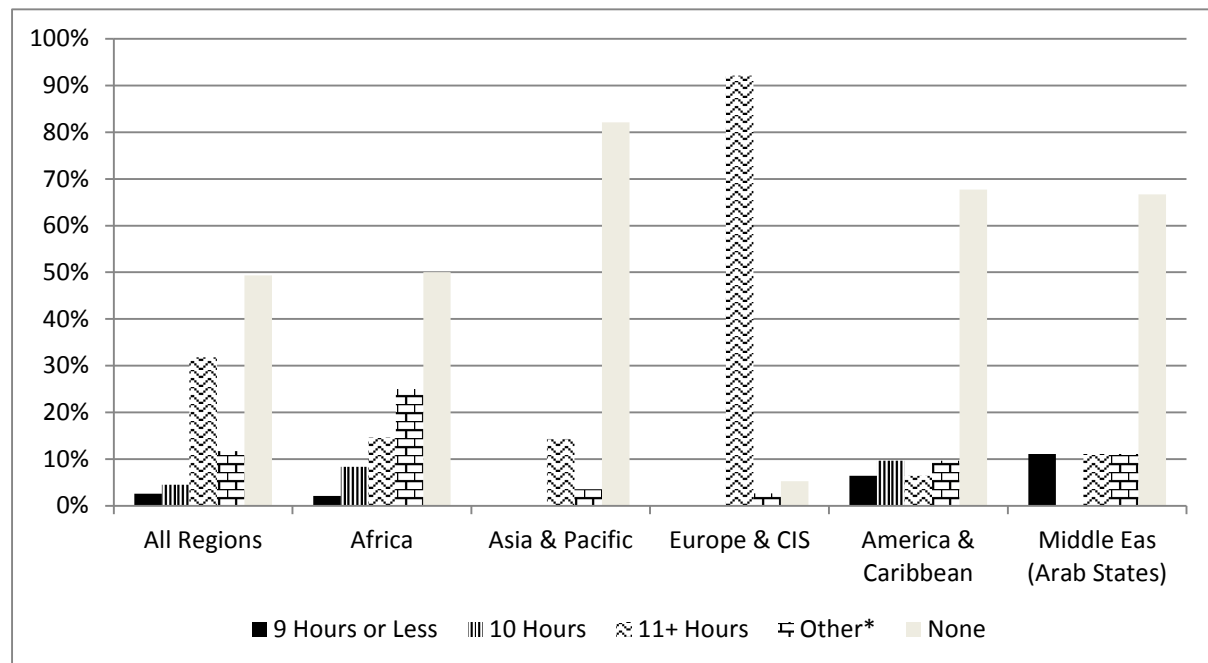
Globally, slightly more than half (51 per cent) of countries have specific provisions in national legislation for daily rest for all or some of the workforce. Approximately 37 per cent of these countries specify between 10 and 11 hours of daily rest per day. National legislation in European countries, particularly those in the European Union, have the highest proportion of countries in any region in the world with 11+ hours of daily rest (92 per cent).

Another group of countries specifies a period of rest, but only for specifically identified categories of workers or people. For example, in Egypt national legislation provides 11 hours of daily rest for young workers and for women. The same is the case in 25 per cent of African countries, the highest number of any region in the world. In Venezuela a 12-hour daily rest period is prescribed for women and domestic workers. In Panama and Vietnam shift workers are entitled to 12 hours of rest in a day. While it is important that the law recognises these specific categories as particularly vulnerable, it means many others are excluded from this legal coverage.

Slightly less than half (49 per cent) of countries do not specify a period for daily rest. In this case any working hours plus overtime make up the maximum daily working time, with the remainder making up the daily rest period. This means that rest is not defined as an explicit right, but as a derived right. Thus, anything that extends working hours comes at the expense of daily rest, as there is no positive right to rest, only a negative right not to work longer hours. 82 per cent of countries in Asia do not have a specific provision on daily rest

in national law, the highest of any region in the world. National legislation in more than half of countries in the Americas and Caribbean as well as in the Middle East (68 per cent and 67 per cent respectively) do not specify daily rest.

Figure 4. Daily rest periods in national legislation



Source: ILO Working Conditions Laws Database; * Other means that protection is not universal, but extended to specific categories (e.g. shift workers, women, young people)

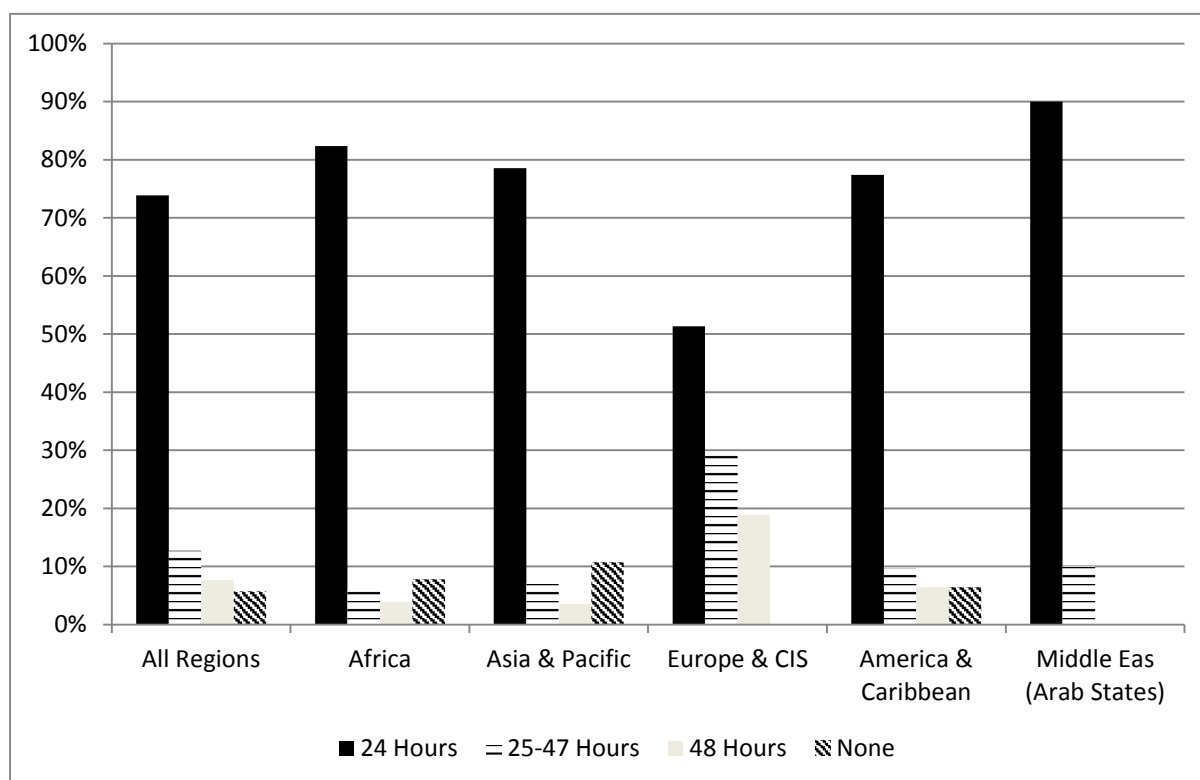
5.3 Weekly rest periods in national labour legislation

As noted, weekly rest periods are also critical for workers as they provide at least one full day to address their personal and family needs. While the concept of weekly rest was originally based on a day for religious contemplation, it has become nearly universally accepted, whether religion is part of the day's events or not. For this reason legislation on weekly rest days can be found in nearly every country around the world, though the specific day chosen may vary. The breakdown of weekly rest is done in days in some countries, but is more often measured in hours, ranging from 24 to 48 hours.

The vast majority of countries around the world (74 per cent) provide at least 24 hours of weekly rest in national labour law. Regionally, Africa (82 per cent), Asia and the Pacific (79 per cent), and the Americas (77 per cent) are the regions with the highest proportion of countries stipulating 24 hours of weekly rest. In Europe, 51 per cent of countries provide at least 24 hours of weekly rest, but a much higher proportion of countries than in other regions provides for rest periods of 25-47 hours (30 per cent) or 48 hours (19 per cent).

While in Europe and the Middle East every country specifies a period of weekly rest, in other regions the national labour law does not always prescribe weekly rest. The Asian region has the highest proportion of countries (11 per cent) that do not specify any period of weekly rest. Other regions such as the Americas and Caribbean (6 per cent) and Africa (8 per cent) have some that do not specify a weekly rest day, including the Central African Republic, Barbados, and the United States.

Figure 5. Weekly rest days in national legislation



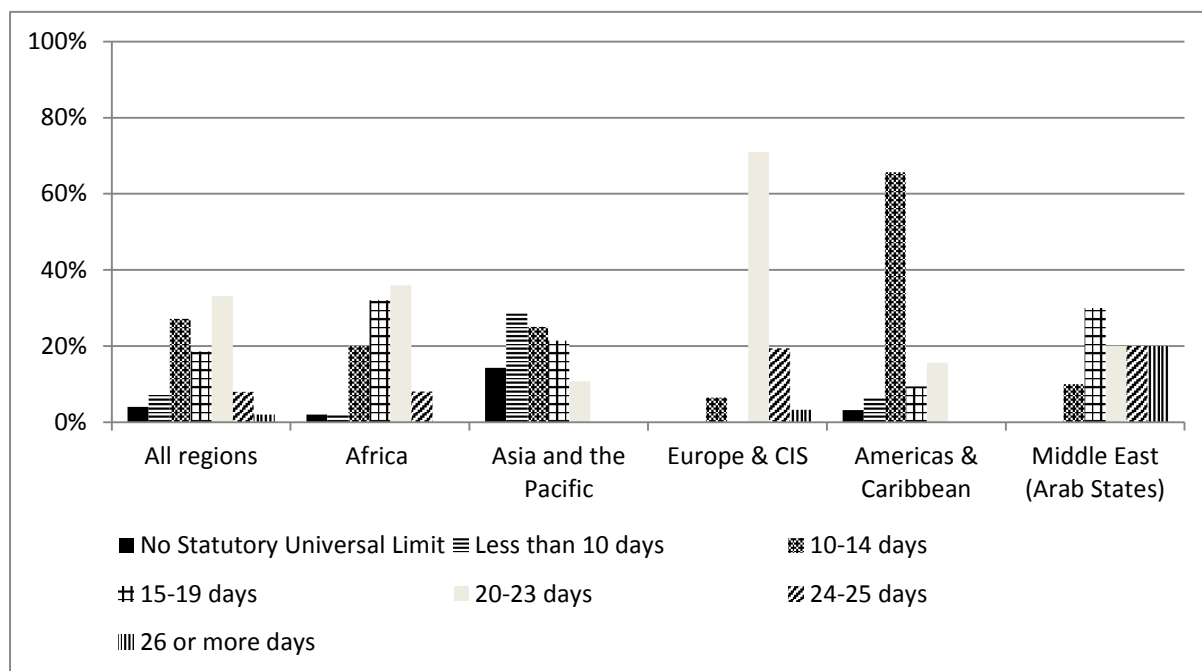
Source: ILO Working Conditions Laws Database

5.4 Annual leave in national labour legislation

Annual leave is a form of rest period found in labour laws that is meant to provide workers with sustained time off from work and the workplace, to be spent however they choose. There are three important dimensions that need to be considered when examining access and availability to annual leave in national labour law.

First, national law often determines a minimum period of annual leave. The number of days can be increased at state/provincial level, through collective bargaining, or by an employer, but employers may not feel the need to exceed legal requirements to annual leave. Globally, the most prevalent amount of annual leave days stipulated in law is 20-23 days (33 per cent of countries), whereas the least prevalent is 26 or more days (2 per cent). Regionally, the picture is somewhat different. A large proportion of national legislation in Europe (71 per cent) and Africa (36 per cent) is in line with the global average of 20-23 days of annual leave. Conversely, almost a third of countries in Asia (29 per cent) provide less than 10 days of annual leave and in the Americas and Caribbean two-thirds of countries (66 per cent) provide 10-14 days of annual leave.

Figure 6. Number of annual leave days in national legislation



Source: Working Conditions Laws Database

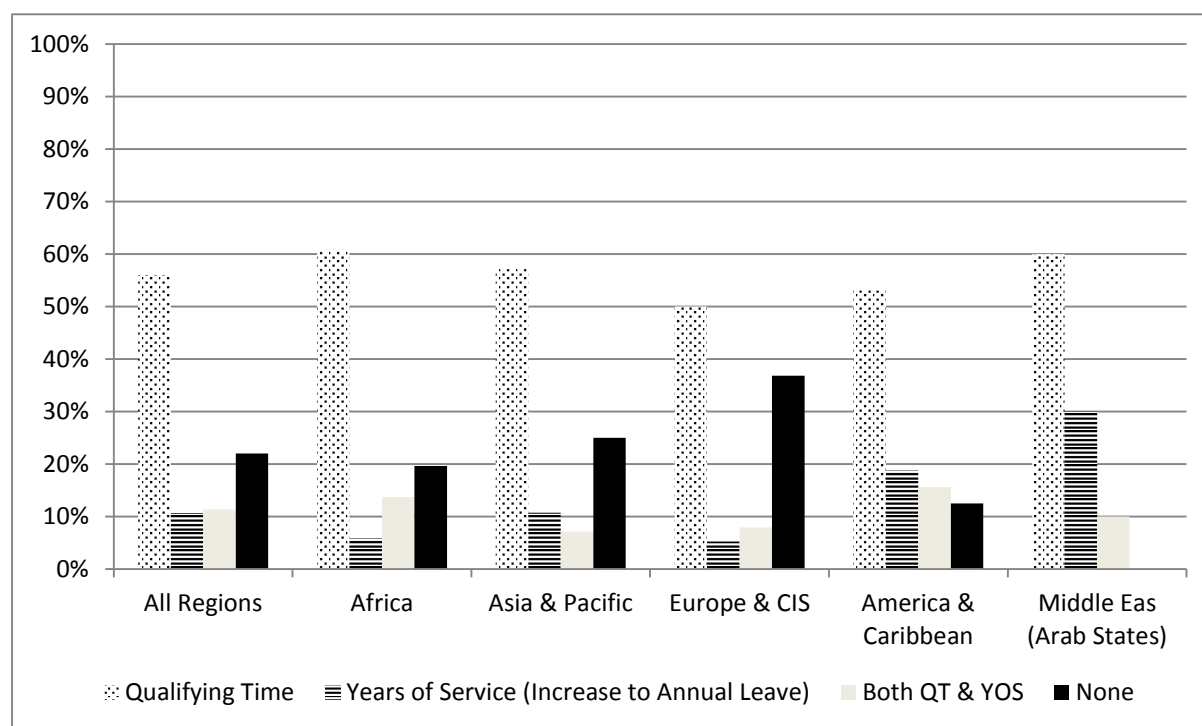
A second issue is that although the legal right to annual leave exists in most countries across the world, much national legislation includes a qualifying period for access to annual leave.¹⁴ This qualifying period must be satisfied before a worker can begin to accumulate annual leave days. National legislation in more than half of countries around the world (56 per cent; see Graph 7 below) includes such a qualifying period before beginning to accumulate annual leave. Regionally, Europe has the least number of countries with qualifying periods (50 per cent), while Africa has the most (61 per cent). The amount of time needed to qualify for annual leave differs. For example, Cambodia, Lebanon, Cape Verde, Barbados, Mexico, Colombia, and Turkey legally require a qualifying period of 1 year. In other countries, such as Morocco, Nicaragua, Armenia, and Serbia there is a 6-month qualifying period. The qualifying period is calculated in days in the Czech Republic (60 days), Finland (14 days), Guyana (12 days) and France (10 days). In Denmark there is no qualifying period at all. The qualifying period plays an important role in terms of the amount of annual leave days that can be accrued during a year and when they are accessible. The longer the qualifying period, the less leave days that can be accumulated in a year. Also, if the qualifying period is too long, workers may not be able to use the days they accumulate, particularly if the timing means they can only be taken during peak season when an employer is less likely to let them do so. While these reasons alone might not determine worker mobility from job to job, they may be a variable when workers consider changing jobs as well as affecting the timing of any job change.

A third issue regarding annual leave in labour law is that some countries legally permit an increase in the number of days of annual leave after a designated number of years of service to one employer. In most regions of the world, less than 20 per cent of countries include this in national law (Graph 7). Regionally almost a third of countries (30 per cent) in the Middle East have provisions raising the number of annual leave days by years of service.

¹⁴ Article 4 of the ILO Holidays with Pay Convention (Revised), No. 132 (1970) allows for qualifying periods of no more than 6 months.

An example of such a provision can be found in Malaysia, where the law stipulates 8 days of annual leave for 2 years or less of service, 12 days for 2-5 years of service, and 16 days for more than five years of service. This framework is similar in Saudi Arabia, Mozambique, the Dominican Republic, Ecuador, and Greece among others. Provisions of this nature are useful for workers as increases are mandated by national law rather than by enterprise policies. Nevertheless, it may raise similar issues as the qualifying period for worker mobility, since working many years with the same employer is rewarded, while moving to another is penalised as there is no legal obligation for the extra annual leave days to transfer to another employer.

Figure 7. Qualifying time, years of service, and combinations of provisions in national legislation



Source: ILO Working Conditions Laws Database

Some countries' legal provisions include both qualifying times and years of service to increase annual leave days. Slightly more than a tenth (11 per cent, see Graph 7 above) of countries bring both of these provisions together in their national legislation. America and the Caribbean has the most countries with the combined legal provisions (16 per cent), while Asian countries put these provisions together the least (7 per cent). Countries such as Myanmar, Vanuatu, Bahrain, Tunisia, Burkina Faso, Honduras, Bolivia, and Austria are some of those with combined legal provisions.

Finally, a substantial number of countries (22 per cent, see Graph 7) do not provide any legal provisions requiring either qualifying time or offering years of service increases for annual leave. Europe has the most countries that do not have any clauses (37 per cent), while America and the Caribbean have the least (13 per cent). 25 per cent of Asian countries and 20 per cent of African countries do not include such provisions in their labour legislation. No qualification time for workers to begin accruing annual leave days is the optimal situation as it recognises annual leave as a right for all workers rather than as a benefit for some. It should also be noted that if annual leave is set high enough, an "escalator clause" raising annual leave based on years of service may not be necessary.

6. Final observations

Some final observations with regard to the importance of legislating rest and leave are worth making. First, despite the obvious need for the different kinds of rest periods to be guaranteed in law, even if they are, some of them may still be ignored in practice. Based on workplace demands rest breaks during the workday, daily rest, weekly rest, and annual leave may not be taken. In these instances, workers may be inclined to cheat the body of needed rest. This may not be a problem if it happens occasionally, but systemically ignoring the body's need for rest and time away from work is not only bad for workers but may raise health and safety concerns in the workplace and beyond. Thus, whenever rest periods are missed, adequate replacement rest periods should be legally mandated.

Second, all of the legal provisions discussed in this paper only apply to workers with an employment contract. Other workers are not covered by international or national labour law and consequently may not have access rights to rest periods. As rest periods are based on human need, it is important to recognise that the application of these provisions should not only apply to workers in formal employment relations, but to all workers in a country. An employment contract cannot be the precursor to accessing any rest period, including annual leave. Even for those who are covered by the cited legislation, annual leave may be the most problematic, as it is the rest period that is determined most formally in the law of some countries but much less well-defined and much more conditionally (through the stipulation of a qualifying period) in others. Furthermore, measures need to be taken to ensure workers can use their annual leave without penalty or loss.

Third, it is worth noting that working hours in many countries are already quite high, with unpaid overtime or working away from the workplace (e.g. at home) not registered in many countries' statistics. The more hours workers work, especially when it concerns unpredictable overtime hours, the more fatigue they will suffer. This heightens the importance of and need for legally prescribed rest periods as well as the ability (or even obligation) to use them. In the event of long hours, legal rest periods may be the only barrier to fatigue and the only way to ensure a worker's mental and physical wellbeing. Legal provisions requiring additional rest periods during overtime hours are a new frontier in labour law that should be actively pursued by policymakers.

Finally, while research has begun to demonstrate the link between a lack of rest and accidents within and outside of the workplace, further consideration should be given to the link between rest periods and productivity, as there appears to be very little available research on this subject. Another factor that deserves further scrutiny is worker discretion with regard to taking rest periods and the question of what organisational or industry culture might have to do with the different dimensions of rest. Legal avenues to be pursued might include a more systematic analysis of national jurisprudence to see if there have been any interpretations that might encourage or discourage legal rest periods. What should remain primary in future research is the recognition that rest periods enshrined in international and national labour law contribute to worker wellbeing and need to be available to all workers.

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