Junior doctors' hours and pay: a guide for foundation year doctors

Introduction

Before 1991, there was no statutory limit on the hours that doctors in training could be contracted and compelled to work. Then the now incongruously-named New Deal was brought in (NHS Management Executive, 1991).

In 2000, the pay banding system was introduced. Modern juniors often refer to this erroneously as the New Deal. However, there was no significant change in hours from 1991 till August 2004, when the first phase of the Working Time Directive (WTD) was introduced. Current groups excluded from the WTD in full include oil rig workers, deep sea fishermen and doctors in training.

The next major change will be in August 2009, when the WTD will be finally implemented for junior doctors at 48 hours' average actual work per week. This will also bring them into line with consultants, staff and associate specialist grades and other non-training grades, who are already supposed to be bound by the WTD.

The New Deal was regarded more as a gentlemen's agreement but is now a contractual requirement for trusts. The WTD is legislation and penalties are more severe for employers breaching its regulations. Contrary to popular belief in some quarters, the New Deal has not automatically been superseded by the WTD. When deciding whether to apply the WTD or New Deal in any particular circumstance, the rule that is more favourable to the doctor is the one that is followed (*Table 1*).

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Pay system

Basic salary for the first 40 hours of weekly duty is standard throughout the UK and only varies with levels within grades. On the other hand, the banding supplement depends on:

- Number of hours
- Intensity of out-of-hours working
- Whether resident or non-resident
- Proportion and frequency of anti-social working, such as weekends.

Under the old system, junior doctors were paid purely by the hour outside normal working hours, known as additional duty hours (ADHs) in different classes. However, it was realized that pay would drop significantly under the WTD, hence the need to look at factors other than just the number of hours. The aim is for all rotas to be compliant with the 48-hour limit and paid at Band 1 by August 2009.

Understanding your own rota

If you have any queries about your rota, you can ask medical staffing to show you how they have calculated the hours and banding using software. They may use a system such as Rotaworks or DRS. Most shift patterns nowadays cannot be easily worked out manually to determine New Deal and WTD compliance and banding.

Table 1. Main guidelines under New Deal and/or working time directive
11 hours' rest in 24 hours, or compensatory rest required
30 minutes' break every 4 hours
All time spent resident in hospital counts as work, even if resting
Maximum total average weekly hours of actual work 56 hours (decreasing to 48 hours from August 2009) (but can be on duty up to 72 hours per week on non-resident on-call rota)
On non-resident on-call rota, need 8 hours' total rest during out-of-hours period, 5 hours of those continuous during the night. If cannot obtain 8 hours, then need 6 hours, with 2 hours taken next day, perhaps by leaving earlier. Need 12 hours' rest in every 24 hours at weekend

From Department of Health (2007), NHS Management Executive (1998, 2003)

Some weeks will be more arduous than others, particularly if weekends are worked in addition to normal days. As long as the average number of hours over the number of weeks in the whole rota cycle (which usually equates to the number of doctors) is not excessive, and rest and off-duty rules are adhered to, this is acceptable.

Out-of-hours duty should not add up to more than one third of daytime hours as this detracts from training. This means that doctors' rotas often require more participants than those of other staff who may only need to provide minimal cover. This is a common source of confusion for nurses, who may be working fewer hours than doctors, yet can manage with fewer people on the rota.

Under the WTD, 11 hours' rest is required in every 24 hours. Hence, many shifts are scheduled for 12.5 hours. This means that there is leeway to reach 13 hours without breaching or before compensatory rest is triggered.

The concept of partial shifts was introduced with the New Deal, but it has fallen into relative disuse since 2004. This is a halfway house between on-call and full shift. 24-hour resident partial shifts are still permissible, so long as 22 hours' compensatory rest is possible in the 24-hour period afterwards (2 x 11 hours). Also, 6 hours' total rest is required, with 4 hours of that being continuous during the night.

Criteria are laid down on distance or travelling time for non-resident doctors who are called in from home. Some choose to occupy hospital accommodation because they live too far away. There is confusion as to whether this counts as being resident or not. The test is that if you are allowed to visit off-site shops while on duty, then it is non-resident.

Workers can opt out of the 48-hour limit. However, trusts cannot design rotas based on opt-outs because these are signed agreements for individual employees, hence opt-outs are rare.

Leave cover

Many rotas expect you to swap day and weekend shifts for annual and study leave, and prevent you from taking leave while on nights. This is known as prospective cover, and it increases the average number of hours of duty, as you are squeezing extra hours into the weeks remaining when not on leave. This has to be taken into account when calculating average hours. The same applies if there is fixed annual leave, as leave weeks are normally based on 40 hours, not the total average hours. Naïve personnel officers may need educating on this point. Bank holiday cover is also built into rotas, and you are entitled to time off in lieu if rostered to work them. Some trusts incorporate the bank holiday entitlement into annual leave nowadays.

If internal or external locums are hired to cover all or some leave, then it is not prospective for that component. When swapping, you need to be careful not to breach inadvertently the requirements for time off in between duty periods. If doing extra paid internal locums, you need to ensure not to exceed the hours limit in addition. It is best to check with medical staffing if you are unsure.

Monitoring

It is a contractual requirement for your trust to monitor your rota and for you to comply. If you think you are working more than your contracted hours and/or illegally, you can also carry out your own diary exercise, keep a copy and put it to the trust. Monitoring examines duty hours, actual hours and breaks. It is important to be truthful, no matter what pressure is exerted, or you could be penalized for fraud if found out. Some trusts put a statement to this effect on monitoring forms.

Monitoring is normally carried out twice a year and also at other times if appropriate, such as when a working pattern is changed. Trusts must follow a set process for this. Doctors need to be prepared to work constructively with trusts to reduce hours if necessary.

Conclusions

Rules on junior doctors' hours, pay and working patterns are complex and it is best to take advice locally while being aware of general guidelines. **BJHM**

Conflict of interest: Dr Hooke has worked in both management and medicine.

Department of Health (2007) *European Working Time Directive FAQ.* Department of Health, London (http://www.dh.gov.uk/PolicyAndGuidance/HumanResourcesAndTraining/WorkingDifferently/EuropeanWorkingTimeDirective/EWTDFAQ/fs/en?CONTENT_ID=4053234&chk=5%2BIfDI accessed 26 February 2007)

NHS Management Executive (1991) *Junior doctors. The new deal.* NHS Executive, London

NHS Management Executive (1998) *Reducing junior doctors' hours.* HSC 1998/240. NHS Executive, Leeds (www.dh.gov.uk/PublicationsAndStatistics/LettersAndCirculars/HealthServiceCirculars/HealthServiceCircularsArticle/fs/en?CONTENT_ID=4003928&chk=MNuGJ%2B accessed 26 February 2007)

NHS Management Executive (2003) *Protecting staff; delivering services: implementing the European Working Time Directive for doctors in training.* HSC 2003/001. NHS Executive, Leeds (www.dh.gov.uk/PublicationsAndStatistics/LettersAndCirculars/HealthServiceCirculars/HealthServiceCircularsArticle/fs/en?CONTENT_ID=4003588&chk=i2aOMz accessed 26 February 2007)

KEY POINTS

- Check your contract carefully, if you are supplied with one.
- Familiarize yourself with your rota, leave arrangements and pay banding.
- Hours regulations from 1991 New Deal still apply in parallel with the Working Time Directive.
- You are contractually obliged to comply with standard monitoring of hours, but you can also do your own.
- Be prepared to work with the trust to reduce hours and improve working conditions.