



Employment law and Mobility of Workforce

Legislation on Sunday work in: England and Wales

The only rules on Sunday working are set out in section 4 and schedule 4 of the Sunday Trading Act 1994 and the Betting, Gaming and Lotteries Act 1963 (together "the Acts"), which have since been incorporated in the Employment Rights Act 1996. The Acts permit large shops (with more than 280 square metres of floor space) to open on a Sunday for a maximum of 6 hours. Small shops and motorway services are not subject to such restrictions.

The only workers protected under the Acts are employees who are either "shop workers" or "betting workers" (i.e. individuals working for a bookmaker). First we need to determine what the contractual position is. There are 5 possibilities:

1. Those shop workers employed before 25 August 1994 and betting workers before 2 January 1995 (i.e. before the rules under the Acts were introduced)
2. Those employees who do not work on Sundays and cannot be required to work on Sundays under the terms of their employment
3. Those employees who can be required to work on Sundays under their contracts, but are not employed solely to work on Sundays
4. Those employees who can be required to work on Sundays under their contracts but have given a written "opting-out" notice registering objection to working on Sundays
5. Those who are employed to work solely on Sundays.

Only employees whose contracts fall within (1) to (4) are covered. That is to say that if you are employed solely to work on a Sunday (i.e. (5) above) you have no protection under the Acts.

Those employees within (1) and (2) are known as "protected" employees and enjoy the following rights automatically. Those employees within (4) are known as "opted-out" employees and only enjoy these rights once the "opt-out" has taken effect: These employees have the right:

- Not to be dismissed for refusing to work on Sundays or asserting their rights under the Acts
- Not to be selected for redundancy for refusing to work on Sundays
- Not to suffer any other detriment for refusing to work on Sundays (such as denial of overtime, promotion or training opportunities).

Those employees within (3), i.e. shop or betting workers who are or may be required to work on Sundays under the terms of their contract must be given (within 2 months of the commencement of their employment) a written explanatory statement setting out their right to opt out of working Sundays. If they exercise this right they will then have the above rights, i.e. the right not to be dismissed or to suffer a detriment as a result of doing so. Notice of opting-out will take effect 3 months after it is given. An "opting out notice" has the effect of voiding any agreement, whether in the contract of employment or in another document, to work on Sundays.

However, betting and shop workers will cease to be protected if they give their employer a written, signed and dated "opting-in" notice expressly stating that they wish to work on Sundays or have no objection to being required to work on that day **AND** subsequently expressly agree to do shop work on Sundays or on a particular Sunday. Their right to opt back out again is unaffected.

Good practice is for employers to give their workers:

- One weekend off in every three
- Reasonable notice of any changes in their shift patterns
- Increased rate of pay and enhanced benefits for Sunday work (there is no statutory right to be paid more on Sundays but employers often choose to reward employees financially to entice them to work Sundays).

The Department for Trade and Industry started a general review of the Sunday Trading laws in January 2006 but the Government decided no change was required to the current law.

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Paul Whinder

France

The Sunday rest rule

Originally a religious edict dating back to medieval times, the principle according to which workers must rest on Sundays became that of a weekly day-off at the end of the 19th century. Today, this principle is embodied in article L.221-4 of the French Labour Code (which derives from a 1906 French Act), while the Sunday rest rule itself is provided for in article L.221-5. Any other arrangement is an exception and can only apply within the statutory limits.

Exceptions to the Sunday rest rule

Some exceptions are permanent, others temporary. For instance, food retailers, hotels, restaurants, cafés, florists, chemists, hospitals, museums, exhibitions, etc. may exercise their activity as of right on Sundays throughout the year.

Other businesses require a special, temporary authorisation either granted by the mayor, the prefect or the labour inspector or provided for in a bargaining agreement. Such businesses include non-food retail businesses wishing to open on up to 5 Sundays a year (article L.221-19); retail businesses providing goods and services for the purpose of facilitating accommodation or recreational and entertainment activities at tourist destinations as well as in areas with exceptionally large numbers of visitors or permanent cultural activities (article L.221-8-1); businesses where it is established that giving all personnel their day off on the Sunday would cause the public a prejudice – e.g. businesses providing family and entertainment activities – or would prevent the business from operating normally – e.g. industrial businesses operating with replacement teams – (article L.221-6).

In all cases, the employer must give the employee weekly time-off (by using shifts, closing the facility on another day, etc.). In some businesses other types of compensation apply: employees in industrial businesses with a replacement workforce are paid an extra 50% of their salaries; employees of non-food retail businesses get paid an extra 1/30 of their normal salary and are granted time-off in lieu within the two preceding or following weeks. (Any salary increase – or lack thereof – is quite independent of the payment of overtime, where applicable). Bargaining agreements also often provide for compensation for work on Sundays.

As to the enforcement of the Sunday rest rule, both civil and criminal penalties apply. Pursuant to article L.221-16-1, the president of the *Tribunal de Grande Instance* may at the petition of the labour inspector take all appropriate measures within the framework of civil proceedings in urgent matters (*référé*) in order to stop a business violating the Sunday rest rule, including ordering the closure of said business subject to periodic penalty payments. The criminal penalties are the same as those applicable to working time (fines) and are governed by article R.262-1 of the French Labour Code.

From the exceptions to a new rule?

The question of whether businesses should be allowed to open on Sundays has sparked an intense social debate. Indeed, the fact that many exceptions to the Sunday rest rule are granted does not mean that they do not meet fierce opposition: many people are concerned that the normalisation of work on Sunday would happen to the detriment of workers. Still, the Government is currently working on a loosening of this hundred-year-old law, on the grounds

that it nowadays lacks any real justification and that the rule is furthermore steadily becoming obsolete, as the numerous exceptions tend to show; a couple of bills have been introduced by members of the French parliament who argue that this originally religious rule is today clearly at odds with the real needs of the economy and the development of our society. In the quest for solutions foreign models have been invoked, such as the Spanish model, which tends to focus on size (small businesses vs larger businesses); however, even the recent findings of the French Economic and Social Council on the subject are not very conclusive. It will therefore be up to the Government under the newly elected French president to pursue – or not – the reform.



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Netherlands

In The Netherlands work on Sunday is regulated by the law on labour hours ("Arbeidstijdenwet"). Under this law employees have in principle the right not to work on Sundays.

There are only two exceptions to this rule:

1. The nature of the work implies that work has to be performed on Sundays and the employee has consented to work on Sundays
2. There are other circumstances (economic reasons) for work on Sundays, the works council has consented to work on Sundays and the employee on an individual basis has also consented to work on Sundays.

A refusal to work on Sundays cannot in principle be grounds for not hiring an employee or for dismissing an employee.

If work on Sundays is allowed, the employer has to organise work in such a way that an individual employee in a period of 13 weeks does not have to work on at least 4 Sundays. In collective labour agreements it may be agreed that in a period of 52 consecutive weeks the employee does not have to work on at least 13 Sundays.

If employees on the basis of their religion have another rest day, they can confirm this to the employer in writing. In such a case this day is to be treated as a Sunday.

As of 1 April 2007 a new, simplified law on labour hours came into effect. However, this law will not have much impact with regard to work on Sundays.



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Italy

In Italy, Legislative Decree n.66/2003 (amended by Legislative Decree n.213/2004) following directions under EU Directive n.2000/34, introduced new rules on working hours, with reference to the public and private sector, and clarified certain points in the previous legislation that had given rise to debate.

Legislative Decree n.66/2003 contains provisions in the matter of standard working time (as per Sect.3: 40 hours a week), maximum working hours (as per Sect. 4: 48 hours a week), rules on overtime (Sect.5) and specific provisions confirming (Sect.9) a basic rule provided by the Italian Constitution (Sect.36) and by the Civil Code (Sect.2109): **all workers have the right to rest 24 consecutive hours every 7 days, normally on Sunday.** On the day of rest the employee is entitled to abstain from work, and receive the normal overall daily pay, including all supplementary components.

Certain exceptions to this general principle (and consequently different rules: for example the weekly rest period can be fixed on a day different from Sunday, or can be divided or shifted) can be established by law or collective bargaining with reference to identified working activities or industrial processes as defined by ministerial provision (taking into account special productive needs or technical peculiarities of specific production areas). But these exceptions apply on condition that workers are entitled to a "compensatory rest day" (a weekly rest day falling on a day other than Sunday), or alternatively (when a compensatory rest day is not possible) specific compensation or protection.

For example, exceptions are allowed with reference to the following activities:

- Rail transport (with reference to staff on board), hotel services or entertainment
- Industrial processes involving the use of combustion or electric furnaces when a continuous process is applied
- Seasonal industrial work that requires immediate processing (due to possible deterioration of goods involved)
- Repairing / cleaning / surveillance activities (that cannot be performed when the rest of the staff are at work).

Where industrial enterprises have periodical extraordinary activities (to be so defined by the Ministry of Labour) the right to the weekly rest day can be suspended for 6 weeks a year. Notice of the suspension must be communicated by the employer to the Provincial Labour Head Office, except in cases where it is provided by collective bargaining.

The right not to work on rest days and public holidays can be waived and in this case workers are entitled to special allowances provided by the collective agreements, which specify in detail the economic treatment to be applied.

For example, the general industrial agreements (that apply to homogeneous production sectors, which usually correspond to the industrial categories: metalworking, textiles, construction and chemicals), with reference to employees earning a fixed monthly salary provide that in case of rest days or public holidays, the employees are entitled to the normal daily pay if they do not work, or if they work to the normal daily pay plus the allowances laid down by collective agreements for work on public holidays, plus (if the public holiday falls on a Sunday) a further amount equal to 1/26 of the monthly pay, except where different contractual provisions apply.

Case law

The Labour courts have held that:

- Work performed on Sunday must be specifically remunerated even in the absence of specific provisions (possibly by granting contractual benefits, for example other rest days in substitution or special allowances/bonuses).
- It is against the law not to allow for a rest period of 24 consecutive hours for managerial staff.
- When work is performed during rest days and it is not possible to grant other rest days to recover,

the employee is entitled (apart from the normal pay plus the allowance provided for work on public holidays) to compensation for loss of weekly rest. The amount of compensation due is assessed by the Judge from time to time, when it is his opinion that the allowances provided by collective bargaining are not sufficient to cover the damage suffered by the worker. On this point the Court of Cassation (Labour Department) has specified (decision no. 16626 in 2003) that the employee claiming compensation for non-economic damage suffered by his psycho-physical integrity (so called "Biological Damage") due to lack of weekly rest (in a case in which a substitution rest day was in fact granted during the following week), has to prove the specific injury suffered and the actual damage to his biological integrity.

Special categories of workers

- **Entertainment staff:** for this area the law provides that the weekly rest period of 24 consecutive hours can fall on a day different from Sunday, and that working shifts can be applied. With reference to staff involved in public entertainment the Provincial Labour Head Office can authorise – when there are specific technical needs – for the rest period to be divided in 2 periods of 12 consecutive hours. The various collective agreements fix the terms of the weekly rest period according to the technical peculiarities of this particular area (as very often entertainment is performed on Sunday).
- **Journalists:** collective agreements establish a working time of 36 hours per week, subdivided in 5 days. A different distribution of the weekly working hours and the weekly rest period can be agreed by the employer, the Editor in Chief and the Editorial staff, provided that no more than 10 hours are worked on any single day.



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Cyprus

In Cyprus the relevant legislation regulating the hours of work of employees is:

- The Hours of Work Law, CAP 182
- The Shops Operation and Terms of Employment Law, No.155(I)/2006
- The Hotels and Tourist Establishments Law, No.40/1969
- The Employees in Places of Recreation (Terms of Employment) Law, No.80/1968
- The Motor Vehicles and Traffic Law CAP 332

All above pieces of legislation stipulate the maximum permitted hours of work for employees falling within the ambit of each of the above Laws.

The Hours of Work Law, Cap 182, covers those employees working as clerks or having some degree of executive or administrative authority in any Firm or Office. Such employees may work for 44 hours per week or 8 hours per day of the week, excluding the period starting on 18.00 on Saturday until 06.00 on the following Monday which is regarded as a period of compulsory rest. It is, however, possible for the employer on certain exceptional situations entailing some sort of urgency (e.g. in case of an accident or other force majeure etc.), to require such employees to work overtime for 2 hours per day but not for more than 4 hours per week. Under no circumstances may such employees be required to work on a Sunday.

The Shops Operation and Terms of Employment Law, No.155(I)/2006 regulates, among other things, the time of work of employees working in shops. A "shop" is defined as a place where any sort of commercial business is being carried on and shops are divided into "general shops" and "special shops". "General" are all shops except kiosks, bakeries, cinemas, hotel shops, liquor shops and some other shops which are defined by the law as "special".

In accordance with the provisions of this Law an employee may work for 38 hours per week, 8 hours per day but, with his/her consent, he/she may work overtime for 8 more hours per week.

"General" shops are not allowed to open on Sundays except during the period from 1.12 – 31.12 of each year and the period starting from the 10th day before the Easter Day until Easter Day of each year.

However, "special" shops are allowed to be open during Sundays. The hours during which "special" shops may remain open differ depending on the kind of "special" shop they are.

The hours of work of people working in hotels and tourist establishments are regulated by the Hotels and Tourist Establishments Law. These people may work for 48 hours per week, 8 hours per day with the right to work 9 hours overtime per week. Such employees may work on Sundays as well.

"Recreation Places" include restaurants, pubs, night clubs etc. People working in such places may work on Sundays as well but they may not work for more than 50 hours per week or 9 hours per day. Overtime work may not exceed 8 hours per week.

Finally, in accordance with the provisions of the Motor Vehicles and Traffic Law, professional drivers may not drive for more than 5 continuous hours or for a total of more than 10 hours within a period of 24 hours or for a total of 54 hours within a period of 7 consecutive days. Each such driver must have a rest of at least 12 continuous hours within a period of 24 hours. Of course, professional drivers may work on Sundays, as well.

The above is a brief description of the situation regarding Sunday work in Cyprus.



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Spain

In Spain the Employees' Statute establishes that the weekly rest period should be enjoyed without interruption. The weekly rest period is 36 hours for adult employees and 48 hours for young employees. The right to a weekly rest period is an absolute right and it is not possible for an employee to agree to a reduced rest period.

As a general rule, the weekly rest period is taken on a Saturday afternoon or Monday morning and for all of Sunday. However, the hours that make up the weekly rest period can be taken over the course of up to 14 consecutive days.

This is a general rule that results from the adoption of the European Union Directives and the International Labour Organisation Conventions ratified by Spain.

The jurisprudence of the Constitutional Court has broken the religious link to the preference for Sunday as the rest day and has clarified that it is not an obligatory day of rest.

The law and the jurisprudence accept that employees can work on Sundays and take their weekly rest entitlement on any day of the week, assuming that any applicable collective agreement permits this and there is an agreement between the employer and the employee.

Where a collective agreement does not permit work on Sundays, an agreement between an employer and an employee to work on this day will be unenforceable.

When Sundays are part of an employee's normal working time, additional compensation for working on such a day is not provided for by law. The exception to this rule is where an applicable collective agreement provides for additional compensation for working on certain days, for example, a Sunday.

Occasionally a collective agreement permits work on Sundays, but it is not normal to do so under the work schedule or agreed in the contract of employment. In this situation, if an employee is required to work during their rest period they should be compensated with an additional, obligatory day off.

The decree Law 1565/1995 establishes exceptions for some work sectors that are subject to a special system of rest, for example, tourism, transport, mining, etc.

There are some acts that establish the possibility to agree different periods of weekly rest by reason of the employee's religion. However, when there is no agreement to change the normal weekly rest period, it is not obligatory for the employer to modify the normal work pattern.

The law relating to employee rest periods establishes the minimum entitlement and can, of course, always be improved by a collective agreement or by the employer.



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TO OUR READERS

This Newsletter is intended to introduce and explain on a regular basis new areas of Employment law and Mobility of Workforce which are of general interest to all of our clients. It is jointly written and produced by PLG's Employment law and Mobility of Workforce International Network which includes legal practitioners in several PLG firms and their contacts worldwide. We always welcome comments and questions on any matters raised in PLG Employment law and Mobility of Workforce News. Further information is available on all topics but nothing in PLG Employment law and Mobility of Workforce News is to be regarded as a definitive statement of the law or as specific legal advice and reliance should only be placed on particular advice obtained from the relevant practitioners in the light of all relevant facts and circumstances. Readers are requested to direct their enquiries to the author of the relevant article.

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