Opening hours and working time: the case of the Netherlands

1 Introduction

Until recently, shops were open only during daytime, and on Saturday mornings. Normal working hours were the same, the traditional 9 to 5 pattern. Of course there were exceptions, especially in industry, with continuous operations including nights and weekends. Employment contracts mirrored this pattern. The large majority of the employees worked very predictable hours, based on a permanent contract.

This picture has changed dramatically in the last decades. Almost one third of the Dutch employees has a flexible position. Fixed term contracts are common, as is employment through a temp agency or a payroll firm. Legislation on working time has been made more flexible. The same is true for legislation on opening hours. These changes have had a major impact, especially on the commerce sector.

In this report, we will analyze the interplay between the different processes of change (working time legislation, legislation on opening hours and the rise of flexible employment contracts) in more detail. In paragraphs 2 and 3, we describe the legal framework of opening hours and working time. In paragraph 4, we analyze a sample of collective agreements in the commerce sector, focusing on working time arrangements (including provisions on bonuses for irregular hours). The subject of paragraph 5 is a recent research report (2011) on changes in working time patterns as a result of the changes of the Working time act. Paragraph 6 contains some recent figures on the composition of the workforce and its characteristics. In paragraph 7 we look at local conflicts around the extension of opening hours for shops. We analyze the main issues in the final paragraph 8.

2 Legal framework of opening hours

In 1996, the former Winkelsluitingswet (Act on the closure of shops) was replaced by the Winkeltijdenwet (Act on shop times), which is still in force. According to this Act:

- Shops may be open on weekdays (including Saturdays) from 06.00 until 22.00 hours.

In principle, shops may not be open:

- On weekdays before 06.00 and after 22.00
- On Sundays
- On New year’s day
- On Good Friday after 19.00
- Second Easter Day
- Ascension Day
The Winkeltijdenwet contains several possibilities to deviate from these rules, on the condition that the local authorities/municipalities give permission. Reasons for permission could be:

- Religious reasons (e.g. opening the shop on Sunday, but closing on Friday)
- Touristic reasons
- Having the status of a night shop (separate rules apply).

Shops can be open on a maximum of 12 Sundays per year, on the condition they have a permit from the local authorities. This maximum can be increased for reasons of tourism. Because there was a certain amount of misuse of this possibility by local governments, the act was amended as of 1 January 2011, stipulating that there must be substantial amount of tourism. In granting permission, local governments are required to balance the different interests involved, including:

- The local economy and employment, taking account also of the interests of shop owners with no or few employees and the interests of the employees;
- Sunday’s rest
- Quality of life
- Safety
- Public order in the municipality.

3 Legal framework on working time

Legislation that came into force in January 1996 (the Working Time Act, Arbeidstijdenwet) replaced legislation dating from 1919. It largely implemented the requirements of the 1993 European Directive on working time. This has recently been amended by new legislation that came into force on 1 April 2007.

New provisions in force in April 2007

The aim of the 2007 legislation was to simplify the 1996 law, and allow more scope for hours to be determined at local level, either collectively or individually.

Under the new law, separate rules governing overtime are abolished. Instead, a maximum of 12 hours a day and 60 hours a week are permitted. Over a period of 16 weeks, average weekly working time should not exceed 48 hours. Over a period of 4 weeks, the average maximum should not exceed 55 hours. By collective arrangement (meaning an agreement with a trade union or works council), the 55 hour-limit can be lifted.

People who work at night will become night workers if they work more than one hour between the hours of 00.00 and 06.00. Night workers will be able to work a maximum of 10
hours each shift but the average working week should not exceed 40 hours over a 16-week period.

Working unsocial hours, Sundays, or at night will be permitted by individual or collective agreement on operational grounds.

Sunday will continue to be considered as a day of rest.

As stated above, under the new legislation, the distinction between normal working time and overtime has been abolished. However, many collective agreements still contain provisions on overtime. In the Working time Act, there is no distinction between weekdays and Saturdays.

**Sunday working**

Sunday is not a working day unless the character of the work requires this. Should operating exigencies require Sunday working, this is possible provided the employer obtains the agreement of the works council (see above) or in the absence of a works council, other employee representatives or the affected employees themselves.

Where Sunday is worked, employees must have at least 13 Sundays off per year under maximum provisions. By collective arrangement (an agreement with the unions or the works council) parties can alleviate this restriction, on the condition that they can only work a maximum of 40 Sundays in an uninterrupted period of 52 weeks when the employee agrees to this.

Under provisions in force from June 2003,¹ Sunday working has been strictly voluntary and employees are protected from unfair dismissal for refusing to work on Sundays; furthermore employers have to take into account employees’ personal circumstances when agreeing their working time. Potential recruits at interview are protected from discrimination if they refuse to work on Sundays.

There is no formal legal connection between the two categories of legislation (opening hours and working time).

**Collective and individual**

The new working time legislation has increased the flexibility both at the collective (union, sometimes works councils) and the individual level. It is possible that the collective agreement is more flexible than that basic scheme of the law (although the law defines the outer limits). Although in principle the collective agreement overrules the individual level, there are many exceptions to this rule, especially if the collective agreement contains provisions that leave room for further negotiations at the plant (works council) or individual level.

*In the annex you will find a Q&A-document on working time, published by the Ministry of Social Affairs and Employment.*

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4 Collective agreements

4.1 Introduction

There are many collective agreements in commerce. Examples include:

- Sound and vision
- Fashion and sports
- Electronic equipment
- Photography
- Supermarkets
- Toys

Etc. etc.

These are all sectoral agreements, which are declared generally binding for all firms in the sector, meaning that all employers and employees are covered by the agreement. Generally, collective agreements in the Netherlands are so-called minimum agreements, meaning that employer and employee can deviate from the provisions in the agreement, but only when this deviation is favorable for the employee. More and more, sectoral collective agreements have a framework character, meaning that only some core provisions are explicitly laid down in the agreement itself, while many other provisions have to be elaborated on the plan/company-level, either by the employer and the works council or by the employer and the individual employee. This is especially so on the issue of working time arrangements. Usually the collective agreement stipulates the duration of the working time (either on a yearly or a weekly basis), while the actual rosters are negotiated between the employer and the works council and/or the individual employee.

It is important to note that the collective agreement in principle covers all types of contracts (including on call contracts, fixed term contracts, part timers etc.). Although there is a separate agreement for temp agency workers, the regular agreements usually stipulate that temp workers enjoy the same terms of employment as other employees.

Many of the agreements in commerce follow a common pattern with regard to working time. We will take an in depth look into some of these agreements.

4.2 Agreement for the larger supermarkets (including Albert Heijn, Aldi, Jumbo etc.).

The normal working week is 40 hours. In principle, working hours should be unbroken. When making rosters, the employer should as much as possible strive for uninterrupted working hours, and take as much account as possible with legitimate wishes of the employee. At least 50% of the agreed working hours will have a structural character. Rosters will be announced at least one week ahead; roster free hours and days off will be
announced at least two hours in advance. The employer will reckon with childcare agreements the employee has conducted.

Other stipulations include:

- The employee cannot be obliged to work more than two evenings per week; employer and employee can agree otherwise;

- Employees which already had a contract on 1 July 2008, cannot be obliged to work more than 12 Saturdays per year; employer and employee can agree otherwise;

- Sundays and public holidays are not considered as working days, unless in case of especial circumstances (and not violating the relevant legislation);

- Employees receive bonuses for inconvenient hours (these are the bonuses for employees in shops, employees in distribution centers receive different (but comparable) percentages):
  - 00.00 – 06.00 and 21.00 – 24.00: 50% (weekdays)
  - 20.00 – 21.00; 33 1/3% (weekdays)
  - Saturdays 18.00 – 24.00: 50%
  - Sundays: 100%

The bonus can be paid in cash or in time equivalents.

Overtime is defined as hours in excess of the normal working hours as defined in the agreement. Employees of 55 and older cannot be obliged to work overtime. In general, overtime should be assigned as rarely as possible. The bonus for overtime is 35%. Overtime is capped for leading personnel.

4.3 Smaller supermarkets

The general provisions on working hours are the same as in the agreement for the larger supermarkets. The same is true for the bonuses (timeframe and percentages), and overtime.

4.4 Audio and video

Employees cannot be obliged to work more than three evenings per week.

An employee cannot be obliged to work more than five days per week. Rest days will as much as possible be uninterrupted. In principle, Sundays are free. Employees cannot be forced to work on Sundays.
Employers may deploy employees in a flexible way. In the employment contract the basic hours are defined. Within a bandwidth of 25% of the basic hours, the employees can be deployed more or less hours. If 25% of the number of basic hours is less than plus or minus four hours, the maximum flexibility is 4 hours. Once every year the employee decides whether payment will be in cash of time. If at the end of a reference period of six months the employee has worked more than 26 times the number of weekly basic hours, the employer has the duty to pay these hours. If at the end of the reference period the total number of hours is less than 26 times the number of weekly basic hours, the negative amount of hours will be cancelled.

The bonus percentages for irregular hours are as follows:

- Weekdays 18.00 – 21.00 33 1/3%
- Weekdays 21.00 – 07.00 50%
- Saturdays 18.00 – 24.00 100%
- Sundays and public holidays 100%

Overtime is calculated over a reference period six months, more than 9 hours per day or more than 38 hours per week). For the first two hours of overtime, the employee gets 25% extra. For other hours, the extra is 50%.

4.5 Retail Perfume

Employees cannot be obliged to work more than three evenings, or more than five days per week, or on Sundays. The same bandwidth system applies as in audio and video. The same overtime arrangements apply, as do the arrangement for irregular hours.

4.6 Drugstores

The following scheme applies to irregular hours:

<table>
<thead>
<tr>
<th>Time Block</th>
<th>00.00–05.00</th>
<th>5.00–7.00</th>
<th>07.00–18.00</th>
<th>18.00–21.00</th>
<th>21.00–24.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Week- and Saturdays</td>
<td>75%</td>
<td>25%</td>
<td>0%</td>
<td>25%</td>
<td>50%</td>
</tr>
<tr>
<td>Sundays</td>
<td>175%</td>
<td>125%</td>
<td>100%</td>
<td>125%</td>
<td>150%</td>
</tr>
</tbody>
</table>

Overtime is paid with 30% extra. If overtime falls within the scheme above, the percentages add up.
4.7 Other agreements

Other agreements follow the same principles. There are the co-called normal hours, there are irregular hours (for which there is extra pay, either in cash or in time). Overtime –although no longer a concept that can be found in law), still is relevant in the collective agreements. All agreements state that overtime should be avoided, and that employees are entitled to more or less regular working weeks and should not be forced into very patchy schemes. They are free not to work on Sundays.

The fact that many agreements are very much lookalikes is no surprise. The different parts of sectors are very much alike and the unions that negotiate the agreements are the same organizations.

4.8 Issues in collective bargaining (apart from working time)

During the past decade working time issues have been an important issue in the collective bargaining process (see further the following paragraph). Another important issue is the wage scales for young employees. In the Netherlands, there is a legal minimum wage, with relative low wages for young employees (e.g. only 30% of the adult minimum wage for 15 year-olds). The unions have been pressing to raise the wage scales for young workers in the collective agreements. Furthermore, they have lodged protests against the practice of not extending temporary contracts for young employees once they grow older and are therefore entitled to a higher wage, being replaced by younger and cheaper employees.

5 Research on working time

In December 2011, a report was published on the effects of the 2007 changes in working time legislation. The research, conducted by Regioplan, had been commissioned by the Ministry of Social Affairs and Employment. The report included chapters on changes in working time provisions in collective agreements and on changes in working time patterns in individual companies.

5.1 Collective agreements

For the purpose of this report we take a closer look at the agreements for the hotel, restaurants, bars and catering (horeca), recreation and commerce in food (smaller and larger supermarkets).

Horeca
In the horeca agreement (2008-2010) the new working time legislation has resulted in major changes. Some provisions referred explicitly to the new legislation, while others would not have been permitted under the old legislation. The latter included provisions on the maximum number of hours (shifts of twelve hours, sixty hour working week), night work and shifts (number of night shifts, definition of night work) and work on Sundays (no minimum number of free Sundays).

During the negotiations there were major differences of opinion between the employers and the unions. The unions have not succeeded in blocking the increase in the flexibilization of working time provision, and were therefore not satisfied with the final agreement. In contrast, the employer side still wants more flexible arrangements.

Recreation

In the agreement for the recreation sector, there have not been many changes, although there has been an increase in the duration of the opening seasons. However, the employer’s need to cope with seasonal peaks has been dealt with by an increase in the number of flexible contracts.

Retail food

In the retail food sector there have been no major changes in the two agreements. Employers have tried to make use of the increase in flexibility options in the new Working time act, but the unions have refused to make this part of the agenda. The major issue around working time is the level of bonuses for irregular hours (evening, night, weekend). Like in the agreement for recreation, there is the growing tendency to use flexible contracts. Employers also use specific provisions in the individual labor contracts on overtime in weekends and evenings.

5.2 Firms

Regioplan conducted interviews in twelve companies. In the food retail sector the employer representative encountered problems with the present legislation. The main reason is that legislation for young employees is stricter, so that it is difficult to employ these workers during evenings or in weekends. With regard to this issue, one should note that since 1 August 2011 the possibilities to employ young employees have been extended: during the holidays young workers from 16 years old may work until 21.00 hours.

Further interviews took place in six local establishments of supermarket chains. It appeared there were large differences in the extent to which employees had knowledge on the rules (legislation, collective agreement) on working time. It also appeared that recent changes in working time patterns were not or hardly related to the changes in working time legislation.
In two of the three supermarkets where changes had taken place this was a consequence of changes in opening hours.

6 The composition of the workforce

This paragraph is based on a national survey on working conditions (*Nationale enquete arbeidsomstandigheden 2011*). The two sectors commerce and horeca stand out with regard to the following characteristics issues, compared to other sectors:

- Lower than average permanent contracts (lower than all other sectors), especially in horeca;
- Higher than average percentage of fixed term contract
- Higher than average percentage on call contracts, especially in horeca
- Higher than average evening work and weekend work
- Lower than average duration of employment in the present job
- Lower than average percentage of being able to take leave when wanted
- Lower than average freedom of choice of working hours

Shop owners, and people working in shops comprise 6.9% of the total workforce, with a very high percentage aged between 15-24 (24.1%).

7 Conflicts on the extension of opening hours

As stated in paragraph 2, legislation on opening hours has been relaxed in 2011. This has resulted in several conflicts in local municipalities.

In August 2011, the then minister of Economic Affairs, Agriculture and Innovation answered questions posed by several members of the Dutch parliament on the possibility to open shops every Sunday in the municipality of Zoetermeer. The minister stressed the right of local governments to weigh the different interests involved, admitting that the basic assumption of the law is that shops may not be open on more than 12 Sundays per year. A legal procedure against the decision by the Zoetermeer authorities to extend the room for Sunday-opening is pending.

On 1 September 2011, the competent court ruled in summary proceedings that the decision of the local authorities of the municipality of Rheden had not violated the conditions of the
Winkeltijdenwet (i.e. sufficient amount of tourism) in increasing the number of Sundays shops could be open.

End of February 2012 three unions lodged a complaint at the local authorities of Haarlem against an extension of the possibility to open shops on Sundays, “for reasons of tourism”. According to the unions, the local government abuses the new legislation. The unions have joined forces with an organization of small shop owners.

In April 2012, a coalition of three unions and small shopkeepers lodged an appeal against the decision of the local authorities of the municipality of Utrecht against the permit to open shops on every Sunday. This appeal is still pending.

In all four cases mentioned above, there was an alliance between (representatives of) small shopkeepers on the one hand and unions (in all cases there was a strong representation of Christian unions) on the other. Until now, they have not won a single case.

8 Position of the unions

The flexibilization of the Working time act in 2007 was supported by the unions. In fact, the Act was more or less drafted in the Social and Economic Council (Sociaal Economische Raad, SER, which consists of representatives of union and employer federations and independent members). The subject of working time as such is not very much contested in the Netherlands (like it is in France). From the standpoint of the unions, a far more important issue is the number of temporary contracts/fixed time contracts. We will come back to this issue below.

In contrast, the unions were very much opposed to the liberalization of the Winkeltijdenwet. On 4 April 2012, a spokesperson from one of the unions (CNV Dienstenbond) stated that several hundreds of thousands employees were a victim of the extension of the number of Sundays shops were allowed to open. According to the unions, employers do not comply with the collective agreement. They do not pay the overtime allowances and force employees to work against their will. Especially young employees are in a difficult position, because they have fixed term contracts. When they refuse, the contract will not be extended, according to the union. These statements were criticized by the employer organization (Detailhandel Nederland), stating that many employees actually prefer to work on Sundays.

In the beginning of 2011, the employer organization for supermarkets/retail stores has established a committee to monitor compliance with the collective agreements for the sector, consisting of two representatives of both the unions and the employer organization, headed by an independent chairperson. Violations of the collective agreement can be notified on a website (www.werkeninde supermarkten.nl). The committee can issue fines in case of violations. As in January 2012, there were as yet no notifications.
There have been two interacting changes in legislation which are relevant for the subject at hand. The first is the change of the Working time act in 2007. Many provisions with regard to working time are much more flexible than before 2007. The second change is the 2011 legislation on opening hours for shops, and especially the possibility to increase the annual number of Sundays that shops can be open, provided that this can be justified for reasons of tourism.

Research has shown that overall the effects of the changes in the working time legislation on the content of collective agreements has not been very large, with some important exceptions. Relevant for the subject at hand are changes in the horeca agreement. The unions in this sector have tried to resist flexibilization, but have not succeeded. The changes in the agreements for retail in food have been rather minor.

The change in the legislation on opening hours has been fairly recent. Unions, in many cases joined by local shopkeepers resist the effects of these changes. Until now, they have not been successful.

Working time as such is not a major issue in the Netherlands. Indirectly however, working time related issues surface in other dossiers, of which the most important are:

- The bonuses for irregular hours. In the Working time act, the concept of overtime has been abolished, so there is a lot of discussion between social partners on the question which hours should be considered irregular and how they should be remunerated;

- The position of employees with atypical contracts. The new legislation leaves many issues to the discretion of individual employers and employees, and employees with atypical contracts have a weak bargaining position.
References

Collective agreements in the commerce sector


SER (2005), Advies Vereenvoudiging Arbeidstijdenwet

TNO Arbeid (2012), Nationale Enquête Arbeidsomstandigheden

Website information on conflicts around Sunday working

Dr Robbert H van het Kaar, May 2012
What does the Working Hours Act cover?

The Working Hours Act (ATW) describes how long you are allowed to work per day and per week and when you are entitled to a break or rest period. The rules have been made for the sake of your health, safety and welfare, but also to make it easier for you to combine your work, private life and care obligations. The rules apply to employees aged 18 years and older. Separate rules apply to children aged under 16 and for young people aged 16 and 17. There is also a set of special rules for women who are pregnant or who have just given birth.

Exceptions and additional rules

The Working Hours Decree (ATB) contains exceptions and additional rules to the Working Hours Act. As well as some general exceptions, there are additional rules relating to the healthcare sector, mining and a number of other sectors. In other words, these sectors are covered by the general rules of the Working Hours Act and Working Hours Decree and the separate sector-specific rules.

Collective scheme

Some of the rules in the Working Hours Act and many of the general and sector-specific rules in the Working Hours Decree can only be applied collectively, that is, after agreement has been reached following consultations involving multiple parties. A collective scheme may take the form of a collective labour agreement (CAO), the arrangements relating to the legal position of employees employed by the government, or a written agreement between an employer and employee consultative bodies, such as the Works Council or employee representative body.

How long may you work?

You may work:

· per shift: no more than 12 hours;
· per week: no more than 60 hours;

Note: you may not work the maximum number of hours every week. Over a longer period of time, the following rules apply:

· working hours per week in any 4-week period: the maximum is an average of 55 hours per week in any 4-week period, although alternative arrangements may apply in a collective scheme (such as a collective labour agreement). However, you may never work more than 60 hours in any one week;
· working hours per week in any 16-week period: the maximum is an average of 48 hours in any 16-week period.

You should agree with your employer about your daily and weekly working hours.

Rest period after work

· After a working day, you may not work for at least 11 consecutive hours. However, this may be reduced once every 7 days to 8 hours if the nature of the work or company circumstances make this necessary.

· After a 5-day working week you may not work for at least 36 consecutive hours.

· A longer working week is also possible, provided you have a rest period of at least 72 hours once every 14 days. This 72-hour period may be split into 2 separate periods, neither of which may be shorter than 32 hours.

Taking a break

· If you work for more than 5.5 hours, you should have a break of at least 30 minutes. This can be split into two 15-minute periods.

· If you work for more than 10 hours, then your break should be at least 45 minutes. This can be split into several breaks, none of which may be shorter than 15 minutes. Collective agreements (such as collective labour agreements) may contain provisions for fewer breaks. However, if you work longer than 5.5 hours, you must take a break of at least 15 minutes.

Are you obliged to work on Sundays?

The starting point is that you do not have to work on Sundays, unless you have agreed with your employer to do so. However, he cannot oblige you to do so unless the type of work makes working on Sunday necessary, such as in the healthcare sector, hotels and restaurants, police and fire service, or in a manufacturing plant where a production process cannot be halted. The company circumstances may also make it necessary for work to be carried out on Sundays. If this is the case, the employer must first gain the agreement of the Works Council. Moreover, your own consent is also required.

You are entitled to at least 13 free Sundays every year. Your collective labour agreement (CAO) may contain provisions for a lower number than 13, but again, you must give your consent to this.

What are the rules regarding night shifts?

A night shift is where you work for more than 1 hour between midnight and 06.00 hrs. The rules that apply to night shifts are stricter than those governing day shifts. Number of hours in a night shift

· You may not work for more than 10 hours in a night shift.
If a night shift ends after 02.00 hrs you may not work for at least 14 hours after the shift. This may be reduced to 8 hours, but no more than once a week, and only if the type of work or company circumstances make this necessary.

If a night shift ends before 02.00 hrs, you may not work for at least 11 consecutive hours after the end of the shift, as is also the case for day shifts.

You may work for 12 hours in a night shift no more than 5 times every 2 weeks, and no more than 22 times a year. You may not work for at least 12 hours after completing a 12-hour night shift.

You may not work for at least 46 hours after 3 or more successive night shifts. For example, if the final night shift ends at 06.00 hrs on Tuesday morning, you may not resume work until at least 04.00 hrs on Thursday morning.

**Number of night shifts**

- You may not work more than 36 night shifts in any 16-week period.

- You may not work for more than 7 shifts in succession if one of those shifts is a night shift. This may be extended to 8 if the type of work or company circumstances make it necessary and if it has been accepted as part of a collective agreement.

- If you only work nights on an occasional basis (fewer than 16 times in a 16-week period), the situation is the same as with day shifts: an average of 48 hours’ work per week.

- If you work nights on a regular basis (16 times or more in a 16-week period), you may not work more than an average of 40 hours a week within those 16 weeks.

**Increase in the number of night shifts**

- Where a collective scheme applies (such as a collective labour agreement, CAO), the number of night shifts may be increased from 117 to 140 a year if the type of work or company circumstances make this necessary.

- If you work partly at night (for example, if your working day begins at 04.00 hrs), you may also use the rule that you cannot work for more than 38 hours every 2 weeks between midnight and 06.00 hrs. This should be agreed in a collective scheme.

**If you almost always work at night**

Now that the new Working Hours Act has taken effect (on 1 April 2007), the transitional Permanent Night Work regulation has entered into force indefinitely. If you have been working mostly at night since before 1 January 1996, then you may continue this pattern after 1 April. In every uninterrupted 4-week period, you may work a maximum of 20 night shifts.
What rules apply for being on call in the event of unexpected circumstances (consignment)?

Even if you are not at your place of work, your employer may call on you to come to work if unexpected circumstances occur. This is referred to as ‘on-call duty’ in the Working Hours Act. A similar arrangement to on-call duty is ‘stand-by duty’ where employees are available to be contacted, the difference being that this is part of their normal working duties even though they are not actually at their place of work. Examples include maternity assistants. This arrangement exists only in the healthcare sector.

Working hours or not?

The time during which you are on on-call duty or stand-by duty is not regarded as working hours. However, if you are called up and have to start work, this does count as working hours. As soon as you are called, you are deemed to have worked 30 minutes, even if you only have to actually work for 15 minutes. If you are called again within half an hour of being called the first time, the interim period also counts as working hours.

The rules for on-call duty in brief

- You may not work for longer than 13 hours in any 24-hour period, including hours resulting from calls.

- You may not spend more than 14 days on on-call duty in any 4-week period.

- Every 4 weeks, there should be at least 2 consecutive days on which you do not work and on which you are not on on-call duty.

- You may not be on on-call duty either immediately before or after a night shift. You may be on on-call duty up to 11 hours before and no less than 14 hours after a night shift.

- If, in a 16-week period, you are on on-call duty 16 or more times between midnight and 06.00 hrs, you may not work for more than an average of 40 hours a week in that 16-week period.

- There is an exception to this: you may work an average of 45 hours a week in that 16-week period, subject to the following conditions:

  o you have had 8 hours’ continuous rest immediately after your last night shift and have not been on on-call duty;

  o if this is not possible, then you should have had at least 8 hours’ continuous rest on the same day (that is, before midnight).

Note!

- If you are called up, this does not count as an interruption to your daily or weekly period of rest.
- If you are called up at night, this does not count as a night shift.

In addition to on-call duty and stand-by duty, the Working Hours Decree provides for another form of availability, that of ‘on-site stand-by’, where an employee is required to be at the place of work. On-site stand-by shifts are governed by separate rules.

**What are the rules governing on-site stand-by employees?**

During an on-site stand-by shift, you are required to be present at your place of work in order to be able to respond as quickly as possible to any call-up. You may work on shifts of this kind only if the type of work makes it necessary and the work cannot be organized in any other way (examples include the healthcare sector and the fire service). The conditions governing on-site stand-by shifts must also be set down in a collective agreement.

For on-site stand-by shifts, the following rules apply

Note: if you do not do regular on-site stand-by shifts, the normal rules apply to you.

- Immediately before or after an on-site stand-by shift, you may not work for at least 11 hours. This period of rest may be shortened once a week to 10 hours and once to 8 hours, if the nature of the work or company circumstances make this necessary and provided it has been agreed at collective level. The 2 reduced rest periods may not be applied in succession – they must therefore be at separate times of the week.

- A reduced rest period between 2 shifts must be compensated in the subsequent period of rest. This means the latter period of rest should be extended by the same amount of time by which the former period was reduced.

- The minimum rest in any block of 7 24-hour days is 90 hours. The rest time should include at least one unbroken 24-hour period, as well as 4 unbroken rest periods of at least 11 hours, one of at least 10 hours, and one of at least 8 hours.

These unbroken periods may be taken contiguously.

- An on-site stand-by shift may not last more than 24 hours, including times spent waiting and sleeping.

- You may not work more than 52 times on an on-site stand-by shift in 26 weeks.

- All hours in an on-site stand-by shift – any work that is rostered, work that has been carried out after a call up, and the hours of compulsory presence – count as working hours.

- You may not work more than an average of 48 hours per week in a 26-week period.

- In consultation with your employer, you may agree to use a tailor-made construction, or opt-out. You may agree to a scheme whereby you work up to sixty hours a week – you will have to give your written consent to this.
· The written consent covers a period of 26 weeks and will be extended automatically for the same period of time, unless you expressly state that you do not agree with the automatic extension.

**What are the exceptions to the Working Hours Act?**

The Working Hours Decree includes exceptions and additional rules to the Working Hours Act. There are general exceptions that apply to certain employees and to certain situations, and exceptions that apply to a particular sector, such as mining or healthcare. In other words, these sectors are covered by the general rules of the Working Hours Act and Working Hours Decree and the separate sector-specific rules.

**Collective scheme**

*Unless stated otherwise, the exceptions given below can apply only to collective schemes.*

**On-site stand-by shifts**

During an on-site stand-by shift, you are required to be present at your place of work in order to be able to respond as quickly as possible to any call-up. You may work on shifts of this kind only if the type of work makes it necessary and the work cannot be organized in any other way (examples include the healthcare sector and the fire service).

**Working longer in advance of public holidays**

If it is necessary due to preparations in advance of a public holiday, you may work for a maximum of 14 hours (including at nights) on 2 occasions in the 7 days prior to the public holiday in question.

The following are public holidays: New Year’s Day, Easter, Queen’s Day, Ascension Day, Whit, 5 December and Christmas, although the definition may extend to other public holidays. No collective agreement is required for the application of this rule.

**Longer night shifts at weekends**

Between 18.00 hrs on Friday and 08.00 hrs on Monday, you may, in addition to a night shift of 10 hours, work 2 night shifts of no more than 11 hours. You must rest for at least 12 hours after a shift like this. If you use this scheme, you must have at least 26 Sundays off every year. This scheme may not be used in combination with the general rules for longer night shifts.

**Longer night shifts outside the weekend**

If as a result of unforeseen circumstances the number of staff falls below the minimum level, or because there is a public holiday, the remaining employees may work longer night shifts (more than 10 hours). The maximum number of hours that may be worked on these shifts is 12. This is allowed up to twice every 2 weeks and 8 times every 52 weeks.
You must have at least 12 hours’ rest after such a shift. This scheme, too, may not be used in combination with the general rules for longer night shifts.

**Working longer hours due to inescapable work requirements**

If there is work that cannot be delayed, employees may work longer hours. It is important that the work in question is absolutely unavoidable. You may work up to a maximum of 14 hours once every 2 weeks (including at night). No collective agreement is required for the application of this rule.

**Extra quarter of an hour for handover to next shift**

For the purpose of handing over to the next shift, the working hours may be extended by 15 minutes, and the daily period of rest be reduced by the same amount. An example of where this occurs is where work is carried out in separate shifts. If as a result of these extra 15 minutes an employee is working on the night shift, this does not count towards the number of night shifts worked. No collective agreement is required for the application of this rule.

**Call up during break**

If the nature of the work makes it necessary, it can be agreed that an employee can be available to be called up during his breaks. These on-call breaks do not count towards the number of times that an employee can be on on-call duty. If an employee is actually unable to leave the place of work, then these break periods do count towards the number of hours worked.

**Dispensing with breaks**

If the nature of your work means you cannot leave your place of work to take a break, it is possible to dispense with taking breaks. In many cases, this covers people who work alone, such as bridgemasters. Should this apply to you, you may work no more than 44 hours on average in every 16-week period. If you are covered by the rule on exceptional break times and the rule with regard to longer night shifts at weekends also applies to you, you may not work for more than 10 hours on a night shift.

**Extending the period of reference to 52 weeks**

As a result of unforeseen circumstances or because of the nature of your tasks, the amount of work to be done may vary considerably during the year (as in the case of seasonal work, for example). In that case, the 16 week-period (the so-called reference period) that is used for calculating the average working time can be extended to 52 weeks. The reference period may also be extended if your tasks consist only or mainly of supervisory duties. This may be done in two ways:

- in a 52-week period you can work for a maximum of 48 hours a week on average. There must be arrangements for this in the collective labour agreement (CAO); in the case of
night shifts, in a 52-week period you can work for a maximum of 40 hours a week on average. Agreement for this extension only needs to be obtained at company level.

Does the Working Hours Act also apply to temporary agency employees and the self-employed?

In principle, the Working Hours Act applies to anyone who works for an employer – in other words to all employees, including people on traineeships, temporary agency employees, and seconded employees. There are also cases where the Working Hours Act applies to people who are self-employed - in situations where the safety of third parties is at stake, such as in the transport sectors.

To whom does the Working Hours Act not apply?

In some situations the Working Hours Act does not apply, either in whole or in part, such as in the case of completely unforeseen dangerous situations in which observance of the law would impede any appropriate response. The Working Hours Act does not apply when observance would disrupt attempts at maintaining public order (this applies to government security and intelligence services and to the police). There are also some types of work for which the Working Hours Act does not apply, either wholly or in part. For example, the rules on Sunday working do not apply to people who have a spiritual function within the church.

Other groups of employees covered by exceptions are:

- those who earn at least three times the minimum wage (unless the work involved is dangerous, at night, or in the mining industry and not carried out by supervisors or managers);
- volunteers;
- professional sportsmen and women;
- scientific researchers;
- parents in foster homes;
- stage artists;
- medical and dental specialists, doctors in nursing homes, GPs and social physicians;
- supervisors of school and holiday camps;
- military personnel on duty and during exercises.

What if your employer does not comply with the Working Hours Act?
You should first make sure yourself that the rules regarding working hours, rest periods, breaks and night work are not being breached. Your employer has no right to force you to work outside these rules. If you believe that your employer is not complying with the rules, you should raise the issue with him.

**Works Council**

It is also the task of the Works Council to make sure that the law is being complied with. You can therefore inform your Works Council if you think that your employer is not observing the rules.

**The Labour Inspectorate**

The Labour Inspectorate carries out regular random checks. If you think that the rules are being broken, and you are unable to resolve the issue with your employer, you can report this (anonymously) to the Labour Inspectorate.

**Penalty**

The Labour Inspectorate also carries out regular random checks on its own initiative. If a company is not observing the rules, a penalty may be imposed, in some cases after a warning. Should an employer continue to ignore the rules, or if a breach is such that the health of children or traffic safety is at risk, an official report may be made with a view to criminal proceedings.

**Court**

Disputes may also be put before the courts, in which case a trade union may be helpful. The courts can force employers to comply with the law.

**More information**

If you cannot find an answer to your question on this website, you can ask the Postbus 51 Information Service by calling free number 0800 8051. The service is available on working days from 08.00 to 20.00 hrs. If you are calling from abroad, the number is +31 77 4656767 and the regular rate will apply. Your question will usually be answered immediately, though sometimes you will be referred to another government or non-government agency.