



# Matt Gingell™

Making sense of employment law

## Overtime: A guide for employers

### EMPLOYMENT CONTRACT

Whether you can make employees work overtime will depend on the terms of the employment contract. The contract should set out the hours of work and the remuneration to be received, whether it's in the form of an annual salary or pay at an hourly rate. There may also be provisions outlining overtime rates.

In some contracts though, and usually in contracts for professional services staff, while the hours of work are specified, a separate clause may state that the employee is expected on occasions to work additional hours for no extra pay in order to fulfil their duties.

### WORKING TIME

It's also important to be aware that under working time regulations workers mustn't work more than 48 hours each week, averaged over 17 weeks. Workers can opt out provided that they provide a minimum of 7 days notice, although they may have to give more notice up to a maximum of 3 months if there is an agreement with the employer. There are also some general exceptions to the 48 hour week including for those workers whose working time is not measured and are in control of their work.

Employers frequently ask employees to sign up to a waiver of the 48 hour maximum working week as part of the employment contract when they join. Although employees could at a later date give notice to opt out, employees may worry about repercussions from their bosses.

### NATIONAL LIVING WAGE

Another thing to have in mind is the legal obligation to pay the National Living Wage (NLW) and National Minimum Wage (NMW), which would include pay for overtime. Employees' average pay for the total hours worked mustn't fall below the NLW and NMW. The NLW of £7.50 an hour must be paid to workers aged 25 and over. The NMW continues to apply to workers aged 24 and under.

Employees who work excessive hours may also have other types of redress against their employer. Employees could, for example, have claims if they suffer a stress illness, but each case would depend on the circumstances.

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### For Employment Law Advice Contact