FACT SHEET

WORKING TIME IN THE HEALTH SECTOR IN EUROPE

EUROPEAN TRADE UNION CONFEDERATION (ETUC)

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INTRODUCTION

Working time is hugely important for the health sector across Europe because of the implications of long working hours for the health and safety of staff, patient safety and the impact on work-life balance for the recruitment and retention of staff. Staffing shortages pose major challenges for health care systems, which are likely to intensify as a result of the ageing workforce. Many skilled health workers will retire as demand for health services from an ageing population rises. Staffing shortages are particularly acute in some Central and Eastern European countries where many skilled health workers have left to find work in Western Europe.

SOCIAL PARTNER ROLES

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The social partners at European level have agreed a framework of actions on recruitment and retention. At the national level the social partners are examining innovative ways of organising working time to improve work-life balance and respond to the requirements of the Working Time Directive and the European Court of Justice rulings on on-call time at work. In the UK and other countries that have implemented the opt-out, public service unions identify continued problems, which particularly affect workers in commercial and contracted out health services

EPSU and HOSPEEM "Recruitment and Retention – A Framework of Actions", 17 December 2010

DThe framework of actions highlights the implications of working time in providing a 24/7 service, particularly with regards to staff and patient safety, and work-life balance:

"HOSPEEM and EPSU acknowledge the benefits that can be gained from staff having planned and agreed hours of work and rest periods. Social partners will cooperate to promote the best way of delivering efficient health care, which will safeguard staff and patient health and safety."

"The majority of health care staff are women, a significant number of whom also currently have caring responsibilities. In order to facilitate the full participation of men and women in the healthcare labour market, health employers and social partners should take measures and develop policies which will improve the work-life balance of workers."

See: http://www.epsu.org/a/7158

EPSU'S WORKING TIME POLICY

Working time has been a central issue in the work of the European Federation of Public Service Unions (EPSU), and remains a core objective of collective bargaining. EPSU's Working Time Policy 'An Active Working Time Policy: For Employment, Time Sovereignity and Equal Opportunities' was agreed at the 2000 EPSU Congress setting out the centrality of collective barganining to achieving decent working time to:

- Secure employment and to create new quality jobs reducing unemployment;
- Respond to new forms of work organisation;
- Improve the quality and role of public services and extend their provision;
- Improve working conditions, leisure time, education and parental leave possibilities;
- Enhance equal opportunities and reconcile the sharing of family and work life.

EPSU's 2000 Working Time Policy has been a useful reference point for national level agreements and a guide for negotiators where no union policies are in place. Some unions have introduced policies that are in line with the policy. For example, the Slovak Trade Union of Health and Social Services used the policy as a basis for negotiating working time arrangements in the health sector, and achieved reductions in working time and extended annual leave. However, low levels of public

expenditure have had an impact on the recruitment of new staff and health staff tend to work overtime to make up for the shortfall in staffing levels required to provide decent services.

WORKING TIME TRENDS IN THE HEALTH SECTOR

A survey of EPSU affiliates carried out in 2009 highighted working time developments and trends, including examples of collective agreements and policies. Overall the survey found that:

» Since 2003 there have been very few collectively agreed reductions in working time in the public services, and in the health sector overall. There has been little change in average working hours with reduced working hours, without a loss of pay, and lesser importance given to this issue on collective bargaining agendas.
» The economic crisis has led to cuts in working hours of a new kind in the health sector in some countries, for example, through extra days off, reduced holiday leave or cuts in annual working hours, leaving the normal working week unchanged. This has been particularly the case in services that are contracted-out, for example, in catering and cleaning.
» One of the more retrograde developments has been that some workers, working in contracted-out services in the health sector, work on a zero-hour contract basis.
» Annualised working hours, calculating working time on the basis of annual, rather than a weekly calculation has become more common in the scheduling of hours and working time in the health sector.

Public sector unions have identified a range of challenges and changes in union policy on working time in the last few years. For example, the Swedish union Kommunal has moved away from a policy of the 6 hour working day to one of reduced average working hours (currently normal working hours are 40 hours per week). Fragmented bargaining causes difficulties for some unions. For example, Unison, UK, has had difficulties in identifying the extent and scope of existing policies and agreements because bargaining is so fragmented (across service groups and workplaces). In many countries the nursing workforce is ageing and this led some unions to negotiate flexible working options for nurses who are considering retirement. The objective has been to give access to retirement planning and flexible work options in order to retain staff.

France: retaining older nurses through reductions in working time

In France a collective agreement between trade unions and employers in the health sector in 2008 has led to an innovative scheme to reduce working time and lighten the workload for older staff, particularly nurses, as a means of retaining them in the workforce. The initiative provides for the right to days off for nursing and other paramedic staff as they get older, with up to an additional 36 days off per year for those aged 55 years and above. The agreement resulted from concerns about a shortage of nurses and work-

related physical and psychological health problems faced by older nurses, and the need to retain nurses in the workplace until retirement. The lost time is compensated through the creation of new jobs.

UK: Hospital at night initiative for 24/7 acute care

The 'Hospital at Night' initiative is a good example of how the Working Time Regulations have been implemented in the UK to reduce working hours from 56 hours a week to 48 hours a week by 2009. This has provided an opportunity for positive change, to retaining levels of service, patient safety, high quality care and the quality of training. The benefits have been better clinical outcomes and a 20% reduction in length of stay, admissions and readmissions. In meeting the Regulations strategies have included moving doctors from on-call rotas to full shifts, an increase in the numbers of doctors employed at junior grade level, reorganisation from three to two rotas, more effective planning of shift-work, and a whole system approach. The implementation of the system has had positive outcomes on training, work-life balance and safer patient care.

WORKING TIME FLEXIBILITY IN THE HEALTH SECTOR

There has been a significant growth of flexible working agreements in the health sector across Europe, and unions have played a key role in developing workplace agreements on flexible working time. Flexible working arrangements have been used to improve the quality of services, for example, to extend opening times of services, and to enable workers to have greater time-sovereignty and to balance family and care responsibilities. Many of the agreements have been designed to recruit and retain the best staff, particularly because in the health sector the majority of workers are women. The most common agreements have covered:

- Flexi-time schemes, with average working hours maintained over a reference period of up to three months. These give a choice of when to work within a core period of time;
- Annualised hours where hours are worked out over a year. These are often organised around set shift work patterns, leaving flexibility when to work other hours. These schemes have been valuable in planning shifts and in addressing peak times for health service delivery;
- Differential hours over the year, for example, enabling parents to work term-times only in order to balance work and family life;
- Compressed hours, which enable a worker to agree hours over fewer days, for example over a 4 day week or a 9 day fortnight;
- Staggered hours, with different starting, break and finishing times for workers in the same workplace;

» Job sharing, leading to two persons sharing one job;
» Part-time and reduced hours working negotiated between the employer and the worker, with schemes to enable workers to reduce their hours or work fewer days per week.

Working time flexibility in the Finnish health sector

An innovative method of shift planning for nurses has been developed in a project led by the Finnish nurses union SuPer, in partnership with Trade Unions of the Public Welfare Sectors (JHL) and the Union of Health and Social Care Professionals (Tehy), and two employers organisations. A participatory planning model has been put in place to enable staff to plan roles and tasks together, based on principles of fairness and equality. The shift planning model has adopted principles of ergonomic working time based on a model of two mornings, two evenings, two nights and four days off. This is also based on a greater deal of regularity, 8-10 hour shifts, at least 11 hours off duty between shifts, no more than 48 hours working time a week and consecutive days off. Staff are able to plan their working time schedules and ward shifts in a participatory way, taking into account skill mix, staffing levels and the preferences of other workers on a ward. There has been a very positive impact on staff who now have more control over their work, which in turn has had an impact on their well-being. This has

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also led to high quality nursing, effective use of resources, motivated and committed workers, and better retention of staff. The example shows the benefits of a participatory approach and the role that the social partners can play in inspiring positive forms of flexibility with benefits for staff and the organisation.

WORKING TIME DIRECTIVE AND EUROPEAN COURT JUDGEMENTS

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Opt-out from the Working Time Directive

In some countries the introduction in the health sector of the individual opt-out from the 48-hour week has been used as a short-term solution to staff shortages. Trade unions have argued against the use of the individual opt-out on the basis that the Working Time Directive is essential to protect workers and the public. Long working hours affect the health of health care workers and their judgement and actions, which in turn impacts on patient safety.

In some cases trade unions have reluctantly agreed to the individual opt-out on the basis that it is regulated by collective agreement, as exists for, in the Netherlands and Germany. It is unclear what actual use is made of the individual opt-out as both the European Commission's own report on implementation of the Working Time Directive and the impact assessment carried out by Deloitte reveal the failure on the part of both employers and public authorities to collect and monitor data. However, the Deloitte report highlights the concern about the impact of long working hours on health and safety: "It can thus be concluded that even for those working long hours voluntarily, the risk of health problems will increase as the numbers of hours they work goes up".

On-call work

Implementing the Working Time Directive and the European Court of Justice (ECJ) rulings on on-call time at work (SIMAP, Jaeger, Pfeiffer and Dellas) have posed major challenges to the health sector. While there have been positive developments in some countries, as shown above in the example of the 'Hospital at Night' initiative for doctors in the UK, the problem in several countries is the widespread use of on-call arrangements at the workplace. Staff shortages have made work reorganisation difficult to achieve. In practice this means that some workers exceed the 48-hour maximum working week when on-call hours are included.

In the SIMAP, and Jaeger and Pfeiffer, and Dellas cases the ECJ has ruled that 'on-call working time' i.e. when the employee must be available in the workplace, must be defined as working time under the Directive and that compensatory rest time must be available immediately after the working period. The SiMAP judgement concerned a case brought before the European Court of Justice on behalf of a group of Spanish doctors. The ruling declared that all time spent resident on-call would count as working time. The ECJ judgement in the Jaeger case concerned the application of on-call within the German health service, and this followed the line of the SiMAP judgement. In the Dellas case ruled that the French system of on-call work was incompatible with the Directive

on the basis that all periods of on-call duty at the workplace should have been taken into account in their entirety when calculating maximum daily and weekly working time permitted by the Directive.

As a result of the ECJ rulings the entire time that an employee is required to be present at work has to count, hour-for-hour, as actual working hours, even if the employee is allowed to sleep during their shift. In the second round of consultations on the Working Time Directive that ran from December 2010 to March 2011, the European Commission in contradiction to the Dellas judgement, has argued that on-call time should be counted differently. EPSU's response to the second stage consultation in 2011 stated that[1]:

> DAs pressure mounts from governments to do more with less, public service workers are being called on to work harder and longer as jobs are cut and services threatened. A weaker Working Time Directive will only allow governments and employers to intensify that pressure.

1 EPSU Executive Committee,13-14 April 2011, European Commission's Second Phase Consultation on Revising the Working Time Directive.

EPSU would set as minimum requirements for negotiation the abolition or phasing out of the individual opt-out, the codification of the SIMAP, Jaeger and Dellas rulings into the Working Time Directive, the need for compensatory rest to be taken at the earliest opportunity and retaining collective bargaining as the requirement for any extension of reference periods.

Finding alternatives to the opt-out in the health sector

The German Working Time Act allows individuals to work up to 66 hours a week where there is regular use of on-call time. This has to be subject to a collective agreement and the written permission of the individual affected. However, some German hospitals have chosen not to make use of the opt-out because they find it is more effective not to do so. Guidance on working time organisation in hospitals produced by the national guidance committee on health and safety (LASI) in 2009 noted that traditional forms of organising working time, with long periods of on-call time were no longer appropriate and that "many hospitals have therefore modernised the way they organise working time and are well on the way to working time models that are both in line with the legislation and appropriate to the workplace." (Arbeitszeitgestaltung in Krankenhäusern, LV 30, Länderausschuss für Arbeitsschutz und Sicherheitstechnik, May 2009)

The UK Working Time Regulations allow individuals to opt-out of the 48-hour weekly limit without restriction. In 2009 maximum average working week for all junior doctors came down to 48 hours in 2009. A survey by the British Medical Association in 2010 found that 12.2% of junior hospital doctors had been asked to sign an opt-out, of whom 32% refused to sign. In practice, the opt-out is not widely used in the UK because staff rotas are organised around a 48-hour week system. As a result it is more difficult to run rotas based on a longer working week. One initial concern with the 48-hour limit was that medical training of junior doctors would suffer. However, a recent expert report found that training could be enhanced by redesigning services around a 48-hour week, and in addition the quality of care could be improved. As the report noted some health organisations "have engaged in redesigning services, or are addressing reconfiguration and networking solutions. These result in safer, better care to patients, and enhanced quality of training. In the current economic climate reconfiguration is an important way of making better use of scarce resources."

(Time for Training: A Review of the impact of the European Working Time Directive on the quality of training by Professor Sir John Temple, May 2010)

IMPACT OF THE ECONOMIC AND FINANCIAL CRISIS

The current economic crisis has led to a number of reversals of gains made in working time, with many unions identifying working time as a key battle ground, alongside pay. Austerity measures and public expenditure cuts have impacted on health sector funding. In some countries, such as Ireland, Romania, Greece and several others, health workers are suffering the same pay cuts and freezes that have been imposed on other public sector staff. Job cuts and freezes on staff recruitment have become more common. This has also had the effect of limiting access to flexible working that suits the individual, which is often blocked by employers. Job cuts have led to greater intensity of work, while part-time workers and women returning from maternity leave have experienced greater problems in adjusting their working hours. This has led to concerns about new forms of discrimination against women.

CONCLUSION

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The health sectors is characterised by changing patterns of working time, persistently long working hours resulting from the opt-out and no resolution to the issue of on-call work. On top of all this, health workers face an increase in the intensity of work as public spending cuts bite. Working time remains a core trade union collective bargaining objective, and the economic crisis has heightened the need for the ETUC, EPSU and the rest of the European trade union movement to continue to fight for a strong Working Time Directive, capable of providing for the health and safety of workers and patients.

avec le soutien de la Commission européenne
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