

Compensatory Rest Guidance

September 2019

Compensatory rest is essential for patient safety and for your wellbeing. This guidance sets out what compensatory rest is, when consultants are entitled to it, how much compensatory rest they are entitled to, and what arrangements are appropriate for taking such rest.

Key points:

- If you are unable to take 11 hours of consecutive rest per day, you should be entitled to take compensatory rest
- Those working on-call overnight are likely to have their rest period disturbed by a phone call; where this happens, they should be able to take compensatory rest the following day
- Compensatory rest should not be calculated on a minute-for-minute basis, based on the duration of the interruption – it should be for the full value of 11 hours' continuous rest with the clock starting when you get back to resting.
- You should not have to 'pay back' any activity missed during the time you have been taking compensatory rest
- You should not agree to have SPA time scheduled for the morning after a night on-call – compensatory rest should be taken proportionately during both DCC and SPA time
- The need for compensatory rest can be avoided by common-sense approaches to job planning



What is compensatory rest?

Compensatory rest is one of the safeguards brought into force by the Working Time Regulations 1998 (WTR), which gave effect to the earlier European Working Time Directive (EWTd). Those provisions include a requirement for 11 hours of consecutive rest per day. However, it is recognised that, as in the case of delivering services such as medical care, providing 11 hours of consecutive rest will not always be possible.

Where a doctor is required by their employer to work during a period which would otherwise be a rest period, the provisions of Regulation 24 on 'Compensatory rest' states that their employer 'shall wherever possible allow him [sic] to take an equivalent period of compensatory rest' and that where this is 'not possible, for objective reasons' the doctor should be afforded 'such protection as may be appropriate in order to safeguard the worker's health and safety'.

This is very likely to be the scenario when a doctor is on-call during the night. When they are on-call but are not responding to a call, this constitutes time in which they should otherwise be a rest period. When they receive a call, this naturally disturbs their rest period, often having a significant impact on the doctor's sleep cycle. In line with Regulation 24, the doctor should therefore be afforded a period of compensatory rest to redress the sleep that they have lost.

Sensible job planning should mean that any doctor will not be scheduled in their job plan to work the morning, or even the whole day, after a night of being on-call. However, if they are, it is essential that the doctor is able to take a period of compensatory rest when their sleep has been disturbed. This is both in the interests of patient safety and the doctor's own health and wellbeing. It is not in anyone's interest for a doctor to be treating patients while tired, especially since the findings of the Norman Williams Review into Gross Negligence Manslaughter.

My rest has been disturbed by responding to a call during the night. How much compensatory rest am I entitled to?

There is some variation in the approaches taken by different employers to providing compensatory rest. We know that some offer compensatory rest that is only equivalent to the duration of the calls that a doctor has received. So, if a doctor's on-call period is interrupted by a 10-minute phone call, they would allow the doctor to take only 10 minutes of additional rest to compensate them for the loss of sleep.

This clearly ignores the true impact of a disturbance on an individual's sleep patterns – it treats doctors as though they were machines, immediately able to return to the same stage of their rest cycle as when they were awoken by the call. We know that in practice, doctors will often take some time to go back to sleep and may continue thinking about the clinical situation that they were contacted about.

The BMA has sought legal advice on the question of how compensatory rest should be calculated. When considered in conjunction with the rest of the Regulations, it is clear that calculating rest on a minute-for-minute basis, based on the duration of the interruption, is not sufficient. In taking this approach, an employer would be failing to provide the 'adequate' or 'equivalent' rest that is required – such rest must be 'continuous' if it is to achieve the object of protecting the health of the worker.

The implication of this is that where your rest is interrupted by a phone call during a period of on-call, you should be entitled to effectively re-set the clock and take a further 11 hours of rest from the time at which you were last disturbed. Again, sensible job planning should mean that this issue never need arise; if no doctor is scheduled to work the day after a night on-call, allowing the full 11 hours of rest will have no impact on services.

Example

A consultant is working Category B on-call on a Sunday night. At 3am, they are awoken by a call from a junior doctor seeking advice on dealing with a complex case. The consultant stays on the phone for ten minutes, and then after a brief interval, a further ten minutes. It is 3:30am by the time they are able to begin settling back down to sleep. Against best practice, the consultant was scheduled to be in work at 9am the day following a night on-call. In order for the consultant to get their required 11 hours of sleep, they should contact their employer to inform them that they will not be able to come into work until 2:30pm the next day as it is potentially unsafe for patients. This time should be paid. An urgent job plan review is indicated to avoid this situation recurring in the future.

When should compensatory rest be taken?

The cases of SIMAP (2000) and Jaeger (2003), heard in the European Court of Justice (ECJ), have both indicated that compensatory rest should be taken as soon as practicably possible after the rest period that has been disturbed. So, in the interest of protecting the individual's health, the rest should be used to actually address the sleep disturbance where possible. Compensatory rest cannot, for example, be accumulated up and taken at a later date as though it were leave.

In the case of interrupted sleep during a night on-call, you should expect to take your compensatory rest the day after.

Do I have to pay back the clinical activity that has not been done while I am taking compensatory rest?

We know that a number of employers have informed doctors who have taken compensatory rest that they expect them to 'pay back' the work that has not been done while they have been resting. This would involve them undertaking the rescheduled work for no additional pay, meaning that their compensatory rest time is effectively unpaid.

This has especially been the case where individuals are on annualised job plans – employers say that the taking of rest has no bearing on the number of sessions of activity the individual is obliged to deliver over the course of the year.

We completely reject this interpretation of compensatory rest provisions. Doctors should not be expected to 'pay back' this activity at a later time. Making compensatory rest effectively unpaid time will only serve to discourage doctors from actually taking it, even if their tiredness means that it is entirely justified. Again, it is not in anyone's interest for employers to compel doctors to continue working when tired, and sensible job planning should mean that there is never a need for this issue to arise.

Another tactic used by some employers is attempting to schedule a doctor's Supporting Professional Activities (SPA) time for the day after a night on-call. They may do so because they view this time as being more valuable to the doctor than to the employer and therefore are less concerned whether it is used for rest or SPA. We would emphasise that SPA still constitutes work and is an essential component of a doctor's role, ensuring that they remain up to date and continue to deliver value to the employer. You should not agree to a job plan which schedules your SPA time for the morning after a night on-call.

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