Compensatory Rest

Workers are entitled to in-work, daily and weekly rest unless an exception applies. The exceptions mean that in certain situations rest break provisions do not apply, and that a collective agreement can modify or disapply them. However when rest break provisions are disapplied or modified, ‘compensatory rest’ or other protection must be provided instead. (Note that very few exceptions apply to Young Workers’ breaks).

Wherever possible, Compensatory Rest (equivalent to the rest that has been missed) is provided. It must be given directly after the work which incurred it and before the employee is next expected to work.

In exceptional cases where it is not possible, for objective reasons, for an equivalent rest period to be taken before the individual commences work again the Service must ensure that sufficient protection is provided to safeguard that worker’s health and safety.

In the example below, an employee (over the age of 18) is called out at night.

They accrue working time between 9pm and 1am, interrupting their 11-hour rest break. They resume their rest break from 1am.

As the break is interrupted for 4 hours, the employee receives 4 hours compensatory rest which is then added to the end of the scheduled rest period at 2am and is completed before the employee is next due to work.

If the timing of the call-out had meant that the employee had received 11 consecutive hours’ rest (e.g. 3pm – 7pm or 4am – 8am) then no compensatory rest would have been due.

If the duration/timing of a call-out means that compensatory rest is due but cannot be taken before the employee is scheduled to work again, the service must determine how to address this.
If the employee may take the compensatory rest and start later than scheduled, the Service must determine:

- Whether an employee who starts late will finish correspondingly late or at the normal time.
- Whether the rest between normal and actual start time is paid or not.
- Whether the rest between normal and actual start time is compulsory or not.

The decision on the first and third bullet point above will be based on a Risk Assessment. If a service has reason to have significant safety concerns it may for instance determine that the rest time between normal and actual start time is compulsory and paid, with the employee starting late (due to taking rest) and still finishing at their normal time. If safety concerns are minimal it may be left up to the employee to decide whether to take compensatory rest (unpaid).

The Service’s decisions will then apply to each similar incident for all employees in the group under consideration.

If the situation is an exceptional case because it is not possible for the compensatory rest to be taken before the employee next works, then the Service must provide appropriate protection to safeguard the worker’s health and safety. This could include for instance reduced rest, lighter duties or additional supervision. It is not considered that many situations will fall into this category.