Working hours, a mirror of the specificities of home care in France*

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Ricevuto il 2.5.2025 – Accettato il 15.6.2025 – Pubblicato online first il 4.8.2025

Riassunto. Nel settore sanitario francese, l'orario di lavoro è caratterizzato da un mosaico di deroghe. Tutti gli operatori di assistenza e cura, sia che lavorino presso enti o strutture, sia che lavorino a domicilio, sono soggetti a orari di lavoro ampi e irregolari, con periodi di riposo spesso inadeguati, il che aumenta il rischio di incidenti sul lavoro e di stanchezza. Gli assistenti familiari sono ancor più soggetti a questi vincoli di orario, in parte per le caratteristiche del luogo di lavoro, che corrisponde a un'abitazione privata, e in parte per le caratteristiche connesse al loro ruolo. L'orario di lavoro degli assistenti familiari rappresenta uno dei motivi principali per cui questa attività professionale è considerata una delle più faticose, meno qualificate e meno remunerate; ciò implica che essa rimane screditata, nonostante il suo effimero legame con i lavoratori essenziali durante la pandemia da Covid-19, e indelebilmente associata a un pregiudizio di genere. Con un'unica eccezione, gli adattamenti dell'orario di lavoro non sono mai il risultato della volontà del lavoratore, ma di vincoli imposti, che creano tensioni con i diritti dei lavoratori che non prestano la loro attività a tempo pieno, la cui effettiva protezione si scontra con due problemi strutturali: il finanziamento dell'assistenza e la carenza di manodopera.

Parole chiave: Orario di lavoro; Assistenza; Francia.

Abstract. Working time in the French healthcare sector is a patchwork of derogations. All care and support workers, whether they work in institutions or at home, are subject to extensive and irregular working hours, with rest periods that are often inadequate, which

* L'articolo è stato redatto nell'ambito delle attività del progetto di ricerca *CARE4CARE – We Care for Those Who Care*, finanziato dall'Unione europea attraverso il programma Horizon Europe Research and Innovation (GA n. 101094603).

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increases the risk of accidents at work and exhaustion (tiredness). Home care and support workers are subject to these time constraints tenfold, partly because of the characteristics of the location, which corresponds to a number of private homes located in a more or less extensive geographical area, and partly because of the dual role of beneficiary/employer. The working hours of homecare workers are one of the main reasons why this professional activity is considered to be one of the most back-breaking, least qualified and least remunerated, because it remains discredited despite its ephemeral link with essential workers during the Covid pandemic, and because it is indelibly associated with gender prejudice. With one exception, adjustments to working hours are never the result of the wishes of the worker, but of imposed constraints, which create tensions with the rights of non-working time workers, whose effective legal and conventional protection comes up against two structural problems: the funding of care and the shortage of labour.

Keywords: Working time; Healthcare sector; France.

1. Working time in the French healthcare sector is a patchwork of derogations resulting from a triple movement of a legal and political-economic nature.

The first movement is the history of working time regulation in France. Reforms have consisted in individualising working hours and reorganising them according to the needs of the company, so that the overall cost of effective work is less onerous, by establishing reference periods other than the week (generally in cycles of weeks or over the year). In addition, following the 2017 Macron's ordinances, working time is one of the subjects that can be dealt with by company agreements that derogate *in peius* and take precedence over branch agreements. Since then, the legal provisions have become suppletive; public policy has retreated but is still prevalent in certain respects, especially as regards minimum rest periods and maximum daily and weekly working hours.

The second, more recent, movement is linked to public policies on the autonomy of people who are dependent because of their age or disability, which establish the principle of freedom of choice for individuals: in France, the arrangements for access to care and support in the home come under two types of scenarios with their own legal regulations. If these activities are organised in the beneficiary's home by an institution, a commercial company or a non-profit organisation and give rise to the conclusion of an employment contract, then all employment law applies. On the other hand, the beneficiary is legally the employer falling within the category of individual employer, then the employees come under the heading of domestic work and enjoy a legal status that largely derogates from ordinary law. Additionally,

France has not ratified the ILO Convention 189 of 2011[1] on domestic workers, which limits its participation in the international framework for promoting and protecting the rights of these workers.

The third movement is the consequence of a structural recruitment crisis in the care and support professions. This crisis is reflected in a severe shortage of nurses, care assistants and life assistants, due to difficult working conditions and very low – sometimes even undignified – wages, turning these long-working people into the working poor.

All care and support workers, whether they work in institutions or at house, are subject to extensive and irregular working hours, with insufficient rest periods, which increases the risk of accidents at work and exhaustion (tiredness). Home care and support workers are subject to these time constraints tenfold, partly because of the characteristics of the location, which corresponds to several private homes located in a more or less extensive geographical area, and partly because of the dual role of beneficiary/employer. The working hours of homecare workers are one of the main reasons why this professional activity is considered to be one of the most back-breaking, low-skilled, and poorly remunerated. Despite its ephemeral link with essential workers during the Covid pandemic, this profession remains discredited and is indelibly associated with gender stereotypes. With one exception, adjustments to working hours are never the result of the wishes of the worker, but of imposed constraints (§ 2). These constraints generate tensions with the rights of care workers to protected non-working time, whose effective legal and contractual[2] protection are undermined by two structural problems: the underfunding of care services and the labour shortages (§ 3).

2. The provision of home care services has two specific features that have an impact on working hours: the place of work, which is the beneficiary's home (§ 2.1), and the purpose of the service – care – which requires continuity of service (§ 2.2).

2.1. Home care inevitably generates a fragmentation of activity that distinguishes it from institutional care. The limited amount of care provided for older adults, compared to persons with disabilities, leads to a strict standardisation of care procedures. This reduction in the amount of time allocated to care means that many of the essential dimensions of care are invisible. The motivations behind this logic are mainly economic, driven by both employers and public authorities. In contrast to the fragmentation of employment and/or work (§ 2.1.1) that occurs when people are subjected to it, there is also a fragmentation of work that has been chosen as a result of new professional practices (§ 2.1.2).

[1] Despite the Council of Ministers Decision of 28 January 2014 which authorized EU Member States to ratify ILO Convention 189. Council Decision 2014/51/EU (OJ L.32/32). See Scheive, 2021.

[2] Home care work is covered by three extended national collective agreements: the NCC du particulier employeur et de l'emploi à domicile (the 2021 NCC), the NCC des entreprises de service à la personne (the 2012 NCC) and the NCC de l'aide, de l'accompagnement, des soins et des services à domicile (the 2010 NCC).

2.1.1. The fragmentation of a care worker's day can occur in two ways. The first is the result of the constraints imposed by Care's funding bodies, which encourage establishments to divide their work into ever shorter periods, sometimes as short as 15 minutes. The result is that the work is broken up into shorter and shorter periods, alternating with travel, which means that the average working day is 12 to 13 hours long.

The second case is characterised by the fragmentation of employment as a result of part-time employment contracts concluded with several individual employers. In this scenario, the legal provisions relating to part-time working are not applicable[3] and the national collective agreement does not include any provisions relating thereto. Therefore, there is no rule imposing a minimum daily, weekly, monthly or annual working time. This is why these employees are forced to multiply their employers and therefore their part-time contracts to earn a decent income[4]. Similarly, there is no notice period for changes to working hours, which means that these workers are subject to ultra-flexible working hours with no compensation.

Short part-time shifts[5] and reduced working hours mean that the working day is usually longer than average: «from 9am to 8pm, we're always on deck».

2.1.2. In addition to the organisation of work with weekend and public holiday shifts reserved for volunteers[6], the choice of a fragmented care activity appears with *balluchonnage*, a form of long-term respite at home. This involves making a single professional available in the home to replace the carer who is exercising his or her right to respite for several days. This form of work organisation was initially the subject of a so-called experimental law of 10 August 2018 (art. 53) authorising derogations from working time regulations. Evaluations published in October 2021[7] reported the benefits for the workers concerned. They feel that they have rediscovered their vocation to help, increased their sense of fulfilment at work, a greater sense of usefulness at work and recognition, and have gained greater freedom to organise their work. They felt that the conditions under which *balluchonnage* was set up and carried out (rest periods, freedom of choice of service, quality of service preparation and the quality of the caregiver-helped pairing), provided a secure working environment. In addition, specific training and a 24-hour hotline guarantee good working conditions. The experiment ran from 2018 to 2024.

The pilot initiative was made permanent by the law of 15 November 2024[8]. It establishes that recourse to *balluchonnage* is based on the worker's volunteering. It

[3] This has been confirmed on several occasions by the Court of Cassation: Cass. soc., 11.3.2009, n. 07-44.013; Cass. soc., 7.12.2017, n. 16-12.809, n. 2603 FS – P + B; Cass. soc., 8.7.2020, n. 18-21.584, n. 677 FS – P + B.

[4] Devetter, Valentin, 2024, 89.

[5] El Khomri report, *Plan métier du grand âge*, 2019, 136: 79% of employees in the sector work part-time, with an average monthly working time of 102 hours for all employees combined.

[6] The 2010 NCC: maximum of 3 Sundays worked followed by 1 Sunday not worked.

[7] Koreis, 2021; Faucher-Magnan, Fenoll, Toche, 2022.

[8] JORF of 16.11.2024.

stipulates that the legal and collective bargaining provisions on breaks, maximum daily and weekly working hours, maximum daily and weekly night working hours and daily rest periods do not apply to employees who opt for *balluchonnage*. It authorises employees to work at home for up to 6 consecutive days, or a maximum of 94 days over 12 consecutive months, with 11 hours of daily rest that may be totally waived or reduced, with compensatory rest granted in accordance with the terms laid down by decree, to take over from a carer for a dependent person. The introduction of *balluchonnage* requires a derogatory collective agreement on working hours. The place of work has a decisive influence on the duration and organisation of working time as well as working time arrangements due to the purpose of the contract.

2.2. The Care sector is characterised by non-standard and modified working hours that are becoming commonplace (§ 2.2.1) and by non-standard working periods that pose problems of legal qualification (§ 2.2.2).

2.2.1. The 2010 and 2012 collective agreements take advantage of all the possibilities for derogation offered by the Labour Code, justified by the need to provide a continuous service to vulnerable groups. This is the case for the actual daily working time, which is set at 10 hours and can be extended to 12 hours[9], the maximum daily working time, which is set at 13 hours[10], and the night working time, which can be extended from 8 hours to 10 hours[11] or even 12 hours[12]. The same applies to Sunday rest, which may be waived by agreement for activities such as services to individuals in their own homes[13].

The employee of an individual employer is in a much more unfavourable situation, as he or she does not benefit from any protection under legal working time. The working time regime governed exclusively by collective agreements is characterised by its regressivity in relation to ordinary law. This is the case with the maximum weekly working hours[14] and the weekly working hours set by collective agreement at 40 hours (compared with the legal 35 hours), which creates a loss of earnings. Lastly, these employees are required to work far more overtime than the legal quota[15], without any of the compensation provided for under ordinary law[16].

Changes to the schedule for which it is possible not to respect the agreed lead

[9] Up to 70 days in accordance with the 2012 NCC.

[10] 2012 NCC for activities with dependent persons.

[11] The 2010 NCC.

[12] The 2012 NCC, which is permitted by art. L. 3122-17 and R. 3122-7 of the Labour Code.

[13] Art. R. 3132-5 of the French Labour Code. The 2010 NCC stipulates that the working pattern may be 1 Sunday worked out of 4 or 1 Sunday worked out of 3, with a maximum of 1 Sunday worked out of 2.

[14] 48 hours per week over 12 consecutive weeks or 50 hours in a single week.

[15] An average of 8 hours/week over a period of 12 consecutive weeks, not exceeding 10 hours in any one week, compared with 220 hours/employee/year, Art. 3121-24 of the French Labour Code.

[16] Cass. soc. 8.7.2020, n. 17-10.662, n. 676, FS – P + B.

times are generally justified by fluctuating demands inherent in the activity and to ensure continuity of service (replacement of an unforeseen absence, immediate need for intervention in the event of the unforeseeable absence of the usual carer, sudden deterioration in the state of health of the person being cared for)[17]. Nonetheless, the variability of schedules has become commonplace: «we have to be flexible, we have to adapt»[18]. This flexibility creates situations of uncertainty and stress, reinforced by excessive use of the telephone as a means of communication.

2.2.2. Periods of non-standard activity are periods that do not qualify as effective working time because they do not necessarily require work, continuous work or active surveillance, and for which French law recognises a system known as «equivalence»[19]. Two types of employers in the Care sector make use of this system for night work in the home (profit-making companies and individual's employers) under their respective national collective agreements introducing so-called «night presence» schemes. Three conditions are required for the application of the night work equivalence scheme: any night presence must be compatible with a day job; there must be a real division of time between inactivity and action[20]; the worker is supposed to sleep in the home of the beneficiary[21]. Collective agreements set the minimum or maximum working hours[22] and the number of nights per week[23]. Equivalent hours worked are counted and paid[24] weekly[25]. The 2012 collective agreement imposes a duty of care on the employer, who must contact the employee concerned at least once a month and visit the customer at least once a quarter.

These non-standard periods of activity during which the employee is present, but which do not legally qualify as effective time under French law, conflict with the interpretation of Directive 2003/88/EC on the organisation of working time by the Luxembourg Court. The Court of Justice adopts a strict definition of working time, encompassing any period during which an employee is at the employer's disposal, including *presence passive* periods[26], which is not covered by the aforementioned collective agreements. The legal classification of these periods of employee presence continues to raise questions, particularly in light of the

[17] Art. 37 of the 2010 NCC.

[18] Extract from a *CARE4CARE* focus group interview.

[19] Art. L. 3121-13 of the French Labour Code.

[20] The 2021 NCC stipulates that the number of operations carried out by the employee must not exceed 4 night-time operations every night.

[21] In a separate, properly equipped room or off-centre, depending on the two collective agreements.

[22] It may not be less than 10 continuous hours under the 2012 NCC and not more than 12 hours under the 2021 NCC.

[23] A maximum of 5 nights over a period of seven calendar days for the 2012 NCC, more than 5 consecutive nights are possible, provided that the weekly rest period is respected.

[24] Calculation of equivalent hours vs. time not worked, see Table of equivalence, 2021 NCC, art. 10-2-3.

[25] Art. 13 of the 2012 NCC.

[26] CJEU, *Simap* (C-303/98) of 3.10.2000; CJEU, *Matzak* (C-518/15) of 21.2.2018, Ville de Nivelles; CJEU, *Deutsche Bank* (C-55/18) of 14.5.2019.

development of new forms of elderly housing, such as shared and inclusive living arrangements, which contributes to blurring the boundaries between working time and non-working time.

3. In addition to the compulsory rest periods and annual leave that have been at the heart of the history of labour law, other contemporary periods are now protected by law and collective agreement and are thus formally liberated for the benefit of the worker (§ 3.1). There are, however, times which are excluded from the sphere of work for economic reasons, which remain invisible in statistical data and impose both material and psychological burdens on workers (§ 3.2).

3.1. The social partners have implemented procedures and measures to limit the adverse effects of flexible working hours on personal and family life (§ 3.1.1). Similarly, to protect the right to rest, legislators and social partners have recognised and regulated the right of workers to disconnect (§ 3.1.2).

3.1.1. Despite the absence of any obligation to negotiate on the reconciliation of lifetimes at branch level, the 2010 NCC and the 2012 NCC, have taken up the subject, unlike the 2021 NCC, which places employees primarily under their duty of care to beneficiaries. As part of the provisions relating to the length and organisation of working time, the 2010 NCC specifies that employers must endeavour to reconcile employees' professional and personal lives when organising working hours[27]. There is also provision for adapting the working conditions of employees working on Sundays to enable them to reconcile their professional and personal lives[28]. As part of the provisions relating to professional equality[29], the agreement reiterates the obligation to consider changes in employees' personal circumstances when organising work. These commitments are combined with indicators to measure progress[30]. The reconciliation of private and professional life is also addressed in related subjects such as the preservation of the employees' physical and mental health[31] and the prevent on of psychosocial and occupational risks[32]. Particular attention is required with regard to work organisation and management to minimise, as far as possible, the impact on personal life. All these provisions only apply «as far as possible» where employers are likely to implement them.

3.1.2. The use of digital tools has brought certain benefits, such as reducing the time spent on administrative tasks. Similarly, the «platformisation» of healthcare (*Hublo santé* application) has gone some way to solving the problem

[27] Art. 1, Title V, Duration and organisation of working time of the 2010 NCC.

[28] Ivi, art. 19.

[29] Professional equality, which is the subject of compulsory annual negotiations: art. L. 2242-1 of the Labour Code.

[30] Art. 3.6, Title 8, Professional equality between women and men of the 2010 NCC.

[31] Art. 21.5, Prevention of arduous work in the 2010NCC.

[32] Chapter III, Safety – Health at work of the 2012 NCC.

of labour shortages. However, it has also led to certain disadvantages, such as the intensification or lengthening of working hours, which have had a detrimental effect on workers with single family responsibilities, who are generally women. To address this, the legislator introduced[33] in 2016 the obligation for employers to put in place mechanisms to regulate digital tools «with a view to ensuring respect for rest and leave time as well as personal and family life»[34]. Yet, this obligation is limited to company-level negotiations, and collective agreements in the home care and support sector have made no provision in this respect. The right to disconnect should not be limited to the use of digital tools but should also apply to the impact that care professions can have on employees' personal lives. These occupations involve organising work and being involved in it in ways that are difficult to break away from because of the emotional burden they generate. In the home, employees point out that «the mental load is heavy because in the home care the responsibilities are less shared than in a hospital environment»[35]. That's why they are calling for «a better support infrastructure»[36] at employer level, so that they can better manage the long working hours that can make it difficult to distinguish between work and free time.

Better consideration of this released times should provide relief for employees whose work requires them to find new time slots.

3.2. The limited times include, but are not limited to, travel time (§ 3.2.1), training time (§ 3.2.2), and transmission or collective learning time (§ 3.2.3).

3.2.1. Homecare workers have to cope with a heavy physical and mental workload due to travelling between homes, which is often overlooked in the organisation of their work. This leads to fatigue and stress for the workers. The 2021 NCC is an emblematic example of how the time spent travelling between two home interventions, which is essential to the daily work of home support workers, is ignored. Although this time is a source of fatigue, stress and major territorial inequalities, it is not recognised or compensated for in this agreement. From a strictly legal point of view, this lack of recognition is explained by the nature of the status of private employers: each trip corresponds to a distinct and autonomous change of contract. As a result, no employer is legally obliged to pay for travel time between two employees. By way of comparison, the 2010 NCC[37] affords greater acknowledgment of this «invisible time», albeit inconsistently. The 2012 CCN[38], on the other hand, provides for partial compensation: journeys may be compensated for up to 15 minutes, after which the employee is considered to be no longer under the employer's authority, and therefore unpaid.

[33] Law 2016-1088 of 8.8.2016 on work, modernising social dialogue and securing career paths.

[34] Art. L. 2242-17 of the French Labour Code.

[35] Nurse in an Aides et soins à domicile association covered by the CCN de la BAD.

[36] Care assistant in a home help and care association covered by the BAD NCC.

[37] Art. 14-1 et seq. of the 2010 NCC *op. cit.*

[38] Definition of working time, Section 2 of the 2012 NCC.

3.2.2. Invisible training time constitutes a major obstacle to the professionalisation of homecare workers. Although the texts (collective agreements, the law of 5 September 2018 on the freedom to choose one's professional future) formally recognise the right to training[39], actual access remains unequal and often illusory for a large proportion of employees in the sector. Many workers are unaware of their training rights existence or lack the necessary resources – primarily time and funding – to pursue them[40]. Consequently, training is frequently offered outside working hours – in the evening, weekends or days off – and all too often without any real financial or organisational compensation. The co-investment mechanism provided for by the 2018 law effectively shifts the burden of investment almost entirely onto employees. Limited access to training hampers the recognition and professional development of homeworkers, keeping them in a precarious position. Similarly, despite easier access to validation of acquired experience (VAE) to make it more accessible, there are still obstacles specific[41] to the sector, namely wear and tear, fragmentation, employee isolation and the individual nature of the training approach. This situation accelerates professional wear and tear and traps employees in a vicious circle[42]. To address this, it is essential to recognise training as effective working time, provide compensation for it, and to adapt public policies and skills development practices to the realities of the sector[43].

3.2.3. Transmission time – exchanges between peers, coordination time, analysis of practice, psychological support – is now recognised as essential to the quality of work in the socio-medical sectors. Yet it is still largely invisible and not integrated into the practical organisation of work, particularly in the homecare sector. The law of 8 April 2024 marks an important step forward by encouraging the introduction of group time for homecare professionals[44]. However, these times are still rarely implemented, due to a lack of funding or appropriate organisational frameworks. They remain invisible, unplanned and unpaid, and consequently are not recognised as working time in their own right. Nevertheless, the 2010 NCC is a pioneering text, stating that working hours must be considered as a lever for quality of life at work and providing for the payment of various periods of exchange and analysis of collective practices[45]. Local experiments, such as the analysis of practices through theatre, demonstrate the benefits of such approaches[46].

[39] Article L. 6321-1 of the French Labour Code; CCN BAD of 21 May 2010.

[40] Daugareilh, 2025.

[41] Report of WP5 of the French research group, *Propositions de normes et de politiques publiques pour l'amélioration des conditions de travail en faveur des travailleurs du soin – Archive ouverte HAL*, hal.science/hal-04932688v1.

[42] Recommendation of the El Khomri report, cit., 64. Report of WP5, cit., 19.

[43] Ivi, 18.

[44] But only one department has made a commitment. See the UNA interview we conducted on 4.2.2025.

[45] Article 3, Title V, Chapter 1 of the AfDB NCC, cit.

[46] Some departments prefer inter-structure GAPs, where different structures work together, as is the case with the ADMR in Saint-Brieuc. However, the content and dates of these sessions are set by the department, sometimes limiting flexibility: cf. UNA interview, cit.

To conclude, beyond the forms of deliberately invisible time described above, there exists what François-Xavier Devetter has termed the «time around» or time of attachment[47], referring to those moments of human connection between the carer and the person being cared for: glances, smiles, exchanges. This time, while excluded from the legal definition of work, is multiplying and is responsible for the moral and physical exhaustion of care workers. Recognising this time as a fundamental component of the support profession, and not just as a bonus, would be a necessary step forward[48].

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