



WORKING TIME AND THE APPLICATION OF PENAL RATES OF PAY : A GENDER AND INDUSTRY ANALYSIS IN THE 1993/94 YEAR

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Abstract

New Zealand employers have followed the international drive for greater internal numerical flexibility and associated changes to working time patterns. In the post Employment Contracts Act era, the thrust of changes for internal numerical flexibility has been directed at the removal of and reduction in penal and overtime rates of pay. At the Fifth Conference on Labour, Employment and Work in 1992 (LEW5) the authors reported on the early developments in collective bargaining arrangements over working time that had been identified from a sample of collective employment contracts. At this 1994 conference (LEW6) the authors will update that data, reporting the latest trends and developments in the working time area. The database from which the paper will be written contains some 2200 'live' collective employment contracts covering some 11,500 employers and 340,000 employees. Changes to working time arrangements are very much industry specific and the data will be reported by industry. A particular focus of the paper will be the effects of changes to working time arrangements on women employees.

At the 1992 Conference on Labour Employment and Work, we reported the early trends to changes in working time arrangements, this subsequently appearing in revised form as a journal article (Harbridge and Tolich, 1993) and most recently as a chapter in a book (Harbridge and Tolich, 1994). This paper seeks to update that material and to explore in further detail the changes to working time arrangements by gender and industry.

Our findings in 1992 were based on early trends in collective employment contracting. These trends can be summarised as follows.

First, the data revealed no general extension of the working week. Employees who had traditionally worked a 37 and a half hour week appeared to continue that arrangement, as did workers who normally worked a 40 hour week. A trend towards requiring an employee to work an 'ordinary' week in excess of 40 hours per week - something permissible but never required under the previous legislation - was observed.

Second, on the scheduling of the hours worked each week by full time workers. While the Monday to Friday week remained standard for most workers, some quite dramatic changes were identified. The emergence of a four day week (usually of 10 hours on each of the four days) was noted, a phenomenon rarely (if ever) seen previously. In addition, there was a marked extension of the days of the 'ordinary' working week to include Saturdays and Sundays.

Third, while penal rates were still freely available, often the rate had been reduced and some of the premiums previously available had gone. Workers were more likely to be paid for the actual number of hours worked rather than for minimum periods of engagement, such as three hours. Triple time rates had gone. Double time rates were less freely available than previously but were still commonly available for night and Sunday work. Penal rates for Saturday afternoon work had decreased to time and a half - work that previously used to attract double time rates.

The changes observed were to some extent industry specific. The four day week was a phenomena occurring predominantly in the hotel, retail and restaurant sector. In the manufacturing sector, however, little change to working time arrangements was observed. The changes reported were largely in industries that operate a 6 or 7 day a week operation - where new approaches to the flexible use of labour had been seized by employers eager take advantage of the liberalised statutory requirements.

By late 1994 the database from which the analysis of changed working time is developed has grown significantly and a degree of stability in the bargaining system makes it possible to more comprehensively review working time changes. That review we undertake in this paper.

The Sample

In the period June 1991 to September 1994 we have received a total of 3260 collective employment contracts;

2265 of which are current, 815 have replaced earlier employment contracts, and 71 have lapsed altogether and have been removed from the database. A further 109 contracts have been received but not processed as yet. The data used to report trends in this paper has been developed from 2165 contracts covering slightly more than 340,000 employees and 11,500 employers. Of the 340,000 employees covered by these contracts, 168,000 are women and 172,000 are men indicating the sample is almost evenly divided in terms of the gender variable.

Using data reported by Statistics New Zealand and based on the Quarterly Employment Survey undertaken in February 1993, we estimate that our current database sample represents 54 percent of all collective employment contracts negotiated, 79 percent of all employees covered by collective employment contracts, and 22 percent of the total employed labour force (Statistics New Zealand, 1994, table 9.8). Regrettably the February 1994 Quarterly Employment Survey did not include questions regarding employment contract coverage so it is not possible to accurately estimate just how representative our sample is at this point in time.

For this paper we present the data by gender and by industry. The method follows that reported earlier in Hammond and Harbridge (1993). The total number of employees covered by each contract (coverage) and the percentage of those who were women (gender) remain critical variables for this study as they enable the data for each variable observed to be weighted by the actual number of men, women and total employees covered by each contract. Further, the contracts can be sorted according to whether they are contracts covering 'mainly men', 'mainly women' or 'mixed'. 'Mainly women' contracts have been defined as those where 65 percent or more of the workers covered are women; 'mainly men' contracts where 35 percent or less are women; and 'mixed' are those contracts in between.

We have identified the major industry in which each contract has been settled. The New Zealand Standard Industry Classification (NZSIC) system has been used - classifying contracts at two digit industry level. The NZSIC divides industries into nine major categories, each sub-

divided at a 5 digit level. Generally we have reported data at one digit level - reporting trends in the manufacturing, energy, construction, finance and community/public administration services sectors.

There are some industries we have not reported: agriculture and mining have few employees covered by collective employment contracts so have been excluded from the industry break-down. There is a small number of companies in the communication sector and identification even of aggregate data for that sector would reveal the conditions of employment for one significant company therefore, so as to preserve our undertaking of confidentiality, we have not reported on the communication sector. For other sectors, food manufacturing, textile manufacturing, metals manufacturing, 'other' manufacturing, wholesale, retail, and restaurants and hotels, we have reported data at the two digit industry level. The distribution of contracts by industry at one digit level is presented in table 1.

The data shows the uneven distribution of women employees covered by collective employment contracts, with women disproportionately represented in the public sector (core public service, education, health, local authorities and community services), the trade sector (wholesale, retail and restaurants and hotels), and the finance sector. Women are proportionately under-represented in manufacturing and the transport and communications sector.

Results: penal rates

The application of penal rates remains one of the more controversial areas of impact of the Employment Contracts Act. Our review of collective employment contracts has focused on the rate of application of penal rates by industry.

We have defined 'penal rates' as occurring when an employee is eligible for a premium pay rate dependent on the time or day at which the hours are worked and independent of whether the employee has already worked the week's work. The difficulty has been in determining whether an employee is eligible for penal rates of pay. To make that determination, we have assumed that where a contract contains clock hours, work undertaken outside of

Table 1. The distribution and coverage of contracts by industry and gender 1994

Industry	Contracts	Women	Proportions of Total		Total coverage (000s)
			Men	Total	
Manufacturing	904	10	31	20	67.7
Trade	197	15	10	12	42.4
Transport, communication	202	8	13	10	35.3
Finance	120	11	6	8	28.8
Public	536	54	29	41	140.2
Other	206	2	11	7	25.5
Total	2165	100	100	100	339.9

Table 2. Percentage of employees in contracts containing clock hours by gender

	Women	Men	Total	Total Employees
Contracts with clock hours	43	63	53	180.6
Contracts with no clock hours	57	37	47	157.6
Totals	100	100	100	338.2

the defined hours will attract a premium rate - the penal rate.

Our first task then has been to sort the contracts according to whether or not they contained a 'clock hours' provision. The data presented in table 2 shows that women are far more likely than are men to be covered by a contract that does not contain clock hours.

As a further measure of important changes to clock hours arrangements we have identified the regular days of the week on which an employee can be required to work 'ordinary hours'. This data is presented in table 3. The data show that men are slightly more likely than are women to be on contracts maintaining the traditional Monday to Friday week while women are slightly more likely to be on either a four day week or a Monday to Sunday week - in both the latter two cases the possibility of getting premium payments for Sunday work is negligible.

Regarding the application of penal rates, we have reviewed our method of representing this data. To more closely reflect the actual application of penal rates, we have included in each table data regarding the percentage of employees where no penal rates are paid. The data are presented in tables 4, 5 and 6 and report applicable penal rates for work on weekdays (generally nights), Saturdays and Sundays. The percentages reported are the percentage of employees covered by contracts within each industry grouping. The total number of employees covered in each category is also stated.

Nearly half of the employees covered by the sample now work under employment contracts that do not contain penal rates for night, or weekend work. Women are very much more likely than are men to receive no penal rates with nearly 60 percent of women being on contracts without penal rates whereas less than 40 percent of men are on such contracts.

As we have observed in the past, the data reported in the 'all industries' category conceals enormous differences between contracts in different sectors. This is particularly true with respect to the applicability of penal rates of pay. Almost all of the sample of the 20,000 employees in the restaurant and hotel sector do not receive penal rates; similarly 83 percent of employees in retail and 64 percent of public employees receive no penal rates.

Penal rates have remained very prevalent in contracts in the finance sector, all parts of the manufacturing sector, and the energy sector. Penal rates have all but disappeared in the restaurants and hotels sector, and are comparatively rare in the retail sector and the public and community services sector. Penal rates for weekday 'night' work commonly are applied at time and a half for the first three hours followed by double time thereafter. Employees in the construction sector are more likely to be on straight time and a half throughout, although a substantial number still receive double time after three hours at time and a half; employees in energy sector and parts of the manufacturing sector are on contracts where 'other' penal rates have been implemented (more on these 'other' variations later). The data for applicable penal rates for Saturday and Sunday work are shown in tables 5 and 6.

The most commonly applied penal rate for Saturday work is time and a half for the first three hours followed by double time. This is a very common premium in all parts of the manufacturing sector and in the energy, transport and finance sectors. The lower rate of time and a half throughout is more common in the construction and wholesale trade sectors. Double time throughout is common for Sunday work, in all sectors except of course, retail and restaurants and hotels where there are no penal rates.

The patterns of penal rates have stabilised in the past year and can be summarised as follows -

Table 3. Percentage of employees in contracts by regular working week days by gender

	Women	Men	Total	Total Employees
Monday - Friday	41	45	43	135.9
Monday - Saturday	3	6	5	14.6
Monday - Sunday	43	38	40	127.1
4 day week	13	11	12	37.0
Total	100%	100%	100%	334.6

Table 4. Penal rates for weekdays by industry and gender.

	None	Flat	T1.5	T1.5/T2	T2	Other	Total	Workers
All Industries								
Women	59	0	12	27	0	2	100	159.3
Men	38	2	12	40	1	6	100	166.0
Total	48	1	12	34	0	4	100	325.3
Food Manufacture								
Women	24	1	6	60	0	9	100	2.9
Men	18	1	6	71	0	4	100	12.6
Total	20	1	6	69	0	5	100	15.5
Textile Manufacture								
Women	18	0	25	50	0	7	100	1.9
Men	24	1	26	43	0	6	100	3.9
Total	22	1	25	45	0	6	100	5.8
Metals Manufacture								
Women	4	0	13	61	1	21	100	4.1
Men	9	1	14	39	5	33	100	17.6
Total	8	1	13	43	4	31	100	21.6
Other Manufacture								
Women	14	1	25	53	0	6	100	4.8
Men	16	4	17	57	0	7	100	17.3
Total	16	3	18	56	0	7	100	22.2
All Manufacturing								
Women	14	1	17	56	0	12	100	13.7
Men	15	2	14	53	2	15	100	51.4
Total	15	2	14	54	1	14	100	65.1
Energy								
Women	11	0	36	41	0	13	100	1.1
Men	12	0	20	45	0	23	100	4.8
Total	12	0	23	44	0	21	100	5.9
Construction								
Women	38	1	35	25	0	0	100	0.1
Men	36	6	35	21	0	2	100	6.4
Total	36	6	35	21	0	2	100	7.0
Wholesale								
Women	29	0	50	19	0	2	100	1.4
Men	21	1	27	49	1	1	100	2.1
Total	24	0	36	37	1	2	100	3.5
Retail								
Women	85	0	5	10	0	0	100	6.9
Men	81	0	10	6	0	3	100	7.5
Total	83	0	8	8	0	2	100	14.4
Rest/Hotel								
Women	100	0	0	0	0	0	100	14.7
Men	99	0	0	0	0	1	100	6.0
Total	100	0	0	0	0	0	100	20.6
Transport								
Women	39	7	3	50	0	0	100	3.3
Men	27	12	11	49	0	0	100	10.7
Total	30	11	9	49	0	1	100	13.9
Finance								
Women	4	0	12	81	0	2	100	16.9
Men	4	1	13	79	0	2	100	11.4
Total	4	1	13	80	0	2	100	28.3
Public								
Women	71	0	14	15	0	0	100	90.7
Men	53	1	11	33	0	1	100	52.0
Total	64	0	13	21	0	1	100	142.7

Table 5. Penal rates for Saturdays by industry and gender.

	None	Flat	T1.5	T1.5/T2	T2	Other	%	Workers
All Industries								
Women	59	0	12	22	4	2	100	159.3
Men	38	2	12	36	3	8	100	166.1
Total	48	1	12	29	4	5	100	325.3
Food Manufacture								
Women	24	1	6	59	1	9	100	2.9
Men	18	1	6	69	1	4	100	12.6
Total	20	1	6	67	1	5	100	15.5
Textile Manufacture								
Women	18	0	22	43	1	16	100	1.9
Men	24	1	24	40	2	8	100	3.9
Total	22	1	24	41	1	11	100	5.8
Metals Manufacture								
Women	4	0	13	60	1	22	100	4.1
Men	9	1	13	37	5	35	100	17.6
Total	8	1	13	42	4	32	100	21.6
Other Manufacture								
Women	14	1	23	52	0	9	100	4.8
Men	16	4	17	55	0	8	100	17.3
Total	16	3	18	55	0	8	100	22.2
All Manufacturing								
Women	14	1	16	55	1	14	100	13.7
Men	15	2	13	51	2	16	100	51.4
Total	15	2	14	52	2	16	100	65.1
Energy								
Women	11	0	36	41	0	13	100	1.1
Men	12	0	20	45	0	23	100	4.7
Total	12	0	23	44	0	21	100	5.9
Construction								
Women	38	1	35	24	0	2	100	0.6
Men	36	6	35	19	0	3	100	6.4
Total	36	6	35	20	0	3	100	7.0
Wholesale								
Women	29	0	42	14	7	8	100	1.4
Men	21	1	18	22	6	32	100	2.1
Total	24	0	27	19	6	23	100	3.5
Retail								
Women	85	0	5	7	0	3	100	6.9
Men	81	0	10	2	1	6	100	7.5
Total	83	0	7	5	0	5	100	14.4
Rest/Hotel								
Women	100	0	0	0	0	0	100	14.7
Men	99	0	0	0	0	1	100	6.0
Total	100	0	0	0	0	0	100	20.7
Transport								
Women	39	7	3	41	0	9	100	3.3
Men	27	12	11	46	0	4	100	10.7
Total	30	11	9	45	0	5	100	13.9
Finance								
Women	4	0	11	41	41	3	100	16.9
Men	4	1	11	51	29	3	100	11.4
Total	4	1	11	45	36	3	100	28.3
Public								
Women	71	0	14	14	0	1	100	90.7
Men	53	1	12	31	0	3	100	52.0
Total	64	0	13	20	0	2	100	142.7

Table 6. Penal rates for Sunday work by industry and gender.

	None	Flat	T1.5	T1.5/T2	T2	Other	%	Workers
All Industries								
Women	59	0	11	4	25	1	100	159.2
Men	38	2	10	5	41	3	100	165.9
Total	48	1	10	4	33	2	100	325.1
Food Manufacture								
Women	24	1	5	2	53	15	100	2.9
Men	18	1	6	3	67	6	100	12.6
Total	20	1	6	2	64	7	100	15.5
Textile Manufacture								
Women	18	0	21	3	51	5	100	1.9
Men	25	1	21	3	45	5	100	3.8
Total	23	1	21	3	47	5	100	5.7
Metals Manufacture								
Women	4	0	12	3	79	2	100	4.1
Men	9	1	10	2	73	4	100	17.6
Total	8	1	11	3	74	4	100	21.6
Other Manufacture								
Women	14	1	19	1	60	5	100	4.8
Men	16	4	12	4	57	7	100	17.3
Total	16	3	14	3	58	7	100	22.2
All Manufacturing								
Women	14	1	14	2	63	6	100	13.7
Men	15	2	11	3	64	6	100	51.3
Total	15	2	11	3	64	6	100	65.0
Energy								
Women	11	0	35	1	45	9	100	1.1
Men	12	0	18	1	50	19	100	4.8
Total	12	0	21	1	49	17	100	5.9
Construction								
Women	38	1	33	0	28	0	100	0.6
Men	36	6	34	0	23	1	100	6.4
Total	36	6	34	0	23	1	100	7.0
Wholesale								
Women	29	0	42	5	22	2	100	1.4
Men	21	1	17	2	57	2	100	2.1
Total	24	0	27	3	43	2	100	3.5
Retail								
Women	85	0	5	7	1	3	100	6.9
Men	81	0	9	2	2	6	100	7.5
Total	83	0	7	4	1	5	100	14.4
Rest/Hotel								
Women	100	0	0	0	0	0	100	14.7
Men	99	0	0	0	0	1	100	6.0
Total	100	0	0	0	0	0	100	20.6
Transport								
Women	39	7	3	1	50	0	100	3.3
Men	27	12	10	3	48	1	100	10.6
Total	30	11	8	2	48	1	100	13.9
Finance								
Women	4	0	5	24	65	2	100	16.9
Men	4	1	7	34	52	2	100	11.4
Total	4	1	6	28	59	2	100	28.3
Public								
Women	71	0	13	1	15	0	100	90.7
Men	53	1	11	2	32	1	100	52.0
Total	64	0	12	1	21	1	100	142.7

- * nearly half of the employees in the sample are not eligible to receive penal rates;
- * there are great differences between sectors as to whether or not penal rates are paid;
- * where penal rates are paid, they are paid at the rate of time and a half for the first three hours followed by double time for night and Saturday work, and double time for Sunday work;
- * a growing number of employees are now on contracts that provide for other variations of penal rates.

Results: 'other' types of penal rates

As we have said, a growing number of employees are on contracts that do provide for penal rates but where the rates themselves are quite different from the common patterns referred to above. Approximately 8 percent of employees eligible for penal rates are now on these 'other' rates. The following examples typify the emerging types of penal rates we are seeing:

Lower rates for new employees

As contracts come up for renegotiation, employers and unions are faced with the dilemma of new employees who have been engaged on different, generally lower, conditions. Increasingly we are seeing these employees written into the collective contract, but in such a way as to preserve their different employment conditions. For example:

Forty hours shall constitute an ordinary week's work of which not more than eight hours may be worked on each day from Monday to Friday inclusive and between the hours of 7.00 am and 8.00 pm. Notwithstanding this, employees employed after the date of signing of this contract may agree to work 40 hours on five of six days Monday to Saturday inclusive between the hours of 7.00 am and 8.00 pm (Paper manufacturing example).

There is evidence that sometimes these reduced rates will be carried over into renegotiated contracts:

Overtime rates shall be paid at the following rates for employees employed prior to 9 November 1992: Time and a half for the first three hours; double time after three hours; double time between 10.00 pm and 6.00 am. For employees whose period of engagement commenced on or after 9 November 1992: Time and a half throughout (Health services example).

Re-negotiable rates?

Some contracts envisage that the rates for overtime and penal rates will be variable and negotiable when the situation occurs. For example:

Where agreed between the employer and the employee the maximum hourly rate for overtime may be set at a lower figure to suit the demands of any particular situation (Local

government example).

Lower than standard premiums

Many contracts continue to provide for overtime and penal rates of pay yet at a lower premium than the traditional rates. Time and one third and time and one quarter are becoming more common. However even these rates are by no means exhaustive, for example:

Any time worked in excess of the daily hours provided in this contract; and/or on an employee's rostered days off constitutes overtime and shall be paid for at the Employee's ordinary rate of pay plus 15 percent (Transport and storage example).

Some contracts provide for lower than standard, but incremental, penal rates based on the number of hours worked. For example:

All work in excess of eight hours per day or forty hours per week will be paid in the following manner:

- (a) First five hours - ordinary rate plus 10 percent
- (b) After five hours - ordinary rate plus 50 percent
- (c) Provided that in any hours worked on any one day in excess of 11 shall be paid for an ordinary rate plus 50 percent (Electronics example).

Higher than standard premiums

A small number of contracts provide for penal and overtime rates at a higher level than the standard rates. For example:

Overtime shall be paid for at the rate of 1.6 times the employee's wage rate (Energy supplier example).

There are a number of contracts where unusual penal rates have been struck; multipliers of 1.6, 1.7, 1.77 have been identified. We have been unable to determine the rationale behind the selection of these particular rates.

Flexitime possibilities

Late last year we reported on a slight growth in 'annual hours' calculations within contracts (Harbridge, 1993). A conjunct of that trend has been the development of greater flexitime. The determination of penal and overtime rates in a flexitime situation needs consideration. One example of how this has been overcome is:

Time worked in excess of seven and a half hours per day shall be paid for at the rate of ordinary for first hour and time and a half thereafter except that the first hour may be credited as flexitime (Insurance industry example).

Cunning stunt?

Who chooses to work at which times can present a difficulty when determining overtime and penal rates. One contract gets neatly around that problem as follows:

... the payment of all overtime hours (will be) at the ordinary time rate, except that twice the ordinary time rate shall apply for all overtime worked on Sundays provided that where the employee for their own convenience elects to work approved overtime on a Sunday the normal overtime provisions will apply (Community service example).

Weekly calculations

The calculation of penal rates is generally undertaken on a daily basis however some contracts are moving to blur the distinction between penal and overtime rates, making penal rates in part a weekly calculation. For example:

Overtime shall be paid at the rate of time and a half for the first 18 hours and double time thereafter. Provided that double time is paid for working after 10.00 pm or before 6.00 am and all day Sunday (Metals manufacturing example).

Differential rates based on seniority and grading

One of the more surprising examples is a contract where the rate of penal and overtime pay is determined by the seniority (or lack of) by the employee. In the following example, lower graded employees attract a higher premium rate than do more senior employees:

All overtime will be paid at the following rates per hour relevant to the grade for the employee

Grade	Ordinary time plus
Up to grade 4 (inclusive)	75 percent
Grade 5	70 percent
Grade 6	65 percent
Grade 7 to 9	60 percent

(Local authority example).

The 'week's work' by gender

The final change we report about working time relates to the weekly hours of work required for a full time employee. The data reported in table 7 shows that men are more likely than are women to work 40 or more hours per week. Approximately one quarter of all employees work

a 'fulltime week' of 38 hours or less. Women are more likely than are men to be in this latter situation.

Overall changes to working time

This paper has confirmed patterns identified in our earlier work. First, there appears to be no identifiable change to the 'week's work' - with employees who traditionally worked a 37 and a half or 38 hour week continuing to work those hours. There has been some extension of the working week beyond 40 hours, but this is confined to sections of the transport and construction sectors.

Second, the trend we identified of the development of a four-day-week has continued with some 12 percent of the employees in our sample now being covered by a contract requiring that ordinary weekly hours be worked over 4 days. The traditional Monday to Friday week remains intact for over 40 percent of the sample. The Monday to Saturday week has been extended to include Sunday for around 40 percent of those in the sample - ensuring that these employees are ineligible for penal rates of pay based on the day of the week worked.

Third, where employees are required to work in excess of the week's work, generally 40 hours, overtime rates of pay apply. Generally these rates remain at traditional levels.

Fourth, penal rates of pay now apply to around half of the employees in the sample. Where penal rates are paid, they generally apply at traditional rates - time and a half for the first three hours followed by double time for work undertaken outside clock hours on weekdays and on Saturdays; double time for Sunday. There has been some downgrading of penal rates to time and a half throughout but this is not an extensive phenomena. Limited attempts have been made to break with tradition and to adopt new variations of penal rates, but while some of these are interesting, this is again not a common phenomena.

The situation can be summarised by commenting that penal rates have been the focus of attention in contract negotiations: this has meant their removal from many contracts but where they have remained the penal rate premiums largely follow the traditional pattern.

Table 7: Percentage of employees in contracts by regular weekly hours of work by gender

	Women	Men	Total	Total Employees
38 hours or fewer	28	20	24	72.4
40 hour week	71	75	73	222.1
More than 40 hours	1	5	3	8.5
Total	100	100	100	303.0

Gender and industry effects in changed working time arrangements

There are some demonstrable gender and industry effects that emerge from the data. First, men are much more likely than are women to be employed under the terms of a collective employment contract that contains penal rates. Nearly two thirds of men are on such contracts as compared to only 41 percent of women.

Second, when the rather complex data we have presented on the existence of penal rates is examined by industry and takes into account the degree of representation of women in that industry, it becomes apparent that the existence (or otherwise) of penal rates has a close relationship to both industry and gender. We have re-formatted the data from Tables 4, 5, 6 and 8, and have taken into account the prevalence or otherwise of penal rates and the degree of representation of women in each industry sector.

Table 8 shows that while half of the employees in our sample are under contracts that do not contain penal rates, the existence or otherwise of penal rates of pay is a very industry specific phenomena. In general terms, penal rates remain prevalent in the manufacturing, energy, construction, wholesale trade, transport and finance sectors, whereas they are rare in the retail, restaurants and hotels, and public, community services sectors.

Table 8 also shows that taken across all sectors, women and men are approximately equally distributed in their employment and penal rates are available approximately half of the time. When the figure is examined by sector, however, the picture changes. With the exception of the finance sector, penal rates are prevalent in all industrial sectors where women are under-represented; and penal rates are rare in all industrial sectors where women are over-represented. With work in the finance sector remaining on a traditional Monday to Friday basis, the issue of penal rates in this sector may well be moot in any case.

Third, there is some limited evidence that even in those sectors where contracts provide for penal rates, women are

attracting a lower premium rate than men in the same sector. For example, in the wholesale trade sector, women are more likely to be on contracts that provide for time and a half throughout while men are more likely to be on contracts providing for time and a half for the first three hours and double time thereafter.

Conclusion

The data presented in this paper is further evidence that the effects of the Employment Contracts Act are inequitably shared by employees. The impact of changed working time arrangements on employees has been shown to differ by industry sector and by gender. Overall, women are less likely than are men to be employed on contracts which contain penal rates of pay. Women are disadvantaged in that the sectors in which they are most commonly employed are exactly those sectors where penal rates, for working at weekends and other hours that have traditionally been deemed sufficiently anti-social so as to attract a premium rate of pay, have been eliminated.

Future research

The short-coming of the data used is that it may not capture the full extent of the changes in penal rates and working time. The data shows a shift in conditions contained in employment contracts, but it cannot show actual rates paid or hours worked. A series of in-depth interviews or case studies is necessary to assess the extent that eligibility for penal rates or conditions equates to access or application of such rates for individual employees.

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Table 8. The prevalence of penal rates by industry and representation of women within that industry

Industry	Representation of women	Prevalence of penal rates
All sectors	50/50	50/50
Manufacturing	Under-represented	Prevalent
Energy	Under-represented	Prevalent
Construction	Under-represented	Prevalent
Wholesale trade	Under-represented	Prevalent
Retail	50/50	Rare
Restaurants/hotels	Over-represented	Rare
Transport	Under-represented	Prevalent
Finance	Over-represented	Prevalent
Public community services	Over-represented	Rare

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