

NEW WORKING TIME LAW FROM 01.09.2018 FOR THE PRACTICE

KEYWORD	NEW LEGAL SITUATION FROM 01.09.2018	INFORMATION
MAXIMUM LIMITS OF WORKING TIME ADMINISTRATIVE PENALTY	<ul style="list-style-type: none"> • The maximum working time amounts to 12h per day and 60h per week. • Employees may refuse overtime for 10 / 50h without giving reasons and must not be disadvantaged thereof. • Employees may choose to have overtime over 10h / 50h compensated in cash or time compensation. • The working time must not exceed the 48-hour limit within 17 weeks on average (the collective agreement may provide 26 weeks or even 52 weeks). 	<p>It remains that within 24h rest periods of at least 11h have to be provided.</p> <p>The administrative penalties according to the AZG / ARG may be cumulated and addressed to every single managing director.</p> <p>Compensation for penalties cannot be effectively agreed upon in advance and often is complicated to carry out in the aftermath.</p> <p>Therefore: Check risk minimization by appointing responsible agents.</p>
NORMAL WORKING HOURS	<ul style="list-style-type: none"> • The daily normal working hours of 8h per day and 40h per week remains in place (§ 3 Abs 1 AZG). • The 11th and 12th hour per day are therefore generally overtime. 	<p>No change regarding rest breaks: Half an hour if the working time is more than 6h.</p>
FLEXI-TIME	<ul style="list-style-type: none"> • The maximum limits are to be kept in mind. • A normal working time of up to 12h per day and up to 60h per week may be agreed upon, if it is agreed that a time credit can be consumed all day and the consumption is not excluded in connection with the end of the week • A shop agreement is required or, in the case of companies without a works council, a written individual agreement. 	<p>Old flexitime agreements continue to apply, which usually stipulates a maximum daily working time of 9h or 10h. If more work is done on the order of the employer, this is considered additional overtime that requires a supplement. By law from the 9th hour per day or from the 41st hour per week.</p>
WEEKEND AND HOLIDAY WORK	<ul style="list-style-type: none"> • Employment for up to 4 weekends or holidays per calendar year and employee may be agreed upon by operative agreement, in companies without a works council with a written individual agreement. • Exceptions are sales activities under the opening hours law. • In companies without a works council, the employees have a right of refusal. 	<p>We can look forward to seeing if the first (small) gate to Sunday work was opened here.</p> <p>Work during the week-end, and holiday rest was previously only permitted exceptionally on special occasions defined by law or by ordinance (ARG-VO).</p>

<p>HOTEL AND HOSPITALITY</p>	<p>In the hotel and hospitality industry, the rest period for shared services can be reduced to 8 hours. If you stay 4 weeks (non-seasonal) or until the end of the season (seasonal), compensation is to be granted.</p>	<p>In the hotel and hospitality industry in shared services (= interruption of at least 3 hours) a reduction of the rest time to 8 hours is possible without collective-contractual regulation.</p>
<p>EXECUTIVE EMPLOYEES</p>	<p>Excluded from the AZG / ARG are executives or other employees to whom significant independent decision-making authority has been delegated, and close relatives of the AG, provided that their total working time is based on the particular characteristics of the activity:</p> <ul style="list-style-type: none"> • not measured or predetermined in advance or • can be determined by the employee with regard to duration and location. 	<p>The current legal text corresponds to Article 17 (1) of the EU Working Time Directive.</p> <p>It is important for executive employees to have significant autonomous decision-making powers (specialists, experts) on the basis of the specific nature of the activity, and these employees must be able to allocate their own working time.</p> <p>A management position is no longer a prerequisite, even employees without personnel responsibility and without a particularly relevant function for the operational success can fall into the circle of the exempt, provided that they can act freely at least in their own field of activity.</p> <p>Similar to the "executive employees" within the meaning of the ArbVG, also here the courts will delimit the group of persons more precisely.</p> <p>Whether the third level of leadership will be understood, the courts will have to clarify.</p> <p>However, working time records may still be necessary due to the LSD-BG if executives are not excluded from the personal scope of the collective agreement.</p>
<p>OVERTIME</p>	<ul style="list-style-type: none"> • If there is an increased need for work, the average weekly working time must not exceed 48 hours within a 17-week settlement period, without prejudice to the provisions of § 8 on the permissible duration according to §§ 3 to 5 AZG. • However, no more than 20 overtime hours are allowed per week. • The daily working time may not exceed 12h. • The regulations of § 9 para 4 remain unaffected. 	<p>Consequences of unlawful overtime:</p> <ul style="list-style-type: none"> • additional overtime payable • The one-sided arrangement of the overtime becomes inadmissible and the employee can refuse the performance of overtime without penalty! • The allowable and thus allocable contingent is increased from 320h to 416h on the basis of the calendar year. • The normally prohibited 11th and 12th hour per day or 51th hour per week can be rejected by the employee without stating any reasons. The AN may therefore not be disad-

		<p>vantaged or even terminated.</p> <ul style="list-style-type: none"> • There is a right to vote of the employee for the 11th and 12th hour daily / 51st to 60th hour per week, where he can ask for the compensation for the overtime either the payment in cash or by time compensation. The employee shall exercise this right to vote as early as possible, but at the latest at the end of the respective billing period. • In the case of other overtime, the previous regulations in the Collective Agreement / Shop Agreement / Employment Agreement will remain in force when paid in cash
<p>OVERTIME COMPENSATION</p>	<ul style="list-style-type: none"> • The legal changes have no effect on overtime pay, except in flexitime cases - in the future normal working hours may be extended to 12h per day and 60h per week by agreement. • All-in agreements have controversial implications and will primarily depend on how the all-in agreement is interpreted: whether the wording or after the party's will also invalidate undue overtime. • Compensation for overtime under all-in arrangements will increase the overtime quota to be covered from 320h / year to 416h / year 	
<p>MORE BENEFICIAL RULES</p>	<ul style="list-style-type: none"> • More favorable provisions for the employee in collective agreements and shop agreements are not affected by the amendment. 	<p>In the future, collective agreements and shop agreements may therefore restrict the "12-hour day" in favor of the employee.</p> <p>The employer will not have to fear administrative penalties if the employees work 12 hours despite the collective agreement or the employment agreement.</p> <p>Employers however have to pay attention to possible surcharges for overtime according to the collective agreement, otherwise administrative penalties under the LSD-BG could be imposed.</p>

Our employment law expert Dr Ingrid Korenjak will gladly answer any questions you might have.