Collective agreements trump Working Time Act

18 March 2020 | Contributed by Graf & Pitkowitz Rechtsanwalte GmbH

AUTHOR

Jakob Widner

Introduction

As of 1 September 2018, the newly amended Working Time Act increased the maximum daily working time from 10 to 12 hours. In addition, the maximum weekly working time was increased from 50 to 60 hours. However, the normal daily working time remained at eight hours. The new regime also applies to flexitime so that under the new law, and if the specific flexitime arrangement (plant agreement or employment contract) allows, all work hours within the 12-hour daily maximum are deemed standard working hours without any supplements for overtime work. This is due to the fact that flexitime schemes exist to level out overtime through phases of reduced working hours over the agreed flexitime period.

However, it was unclear whether the new statutory regime also overrode collective bargaining agreements that have not been adapted to the new maximum work hours and regularly provide for a daily maximum of 10 working hours for flexitime, in line with the previous statutory framework.

In the first decision on this issue, the Supreme Court has clarified all relevant questions regarding the collective bargaining agreement for metal workers (OGH 16.12.2019, 8 ObA 77/18h). This decision will have far-reaching consequences for many other industries with similar collective agreements.

Hierarchy

Austrian employment law follows a hierarchy of legal sources which mandate that a lower law cannot restrict the rights afforded by a higher law (the favourability principle). Therefore, the terms of an employment agreement must generally be no less favourable than those set out in a plant agreement between employers and their works council. In turn, plant agreements must be no less advantageous than the collective bargaining agreement for the particular industry as concluded between the 'social partners' (ie, the Chamber of Commerce and labour unions). Finally, the collective bargaining agreement cannot counter the mandatory provisions set out in statutes, such as the Working Time Act.

Facts

The Chamber of Commerce (the plaintiff) argued that the collective agreement for the metal workers, which set a daily maximum of 10 working hours for flexitime, contravened the new Working Time Act, which allows for a 12-hour maximum. Therefore, the collective agreement could render a specific plant agreement which provided for a maximum 12-hour work day invalid. However, the labour union (the defendant) argued that the flexitime restrictions in the collective agreement not only concern working time and the freedom of staff to arrange their daily work schedule independently, but also operate as a tool for setting limits on the work hours that are paid as normal work hours without a supplement, as opposed to work hours beyond that limit which are payable as overtime and include a supplement. Therefore, the 11th and 12th hours of the work day must be classified as overtime, at least for the purpose of supplement payments.

Supreme Court decision

The Supreme Court identified three important questions:

- Do the social partners as the drafters of collective bargaining agreements have the legal authority to curtail the rights afforded to employers and works councils under the Working

Time Act by allowing for 12-hour flexitime schemes in plant agreements?
- In general, what is the legal authority of the social partners in relation to working time and payment conditions under the new Working Time Act?
- How do collective and plant agreements interact when they take a different approach to the same issue?

The Supreme Court answered the first question in the negative, ruling that a 12-hour flexitime scheme under a plant agreement is valid since the Working Time Act does not expressly authorise the social partners to reduce, by way of a collective agreement, the maximum daily working time from 12 to 10 hours. Therefore, a flexitime arrangement providing for a maximum daily working time of 12 hours is not only compliant with the new Working Time Act, but also not in breach of the relevant collective agreement setting the limit at 10 hours. This is despite the fact that the collective agreement is higher than the plant agreement according to the legal hierarchy.

As regards the second question, the Supreme Court opined that the Working Time Act does not overrule the general rights and legal authorities afforded to the social partners under the Labour Relations Act, which includes the general legal authority to conclude collective agreements on various issues, such as working time and payment conditions. While the Working Time Act, as the more specific statute, overrides the Labour Relations Act as regards the determination of maximum daily working hours under flexitime arrangements, the right of the social partners to determine limits for the classification of such hours as normal working hours or overtime remains intact, because this aspect of the flexitime arrangement pertains to payment for work performed. Therefore, the social partners retain their right to set such limits, regardless of the new Working Time Act.

In response to the third question, the Supreme Court clarified that the favourability principle should be followed. Under the circumstances, the court concluded that the 10-hour daily maximum under the collective agreement was more favourable than the 12-hour daily maximum under the plant agreement because it afforded staff with an overtime supplement for the 11th and 12th hours of the working day, where such work is actually performed.

Comment

In essence, the decision states that while the Working Time Act is the relevant legal source for guidance on normal and maximum work hours, the social partners are still free to determine whether work hours exceeding the normal daily working time of eight hours are to be treated as normal working time (without a supplement) or overtime (with a supplement). Therefore, the court followed the line of argument brought by the defendant and rejected the plaintiff's theory that after enacting the new Working Time Act, collective agreements which limit flexitime arrangements to 10 hours are irrelevant, and that the new Working Time Act with its 12-hour maximum overrides collective agreements seeking to uphold the 10-hour threshold.

This is potentially bad news for employers and employees alike. Employers may wish to refrain from introducing flexitime schemes (by way of a plant agreement to be agreed with the works council or, in the absence of a works council, through an individual agreement with staff) that allow for a 12-hour work day, in order to avoid payment of expensive overtime for the 11th and 12th hours worked. Thus, employees will also not benefit from the new legal framework which would have allowed them to take full days off from work as compensation for 12-hour work days (eg, on a Friday or Monday, resulting in longer weekends).

The only way to avoid this consequence would be to adapt collective agreements to the new law, which requires each of the social partners' consent. However, given the outcry by employee organisations when the 12-hour maximum was introduced, this does not appear likely anytime soon.

For further information on this topic please contact Jakob Widner at Graf & Pitkowitz by telephone (+431 401 17 0) or email (widner@gpp.at). The Graf & Pitkowitz website can be accessed at www.gpp.at.