

Parliament passes new Working Time Act

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Introduction

On 5 July 2018 Parliament passed a new law that brings sweeping changes to the Working Time Act and will come into effect on 1 September 2018.

The law – which was heavily debated in the media and caused much controversy among the 'social partnership' (the Austrian system for cooperation between the two sides of industry) – sets the stage for more flexibility in a changing work environment.

The bill was passed by the votes of the newly elected conservative government, and while the employer organisations backing the bill had their agenda largely met, the unions and political parties supporting their cause cried foul.

Setting aside the emotionally charged public discourse, the new law fits neatly into the legal framework set out by the EU Working Time Directive.

Changes to Working Time Act and Act on Rest Periods

The Working Time Act and Act on Rest Periods were amended to include the following changes.

Personal scope

Both acts previously excluded only the employer's legal representatives (ie, managing director and CEO) and second-line managerial personnel (ie, managing executives) from their personal scope. The Working Time Directive goes further, allowing member states to exclude "other persons with autonomous decision-taking powers" and "family workers" (Article 17). The new law adopts those exceptions provided that (also in line with the directive) the duration of the working time is not measured or predetermined and can be determined by the workers themselves. As regards the exception of persons with autonomous decision-making powers, the understanding is that this should now also exclude third-line management from the acts' personal scope.

Maximum working time

The standard eight-hour working day remains unchanged under the new law. However, the maximum daily working time (including overtime) has been increased from 10 hours under the existing law to 12 hours. Consequently, the maximum weekly working time has also increased from 50 hours to 60 hours. However, the average working time for each 17-week (four-month) period, including overtime, is capped at 48 hours a week by the EU Working Time Directive.

Employees can refuse to work overtime beyond a 10-hour working day and a 50-hour weekly working time, respectively, without giving a reason. If they refuse, they must not be discriminated against and can challenge any termination of employment that is rooted in such a refusal. Employees are therefore entirely free to accept or decline the new overtime regime. However, as under the existing law, employees must comply with a request to work overtime if it results in a working day of

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no more than 10 hours, unless this would interfere with their overriding interests (eg, care responsibilities).

As under the existing law, overtime will be compensated through extra payment or free time, each with a supplement of at least 50%. Collective agreements may provide for more favourable compensation schemes.

Flexi-time

The new legal regime on flexible working time also increases the maximum working day from 10 hours to 12 hours. The cap of 60 hours per work week also applies here, although working time exceeding the standard eight-hour day does not generally qualify as overtime and is not separately compensated, since the flexi-time scheme operates to level out overtime through phases of reduced working hours over the agreed flexi-time period. However, if an employer requests that its employees work overtime during the flexible timeframe, such overtime will also be compensated (including supplements) because self-defined work hours under the flexi-time system are suspended.

Reduction of rest periods in tourism sector

Under the existing law, a reduction of minimum rest periods from 11 to eight hours was subject to collective agreements and restricted to full-time workers in seasonal businesses. Under the new law, this reduction applies to all workers "in kitchen and service" who perform services during split work schedules. A split work schedule requires that the daily work routine contain a break of at least three hours (eg, a chef or waiter taking such a break between lunch and dinner services).

Exception from weekend rest period

Under the existing Act on Rest Periods, each employee is entitled to an uninterrupted rest period of 36 hours including the entire Sunday. Employees are also entitled to a full rest during all of the 13 public holidays in Austria. Certain statutory exceptions already apply (eg, in the health, transport and tourism sectors). Under the new law, exceptions can also be agreed between employer and the works council in the form of a written plant agreement – or, in the absence of an elected works council, by way of an individual agreement between the employer and employee (irrespective of the employer's business activity). Such an exception from the statutory weekend rest is restricted to four weekends or public holidays per employee and calendar year.

Outlook

With a 10-hour maximum, Austria has among the shortest working days of the EU member states. The Nordic countries and the United Kingdom impose a maximum of 13 hours and the legal framework under the Working Time Directive, with its mandatory rest periods, ensures that an increase in daily working hours does not result in labour exploitation. Like only a handful of its peers (eg, Bulgaria, Germany, Portugal, Slovenia and Spain), Austria chose to surpass the minimum standard under the directive and forgo more flexible alternatives that are also permissible.

Overly strict legislation had often resulted in violations of working time regulations by employers that had to cope with order peaks and seasonal fluctuations in demand. Employees can now also opt for longer blocks of free time.

Increasing the maximum working time to 12 hours a day and 60 hours a week without changing the usual eight-hour working day is therefore intended to serve both parties in the employment relationship as it has in other EU countries.

Employees who do not wish to change their ingrained work patterns can still refuse additional overtime and are afforded statutory protection to this effect.

Comment

Although the new law was initiated by industry and employer organisations, it appears that labour unions and employees' interest groups are more concerned with an impending loss of power over the collective bargaining process.

It is therefore likely that the new law, despite its obvious merits, will be fiercely discussed for some

time to come.

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