

Employment & Labour - Austria

Rules on Working Hours and Statutory Rest Periods Relaxed

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Standard Working Hours Rest Periods

Recent legislation has amended certain ingrained and inflexible rules on statutory working hours and conferred on staff representatives and employers legal powers to deviate mutually from the usual framework under certain circumstances.

Standard Working Hours

Generally, standard working hours are up to eight hours per day and up to 40 hours per week. Standard working hours plus overtime must not exceed certain thresholds - namely 10 hours per day and 50 hours per week, respectively. However, during times of a temporary, specific demand for additional hours, which would incur the employer a disproportionate financial loss if not worked, the works council may approve additional overtime by way of a works agreement (a written agreement between the works council and the employer to this effect). In this case the weekly working time must not exceed 60 hours and the daily working time must not exceed 12 hours. In urgent cases the Labour Inspectorate may approve additional overtime if the permitted overtime capacity and the additional overtime as set forth in the works agreement have been exhausted.

In addition, standard daily working hours may be exceeded up to certain limits under any of the following circumstances:

- for the purpose of creating longer periods of free time, particularly in connection with weekends;
- for the purpose of creating longer periods of free time in connection with statutory holidays. The working time missed may then be allocated to the working days of seven consecutive weeks, including the particular holiday;
- if a collective bargaining agreement permits the allocation of the standard working hours per week to four consecutive days;
- if a collective bargaining agreement permits a different allocation of the standard working hours per week within a 52-week reference period and the compensatory time off is taken over several consecutive days; and
- if a collective bargaining agreement permits a different allocation of the standard working hours per week within a reference period exceeding 52 weeks and the compensatory time off is taken over several consecutive weeks.

In the above cases normal daily working hours may be extended to 10 hours or, in the case of the first bullet point above, to nine hours.

The statutory provisions delineated above do not apply to managerial employees with material management functions. Therefore, certain job levels are exempt from these statutory restrictions and the employer violates no working time provision by allowing managerial personnel to work overtime exceeding the statutory limits. It is thus necessary to ask: what type of employee (job grade) qualifies as a 'manager' within the purview of the Working Time Act? It is clear that employees on the lower rungs of the hierarchy do not qualify. In turn, managing director(s) and second-line management (and in some cases even third-line management) can be regarded as 'managers' within the meaning of both the Working Time Act and the Hours of Rest Act. Decisive criteria include whether:

- the employee has authority to direct and instruct a team of lower-level employees;
- the potential manager would have discretion to work less than the usual work hours if business allowed; and
- the alleged managerial power results in above-average remuneration (salary).

All-in compensation (see below) can indicate all these criteria.

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If the 'manager' exception does not apply and overall working hours exceed the statutory maximum, the employer and its legal representatives may incur administrative fines of between €72 and €1,815, and in some cases of up to €3,600 for each violation.

Rest Periods

Under the Hours of Rest Act, the 'daily rest period' refers to the time off between two working days. Generally, the rest period must be at least 11 hours or 12 hours for minors. 'Weekend rest' means an uninterrupted 36-hour rest period, which also includes Sunday. Several statutory exceptions apply. For employers with continuous multi-shift operation on working days, the weekend rest period must commence no later than the end of the night shift towards Sunday and may end no earlier than the beginning of the night shift towards Monday. Employees that work during weekend rest are entitled to an uninterrupted 36-hour rest period. The weekly rest period must include a whole business day.

'Public holiday rest' means an employee's right to an uninterrupted rest period of at least 24 hours on public holidays. It must commence no earlier than midnight and no later than 6:00am on the respective public holiday. Public holidays may be credited to the weekly rest period only if they occur during the weekly rest period. An employee who has to work on public holidays is entitled to the remuneration payable for his or her work, unless it was agreed that compensation would be granted in the form of time off. The statutory provisions on rest periods do not apply to managerial employees with core management functions.

Violations of the Hours of Rest Act may incur fines of between €72 and €2,180, and in some cases of up to €3,600 for each violation.

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