MME

Recording of working time – new regulations entered into force on 1 January 2016

Overview

The obligation to record working time has been a much-debated topic in Switzerland for some time already. Due to enhanced controls by the labour inspectorates, the general obligation to precisely record working hours became the focus of public attention. At the same time, the Swiss National parliament was seeking for an adjustment of this obligation to the realities of the economy. After lengthy discussion between the social partners, the Swiss Federal Council entered an amendment to the Labour Ordinance into force on 1 January 2016 (ArGV 1; SR 822.111). Unfortunately, the amendment was no real adjustment of the cumbersome obligation to the realities of the economy. As will be shown hereafter, the amendment of said ordinance did not bring any alleviation.

Current rules

Obligation to comprehensively record working hours

The current rules on the recording of working time contained in the Swiss Labour Act (ArG; SR 822.11) and the ArGV 1 require employers to assure that all their employees maintain a detailed recording of their daily working hours (position or working hours and duration) as well as breaks of at least half an hour for each employee. Only employees in senior executive positions ("*höhere leitende Angestellte*") according to the Swiss Labour Act (article 3d ArG) are not subject to the recording of working time. Given the fact that regularly only very few employees are qualified as senior executive employees, the employer is obliged to record the working hours of the majority of employees meticulously.

Simplified recording of working time by directive of the State Secretariat for Economic Affairs (SECO)

The current obligation to keep detailed records of working hours is annoying and impractical for both employers and employees. In consequence, the strict obligation to record working hours has been ignored by many companies or they have followed the rules only partially.

After several approaches on political level with regard to the recording of working time, a directive by the SECO entered into force on 1 January 2014. According to this directive, employers are entitled to record working time in a simplified way with regard to certain employees. Pursuant to the directive, the employers are eligible to only record the amount of daily working hours without its position and duration.

However, this simplification is only applicable for specific categories of employees, such as (1) full-time project leaders; (2) executives with subordinates; and (3) mandate holders with profit responsibility. It is additionally required that the employee in question cumulatively (a) has a substantial

discretion in the performance of his duties according to the duties record book; (b) has a considerable freedom in the arrangement of working hours; (c) does not constantly have to work at night or on Sundays; (d) agrees in writing to waive the comprehensive recording of working hours and that the agreement also includes a prohibition on night-shifts, work on Sundays and the statutory breaks and rest periods; (e) has a year-end meeting with the employer in which they discuss the effective temporal workload of the employee.

Which employees qualify for the simplified record of working time must be assessed in each individual case.

As of 1 January 2016, the directive of the SECO was replaced by the new regulations on recording of working hours according to the amended ArGV 1 as shown below. Companies that have already implemented the directive of the SECO can keep up this regulation until the end of 2016.

Simplifications as of 1 January 2016

As already mentioned above, the politics as well as the social partners have tried to find a compromise because of the strong criticism on to the recording of working time for a long time. The compromise came into force on 1 January 2016 and was intended to provide a certain amount of relief. However, the result has been largely criticized, particularly by the employers, mainly because of the fact that the waiver to record working time is dependent on the existence of a collective labour agreement, what makes the implementation of the alleged facilitation much more difficult.

Waiver of working time recording (article 73a ArGV 1)

Employees with an annual gross salary (including bonus) exceeding (currently) CHF 120'000 who have an extensive working time autonomy and who can determine their working time for the most part personally may agree to waive their obligation to record working time, provided a written confirmation by each concerned worker exists.

According to the explanatory report of the SECO, this option is only available for employees with working time autonomy of at least 50% of their work schedule. Furthermore, the waiver to record working time presumes the existence of a collective labour agreement. It is sufficient, if the collective labour agreement is reduced to the matter of working time recording, provided the minimum requirements of paragraph 4 are complied (special measures ensuring the protection of health and compliance with legal resting hours requirements; obligation to provide an internal department in charge of matters related to working hours). The collective labour agreement must be signed by the majority of the representative labour organizations. Therefore, it is not allowed to form an ad hoc union for the sole purpose of signing an agreement on working time recording.

Simplified recording of working time (article 73b ArGV 1)

Employees who have a considerable freedom to set their own working time may agree to limit their recording of working time to the number of hours worked each day (without breaks or place). However, there is an exception for work performed at night or on Sundays, where the beginning and the end of the work performance must be recorded in addition to the actual total duration of the daily working hours. According to the explanatory report of the SECO, the option of

simplified working time recording is only available for employees who can dispose at least 25% of their own work by themselves.

However, such simplified recording requires the conclusion of a general agreement between the employer and the employees' representative body of the branch or the company. Alternatively, if an employee representation does not exist, the agreement can be concluded with the majority of the company's employees. The written agreement must include a definition of employees to whom the simplified recording applies, special provisions to ensure compliance with work and recovery time regulations as well as a procedure with regard to the agreement's compliance on a basis of parity.

For companies with fewer than 50 employees, an individual agreement between employer and employee is sufficient, provided that any the agreement contains information with regard to the applicable work and recovery time regulations. In addition, it must be complemented with a documented end year consultation between the employer and the affected employee to discuss the annual workload.

Each employee to whom the simplified recording of working time is applicable, may record his working time consistently. The employer must provide the employee with an appropriate tool.

Implementation of innovations

Our labour law team gladly supports you with the implementation of the new provisions, which apply since 1 January 2016.

Your Team

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