



Labor & Employment Law Strategic Global Topics

Spring 2017 edition
Wage & Hour Law



In this issue, we focus on ...

Wage & Hour Law

Editorial	3	Colombia	13
		▸ Wages and working hours	
Angola	5	Czech Republic	14
▸ Law seeks to boost the economy		▸ Wage and hour law	
Argentina	6	Denmark	15
▸ Workers benefit from new overtime rules		▸ Industrial actions demanding comparable minimum pay for foreign workers	
Austria	7	Finland	16
▸ New law seeks to ease reintegration into workforce after illness		▸ Outdated legislation undergoing reforms	
Belgium	8	France	17
▸ Wage and hour law: an introduction		▸ Labor framework changes dramatically	
Brazil	9	Georgia	18
▸ Employment rights and overtime rules		▸ Rules for overtime compensation	
Bulgaria	10	Germany	19
▸ Flexible working hours and remuneration for professional experience		▸ Overview of wage and hour law	
Canada	11	Greece	20
▸ The essentials of wage and hour law		▸ Focusing on compliance to promote hiring	
Chile	12	Guatemala	21
▸ Working hours and wages under Chilean labor law		▸ New labor framework is taking shape	

Hong Kong	22	Portugal	33
▶ Working hours and wage law		▶ Exemption from fixed working hours regime	
Hungary	23	Romania	34
▶ New form of performance-based compensation		▶ Government increases minimum wage	
India	24	Russia	35
▶ Employment of women in night shifts		▶ Parliament tightens salary payment rules	
Italy	25	Serbia	36
▶ An overview of wages and working time		▶ Wage and hour regulations	
Japan	26	Singapore	37
▶ Inspections uncover violations of overtime rules		▶ Employment Act	
Mexico	27	Slovak Republic	38
▶ Efficiency: work shift vs. salary		▶ Wage and hours: basic requirements	
Netherlands	28	Spain	39
▶ Min-max contracts		▶ Compensation of working hours	
New Zealand	29	Switzerland	40
▶ Wage and hour law		▶ Wage and working time	
Norway	30	Turkey	41
▶ Increased flexibility but still strict regulation of working hours		▶ Working time and overtime: a closer look	
Peru	31	Ukraine	42
▶ A brief overview of wage and hour laws		▶ Labor regulations date back to the Soviet era	
Poland	32	United Kingdom	43
▶ New requirements for remunerating civil law service providers		▶ Broad definition of “worker” shapes policies	

Editorial



In today's "hyper-connected" world, more and more employees are working remotely with clients and colleagues in different countries and time zones, making it increasingly difficult to set clear boundaries between working time and time off.

The blurring of that line raises issues for employers as they try to manage working time and overtime pay, fulfill business needs and comply with legal requirements. This is all the more important given the health and safety concerns for employees in continuous electronic connection with work.

It's imperative for companies to be aware of various wage and hour laws around the globe. We hope that this edition of our global hot topics helps HR & Legal professionals navigate and a better working world.

Roselyn Sands

Global and EMEA Labor & Employment Law
Leader







Angola



Ricardo E. Veloso

Law seeks to boost the economy

In the last few years, the Angolan legal framework has changed because of the country's economic circumstances. In June 2015, the new General Labor Law (GLL) was approved through Law 7/15 of June 15 (rectified by Amendment 15/15 of 2 October), revoking Law 2/00 of 11 February. Almost the entire law was adjusted, from mere formalities to technical requirements.

The revisions aimed to make the law easier to understand and apply, bearing in mind the various conditions faced by companies.

Drawing distinctions based on company size

One of the most significant features of the GLL is the distinct regime applied to large, medium-sized, small and micro-companies. Law 30/11 of 13 September approved these distinctions, based on the number of employees and the annual turnover. If there are doubts, the final criterion is the annual turnover.

Micro-companies are those with up to 10 employees and an annual turnover below US\$250,000.

Small companies are those with 11 to 100 employees and an annual turnover of US\$250,000 to US\$3 million.

Medium-sized companies are those with 101 to 200 employees and an annual turnover above US\$3 million but equal to or below US\$10 million.

Large companies are those exceeding these amounts.

The GLL foresees exceptions for compensation purposes. Nonprofit and faith-based organizations are classified as small companies, for instance. Cooperatives and foreign nongovernmental organizations are classified as medium-sized companies. And public companies, international organizations, and diplomatic and consular representations are classified as large companies.

These distinctions influence not only compensation for collective dismissal, for instance but also the amount paid for overtime and shift and night work.

Salaries

The new law clearly states that payment must be made in local currency (kwanzas). Foreign employees can transfer their salaries to their home countries in accordance with foreign exchange rules. A company's job qualifier schedule defines pay for each function, accomplishing the equal-pay principle.

An employee's remuneration includes salary and benefits, whether in cash or in kind, such as Christmas and vacation allowances.

Working time

The standard working time typically cannot exceed 44 hours per week or 8 hours per day. Exceptions are allowed if approved by the Angolan authorities, if included in a collective bargaining agreement or if established by law. For example, the weekly limit rises to 54 hours if the employer adopts shift work or flexible hours, if the work is executing schedule recovery, or if it is interrupted or sporadic, or involves

simple presence. The daily limit rises to nine hours if the work is sporadic or requires simple presence in which the employer focuses working hours on five consecutive days. The daily limit rises to 10 hours when the work is sporadic or involves simple presence, and the employer adopts shift work or flexible hours, or is recovering working hours.

Rest time

The rest period should be 45 to 90 minutes for a working period of 5 consecutive days at a standard working time unless otherwise approved by the authorities or a collective bargaining agreement.

With rotating shift work or night work, the employee is entitled to additional pay corresponding to a percentage of the base salary:

- ▶ 20% (large companies)
- ▶ 15% (medium-sized)
- ▶ 10% (small)
- ▶ 5% (micro)

With overtime work, employees receive an additional amount per hour. Please note that employers must request overtime work in advance and use it only for imperative production or service needs.

Ricardo Veloso
ricardo.veloso@pt.ey.com
Inês Duarte Galvão
ines.galvao@pt.ey.com



Javier Sabin



Argentina

Workers benefit from new overtime rules

Under Section 197 of Argentina's Employment Contract Law (Law No. 20,744), "working time" means the period when the employee is carrying out duties at the employer's disposal.

Working time is governed by Law No. 11,544, effective since 12 September 1929. Section 1 of the regulation establishes that total working time should not exceed 8 hours per day and 48 hours per week for all employees of public or private institutions.

Agricultural work, cattle raising and domestic services are excluded from the law, as are companies that employ the family of the boss, owner, businessperson, manager, director or manager with power of attorney.

Section 2 also mandates that night work – from 9:00 p.m. to 6:00 a.m. – should not exceed seven hours. When work must take place in unsanitary areas, working time should not exceed 6 hours per day and 36 hours per week. The executive will determine when the six-hour period is applicable at the request of the interested party or based on a direct process.

Under Section 5, salaries should increase by at least 50% for supplementary hours and by 100% for public holidays. This provision should be analyzed jointly with Section 201 of the Employment Contract Law, which establishes a 50% surcharge for normal days and 100% for Saturdays from 1:00 p.m., Sundays and public holidays.

Tax benefits

In December 2016, the method for calculating income tax related to overtime changed significantly. In the past, many employees were unwilling to work overtime because the salary increase pushed them into a higher tax bracket, all but negating any rise in net salary. The Argentine Government sought to effect change with a new law.

Section 1 adds Subsection (z) to Section 20 of the Income Tax Law, establishing that the difference between the value of overtime and ordinary hours worked by payroll employees during public holidays, non-working days and weekends is 100% exempt from income tax calculations.

The pay arising from supplementary hours also does not count toward assessments of net income, which avoids higher tax rates. Workers will pay taxes at the related marginal rate before adding overtime.

In the past few months, working time and overtime have regained momentum in Argentina. Overtime is now promoted through major and original tax benefits that enhance the employee's purchasing power.

Javier Sabin

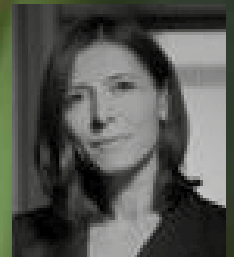
javier.sabin@ar.ey.com

Beatrice Bonaldi

beatrice.bonaldi@ar.ey.com



Austria



Helen Pelzmann

New law seeks to ease reintegration into workforce after illness

At the end of 2016, Austrian legislature established a new law on part-time work to help employees reintegrate into the workforce after prolonged sick leave. The law was published in the Federal Law Gazette on 18 January 2017 (BGBI I Nr. 30/2017) and will be effective as of 1 July 2017.

Background

Across all industries, employees often struggle to return to work after prolonged sick leave, especially when coping with psychological disorders. A rapid return to full-time work is often counterproductive, resulting in relapses and even longer sick leave.

The actual retirement age in Austria is rising, and the working capacity of older employees needs to increase to avoid long leaves of absence. The new law on part-time work allows the employee to re-enter the profession gradually without significant losses in pay. The model is voluntary and subject to agreement between the employer and the employee.

Legal requirements

The new law establishes several requirements:

- ▶ A written agreement between the employer and the employee
- ▶ A mandatory consultation with fit2work (see below) by the employer and the employee
- ▶ A detailed reintegration plan, including medical permission

- ▶ An active employment relationship of more than three months (including the rest period or sick leave)
- ▶ At least six weeks of sick leave before reintegration
- ▶ Fitness to work part time

Not all ailments qualify for this approach – only severe physical or psychological disorders with aftereffects. The employer and the employee must engage fit2work, a counseling center set up by the Austrian Government to support employees who face health-related obstacles at work. If established, a works council can participate in the consultations. Afterward, the employer and the employee can agree on a reintegration plan detailing the part-time work.

Part-time work can continue for one to six months, with one extension of one to three months. During the agreed period, working time can be reduced to 50% to 75% of the average previous working time. Therefore it is possible to start with even less than 50% if the average working time is within the above range. Weekly working time cannot be less than 12 hours and 30% of the previous weekly working time. Monthly pay cannot fall below the low-income threshold set by the Austrian Social Security Act (currently €425.70).

The plan can be amended twice during the part-time phase through a written agreement between the employer and the employee. Apart from the temporary reduction in working time, the employment contract does not change.

The employee can request an early return to full-time work, in writing, if part-time

is no longer medically necessary. After workers return full time, they must wait at least 18 months before engaging in another part-time reintegration arrangement with the same employee.

Remuneration

During the part-time period, employers pay reduced remuneration based on the decreased working time (e.g., 50% of the initial remuneration if working time declines to 50%). Prior overtime payments must be considered and prorated. However, the assessment basis for the employer's monthly contributions to the Employee Pension Fund remains the initial remuneration, not the prorated amount (1.53% of the assessment basis as severance payment for employees who started their employment relationship after 31 December 2002).

During part-time work, the loss in remuneration is compensated with a reintegration payment (*Wiedereingliederungsgeld*). State health insurance makes the reintegration payment in the amount of increased sick pay (60% of the gross payment from the last month) prorated to account for the reduced working time. If, for example, working time is reduced to 75%, the increased sick pay will be reduced to 25%.

The employer cannot request overtime. If the employee works overtime nonetheless, it should be compensated properly.

Helen Pelzmann
 helen.pelzmann@eylaw.at
Gloria Ecklmair
 gloria.ecklmair@eylaw.at



Malissa Begtas



Belgium

Wage and hour law: an introduction

Working time

In Belgium, working time is legally defined as the time that employees are available to – and under the authority of – the employer and that they cannot use freely.

Working time generally cannot be less than 3 hours per period and one-third of the full-time equivalent per week, and should not exceed 8 hours per day and 38 hours per week. Several exceptions exist.

As a rule, working time should take place between 6:00 a.m. and 8:00 p.m., with Sundays excluded. Overtime rules do not apply to certain categories of employees, such as sales representatives, leading positions or positions of trust.

The working week typically consists of 38 hours, but can be less or more under collective bargaining agreements (CBAs). Through a CBA or internal working rules, a standard working week of 40 hours is possible. Under such a regime, the employee is entitled to 12 paid days off per year.

Overtime pay

Under conditions determined by legislation, employees can work additional hours. However, employees must still average 38 hours per week over a reference period (recognized as one year as of 1 February 2017). Once overtime reaches 143 hours (new), the employee is

immediately entitled to compensatory rest. This internal limit can be increased through a CBA. There are also absolute limits on how many hours an employee can work per day and per week, but they vary.

Employers are entitled to overtime pay when working more than 9 hours per day or 38 hours per week (the weekly limit can be adapted via a CBA). This pay amounts to 50% of regular remuneration for overtime performed during regular weekdays and 100% of regular remuneration for overtime performed on Sundays or public holidays.

Small flexibility

Under another exception – known as “small flexibility” – employers can set work schedules of 5 hours above or below the normal maximum working time per week (up to 45 hours per week and 9 hours per day). Small flexibility is allowed only if it is part of a CBA or internal working rules, and it should strive to maintain the 38-hour weekly average over one year. An employee working overtime within the limits of small flexibility is not entitled to overtime pay.

In the future, individual employees will also be able to agree to work as much as 100 hours of overtime per year (or more through a CBA) and be compensated only with extra pay rather than rest days. The first 25 hours will not count toward the internal limit of 143 overtime hours. Such an agreement will be valid for six months and can be extended.

Salary legislation

In Belgium, salary is the remuneration – cash and benefits – owed to an employee who performs a service for the employer.

Though pay is primarily subject to the will of the parties, certain rules apply, including minimum salary requirements. This salary is indicated by a joint committee and is subject to automatic indexations, also negotiated via a committee. The Wage Standard Act limits the average increase in salary costs to preserve the competitive position of the Belgian industry.

Malissa Begtas

malissa.begtas@hvglaw.be

Frank Ruelens

frank.ruelens@hvglaw.be



Brazil



Carlos Antonaglia

Employment rights and overtime rules

Brazilian employment rights are regulated by 1940s legislation called the Consolidation of Labor Laws (abbreviated to CLT in Portuguese).

Under the CLT, the regular working period cannot exceed 8 hours a day or 44 hours a week, except when expressed otherwise in CBAs (e.g., rotating shifts).

For every hour worked beyond the regular period, overtime pay should be at least 50% higher than the regular hourly wage. That figure should rise to 100% if the employee works during national or local holidays, or weekly paid rest.

Registration requirement

To verify that employers are complying with the regular working period, the legislation requires companies with more than 10 workers to register their employees' daily hours manually or electronically.

The CLT makes exceptions for:

- ▶ Employees who exercise external duties without the possibility of recording working hours (this condition should be reported in an employee's work booklet)
- ▶ Employees in management positions (managers, directors and department heads)

Brazilian legislation and labor courts allow overtime to be compensated with rest periods other than regular vacation rights. However, unions should validate such arrangements via CBAs.

Although the CLT allows overtime, it:

- ▶ Prohibits more than two hours of overtime per day
- ▶ Mandates at least 11 consecutive hours of rest between workdays

Not much flexibility

The legislation allows little flexibility, and any changes require the consent of either the union or the Ministry of Labor.

Historically, Brazilian employment justice courts have been protective of the employee, viewing them as the weaker party.

Given the strict legislation and interpretation by labor courts and governmental inspection authorities, companies established in Brazil struggle to put in place cost-effective methods of workforce planning and management based on productivity and demand.

Seeking adjustments

The Brazilian Government is negotiating with Congress on new regulations that adapt employment legislation to the dynamics of the 21st-century corporate world.

The Government seeks to create jobs and decrease the payroll burden for companies.

Carlos Antonaglia

carlos.a.antonaglia@br.ey.com

Giuliano Cintra

giuliano.cintra@br.ey.com



Tanya Stivasareva



Bulgaria

Flexible working hours and remuneration for professional experience

The regular working time in Bulgaria is 40 hours per week, divided equally into 5 days.

Because employers often need a more flexible workforce, they seek alternatives to the equal allocation of hours. One method is the accumulated calculation of working time, where excess time worked in one period is compensated through less work in a subsequent period.

Weekly working time cannot exceed 56 hours, and compensation for extra time must occur within 6 months. The Labor Code recently introduced a flexible model that allows employers to specify the time within the day or week when the employee must be at work. Outside that, employees can freely determine the start and end of each workday, as long as they work all hours due per week.

If a company's internal labor rules specify it, employees can transfer non-worked hours from one day to another in the same working week. Regardless, the minimum duration of lunch, daily and weekly breaks prescribed by law must be observed. The manner of reporting working hours should be determined in internal labor rules as well.

The new regime is useful not only for businesses but also for employees, allowing them to allocate part of their working hours based on their own judgment, and to balance their personal and professional lives.

Additional remuneration for professional experience

The law explicitly regulates several kinds of additional remuneration, some of it unknown to foreign companies hiring people in Bulgaria.

Additional remuneration for professional experience is specific to Bulgarian legislation and represents an obligatory component of the gross monthly salary.

The additional amount depends on the employee's experience. Any worker with at least 12 months of experience is eligible.

What's relevant is any experience with the same employer, as well as experience gained at any other company where the employee held a similar position or performed similar duties.

The minimum additional remuneration is 0.6% of the basic salary for each year of experience. At its discretion, the employer can provide a larger percentage – often under a CBA.

The employer should determine what previous experience is relevant when calculating the gross salary at the signing of the employment contract. The precise criteria for relevant experience should be determined in the company's internal salary regulations.

The amount should be recalculated yearly to reflect newly gained experience, clearly defined in the employment agreement and separated from the basic salary.

Bulgarian courts view all-in-one salaries – where one figure covers everything due under the employment relationship – as an effort to circumvent the law and avoid the obligation to pay additional remuneration for professional experience.

In such cases, employees can go to court to pursue payment of additional remuneration for a backward period of three years. That could be a substantial sum for the employer, especially if it concerns a significant number of employees or involves highly experienced workers.

Anita Popovski

anita.popovski@bg.ey.com

Tanya Stivasareva

tanya.stivasareva@bg.ey.com



Canada



Marie-France Chartrand

The essentials of wage and hour law

Employment rules in Canada are dictated mostly by provinces and territories in accordance with their own legislation, which regulates wages, working hours, and workplace health and safety.

Although provincial rules govern most workers, employees in certain occupations – including federally regulated workplaces such as airlines, banks and the civil service – are subject to federal labor standards. Other workers, such as self-employed and independent contractors, may have different employment rights not covered under provincial or territorial standards. In addition, unionized workplaces with collective agreements may have standards that exceed what's required by law.

Minimum wage

No matter where employees work in Canada, federal, provincial or territorial laws govern when and how they are paid. Each province or territory must establish a minimum wage. Federally regulated workers are usually subject to minimum wage regulations in the province or territory where they work.

As of 1 October 2016, the minimum hourly wage ranged from CA\$10.50 (in Newfoundland and Labrador) to CA\$13.00 (in Nunavut), with most provinces just over CA\$10.50. The wage may rise periodically.

Most provinces have legislative provisions that exempt specific employees from minimum wage protection. As such, not all workers are entitled to minimum wage. Others are covered but are subject to different pay standards specific to their occupation or experience. Certain

categories of agricultural employees in Ontario (e.g., farmworkers) may be paid a piece rate instead of a minimum wage.

Hours of work

Minimum hours, maximum hours per day, week or pay periods and rest periods vary. The working week ranges from 40 to 48 hours, and legislation mandates minimum rest hours, with many jurisdictions requiring 24 consecutive hours per week. Certain occupations and professions, as well as managerial employees, are exempt from some or all minimum standards.

Workers must be paid at regular intervals, and they have a right to annual paid vacation, typically two weeks.

Overtime

In general, additional compensation must be paid for work performed outside the legislated standard workday or working week.

Overtime pay is usually calculated at 1.5 times the regular hourly rate. In some jurisdictions, such as New Brunswick and Newfoundland and Labrador, the overtime rate is based on the minimum wage. A number of jurisdictions allow employers and employees to agree to substitute time off for overtime payment or to average overtime hours. The averaging process alters overtime compensation otherwise required by provincial or territorial legislation.

Employers should verify that they can require overtime. If they can, they must comply with the process set out in legislation. Typical conditions include:

- ▶ Obtaining employee consent
- ▶ Receiving approval from the executive director
- ▶ Accurately recording hours worked (regular and overtime) and wages paid

Not all occupations and job classes are covered by overtime regulations. Employers should carefully consider the relevant sections of legislation and the accompanying regulations.

Considerations

Employers must properly identify the type of workplace (e.g., federal, provincial or territorial, union or nonunion); the industry sector (e.g., health care or construction); and the occupation category (e.g., ambulance drivers or construction employees). These will determine which level of Government has jurisdiction over the employment standards and whether the employee is exempt, partially exempt or non-exempt.

The legislated standards set out minimum requirements that apply regardless of the terms of any employment contract. Employees cannot agree to waive or surrender their rights under the applicable employment standards, and employers cannot contract out of legislation.

Marie-France Chartrand

marie-france.chartrand@ca.ey.com



Nancy A Ibaceta Muñoz



Working hours and wages under Chilean labor law

Chilean legislation on working days has undergone no major changes since 2001, when the ordinary working week was reduced from 48 to 45 hours. However, in 2012, limits were placed on the types of workers who can be excluded from registering their daily attendance with the company or who are not subject to the 45-hour limit. The practice is now restricted to managers, agents with administrative powers and employees who do not require immediate supervision or who work in the field. Their working hours are not controlled by any means, and they face no penalties for delays.

Working time is defined as the period when employees must provide services under their employment contract (active working time) and the time when workers are at the employer's disposal, regardless of whether they are performing work (passive working time).

Types of working time

Ordinary working time: this consists of a maximum of 45 hours per week, distributed across 5 or 6 workdays (Monday to Saturday), with a cap of 10 hours per day. Sundays and public holidays are not workdays, with exceptions.

Extraordinary working time (overtime): this is working time that exceeds the 45-hour maximum or the contractually agreed limit. Overtime cannot exceed two hours per day and can be used only to meet

temporary needs. Written agreements regulate the events that make overtime necessary. It is paid with a 50% surcharge over the hourly salary.

Part-time: this is work that does not exceed two-thirds of the ordinary working week (30 hours). Both parties can agree to distribute working hours on different days, and the employee must receive at least a week's notice of the distribution for the upcoming week.

Payment of wages

Chilean pay legislation has undergone numerous modifications in recent years.

2008: employers faced a new obligation to pay workers who receive mixed remuneration (a fixed base salary plus variable remuneration) "a full week," which includes payment for Sundays, public holidays and compensatory rest days. The amounts earned in the respective week (variable remuneration and commissions) are added together and divided by the number of days worked. The result is the amount to pay for a full week.

2009: the principle of equal pay for men and women performing the same job was established.

2012: commissions can no longer be deferred and must be paid in the month they were earned.

2014: employers must add an annex to pay slips that details the method used to calculate commissions.

Details about pay

Remuneration is any money or in-kind benefits that the employee receives from the employer for work. The gross amount will be subject to taxes and social security deductions. Salaries or wages can be paid by the day, week, month or piece, but the unit of time *cannot* exceed one month.

Types of remuneration

Minimum wage or minimum monthly income (MMI): the monthly salary cannot be lower than the minimum salary established by law yearly. The current MMI wage is CLP264,000. It will rise to CLP270,000 on 1 July 2017 and to CLP276,000 on 1 January 2018.

Base salary: this is any fixed amount paid for equal periods.

Commission: this is a percentage paid on the price of sales, purchases or other transactions.

Participation: this is a portion of the profits of a particular business or operation.

Profit-sharing: this is a portion of a company's annual profits, paid in two ways:

- ▶ Based on the liquid profits of the company, in an annual proportion of at least 30% of the profits
- ▶ Whatever profit the company obtains through a maximum payment of 4.75 MMI annually, paid once annually or in equal monthly amounts

Nancy A. Ibaceta Muñoz

nancy.ibaceta@cl.ey.com



Carlos Sandoval

Wages and hours

In Colombia, the ordinary maximum working time is 8 hours per day and 48 per week. The employee can work two additional hours per day, provided that the employer pays overtime.

Colombia has also ratified international agreements that are enforceable, including Conventions 001, 004, 006, 014, 020, 026, 030, 052, 101 and 106 of the International Labor Organization. All employers should be aware of the limits and obligations they face when defining work schedules.

In recent years, the nation has introduced new legislation and alternatives for flexible schedules and telework. The employer and employee can agree to distribute working hours from Monday to Friday or from Monday to Saturday. They can also agree to make the mandatory day of rest either Saturday or Sunday.

The workday must be divided into at least two periods, with a rest break in between.

Employers and employees can also arrange flexible working hours. If employees will work overtime, the employer must obtain a permit from the Ministry of Labor, which can allow up to 2 hours per day and 12 per week. Failing to obtain authorization may trigger fines of up to 5,000 minimum legal wages (US\$1.2 million).

Overtime and night work

Based on the needs of the business, employers and employees can agree to successive work shifts as long as they do not exceed 8 hours per day and 48 per week, on average, over 3 weeks. Successive work shifts do not trigger

overtime surcharges. However, employees who exceed the limits, on average, must be paid for overtime hours.

The working-hour limits do not apply to employees holding direction, trust or handling positions. Nor does the right to receive overtime surcharges. But they might be entitled to an overnight surcharge and compensation for working on days of rest.

Night work is defined as taking place between 10:00 p.m. and 6:00 a.m. However, a draft regulation in Congress would change that to 8:00 p.m. to 6:00 a.m. Night workers are entitled to a surcharge of 35% of the ordinary hour value. Overtime requires a surcharge of 25% for day work and 75% for night work.

In companies with more than 50 employees and a 48-hour working week, employees are entitled to spend two hours of their working time each week in recreational, cultural, sporting and training activities sponsored by the employer. The activities should be developed within working hours and can be accumulated up to one year.

Statutory paid rest

Employers must pay their employees for time off on Sundays, as well as on the 18 national and religious holidays each year. This statutory rest is included in the monthly salary.

Employees who work occasionally on Sundays (one or two in a calendar month) are entitled to additional pay equivalent to 75% of the regular salary, calculated pro rata for hours worked on Sundays, or a compensatory day off paid in money or enjoyed in the following week, whichever the employee prefers.

For regular Sunday work (three or more in a calendar month), the employee is entitled to both the 75% surcharge and the compensatory day off.

Points to remember

- ▶ Companies must request an overtime authorization from the Ministry of Labor.
- ▶ The Ministry of Labor can impose financial penalties to companies that breach their obligations. The amount varies based on the severity of the breach but can reach 5,000 legal minimum monthly salaries.
- ▶ Night work, rest and overtime surcharges constitute salary and are the basis for calculating fringe benefits, social security contributions, indemnities and vacations.
- ▶ Employees must enjoy at least one day off per week. Those who work in successive shifts can accumulate their rest days and enjoy them consecutively based on an agreement with the employer.
- ▶ Companies must include applicable work shifts in their internal working rules.

Carlos Sandoval

carlos.sandoval@co.ey.com

Ana María Arias

ana.arias-perez@co.ey.com



Ondřej Havránek



Czech Republic

Wage and hour law

Remuneration for work

Every employee who performs dependent work is entitled to remuneration from the employer. Wages can be established in the employment agreement or other contract, or stipulated unilaterally by the employer in a wage assessment or an internal regulation.

Labor law prohibits wage discrimination. Under the equal-treatment principle, employees performing the same work or work of the same value must receive the same wage.

All employees are also entitled to be paid at least the minimum wage and guaranteed wage level (corresponding to the difficulty of their work) stipulated by a government decree. In 2017, the basic minimum wage is CZK11,000 per month, or CZK66 per hour.

Scheduling working hours

Weekly working time, determined in a schedule of shifts, cannot exceed 40 hours. Lower maximum hours apply to employees working in a multiple-shift regime or to particular employees who work underground.

Generally, the employer is solely responsible for distributing working hours – scheduling them evenly, unevenly or flexibly – and determining the beginning and end of shifts. An exception may apply

to employees who work at home. After a Labor Code amendment set to take effect in October 2017, a special self-scheduling regime will also apply to top managerial employees.

The employer must inform employees of their working hours in advance. One shift (without overtime) cannot exceed 12 hours.

Employees who have worked continuously for 6 hours must be given a food and rest break of at least 30 minutes. Breaks are not included in working hours.

The employer must schedule working time so that each employee has at least 11 hours of uninterrupted rest between shifts. The uninterrupted rest period in each week must be at least 35 hours.

Regulations are stricter for employees who are younger than 18 or pregnant.

Overtime work

Overtime work may only be performed exceptionally. Besides setting weekly working hours, an employer can order – for serious operational reasons – up to 8 hours of overtime work within a week and 150 hours within one calendar year (ordered overtime). Any work beyond this scope is allowed only if the employer and employee have agreed (agreed overtime). Total overtime work (agreed plus ordered) cannot exceed eight hours per week on average.

The employer must compensate overtime work with the regular wage plus at least 25% of the employee's average earnings, unless the worker agrees to accept time off in lieu of extra pay.

With wage agreements, it is possible to incorporate an agreed amount of overtime (up to 150 hours per year for regular employees and roughly 416 hours per year for managers).

When working on a public holiday, the employee is entitled to their regular wage and paid time off (or extra pay of at least 100% of the employee's average earnings, if agreed on).

Weekend or night work requires extra pay of 10% of average earnings.

Ondřej Havránek

ondrej.havranek@cz.ey.com

Barbora Kudrhalt Suchá

barbora.sucha@cz.ey.com



Denmark



Julie Gerdes

Industrial actions demanding comparable minimum pay for foreign workers

Denmark has no statutory minimum wage or pension rights. Despite this, labor unions can take industrial actions against foreign companies that pay their expatriated employees less than what's prescribed by Danish CBAs for comparable work within the industry.

It is paramount for foreign companies to consider this risk when posting employees to Denmark for construction and similar work, where industrial claims are likely.

What the law says

Under the Danish Posting of Workers Act, unions can take legal industrial actions (strikes and embargoes) against foreign companies to secure remuneration for posted employees that equals what Danish employers must pay for similar work under national CBAs.

The right is implemented through section 6a of the act, which is rooted in the *Laval* judgment.

Section 6a is a balanced compromise and an attempt to preserve the Danish labor market model by guaranteeing the right to collective industrial actions, provided that such claims are founded on national CBAs that are sufficiently precise and accessible.

Under the provisions of Section 6a, industrial actions will be lawful only if the union has referred to *salary and pay conditions* in a national CBA before raising its claim.

National CBAs apply to the entire territory of Denmark. The parties to CBAs must be the most representative social

partners in Denmark, and the salary and pay conditions they provide must have "sufficient clarity," according to section 6a.

Unions can raise a claim against foreign employers only for *salary and pay conditions*; other working conditions are not included in this right.

The Danish Labor Court must decide whether the union has met the conditions for taking industrial action.

Painting contractor goes to court

In a case that went before the Danish Labor Court, a union discovered that the employees of a foreign painting contractor were working under a contract to refurbish a hotel and were being paid considerably less than the hourly rates set by the industry-wide CBA for painters.

The union issued a demand for the contractor to sign an adhesion agreement to signify its obligation to comply with the CBA.

The contractor brought the matter to the court, claiming that there was no legitimate reason for the union's demand from an industrial relations perspective and that the CBA in question was neither sufficiently clear nor easily available.

The union prevails

The court found that the union's interest – making certain that paintwork is carried out under the same terms as those provided in the CBA – is so strong that it is legal to take industrial action, based on well-established case law.

The court also found that the pay conditions under the adhesion agreement would be no more onerous than under the relevant CBA, and that the CBA's provisions were sufficiently clear. In addition, the

CBA was available on at least two Danish websites, so it was not more difficult for an EU undertaking to obtain knowledge about the relevant pay levels and CBAs in Denmark than, for instance, about relevant legislation in Denmark.

The court noted that the painting amounted to about 20% of the hotel refurbishment contract. Because of the extent of the paintwork, the union had a legitimate interest in having it carried out according to a CBA.

Accordingly, the court ruled in favor of the union, maintaining that it would not be unjustified in taking industrial action to support its demands.

How much to pay?

When posting employees to Denmark to work on construction sites and the like, foreign companies must calculate the total remuneration, in case a union raises a claim.

The comparable monthly remuneration will typically be calculated as:

- ▶ Minimum base salary according to the relevant CBA
- ▶ Overtime pay and payment for working staggered hours according to the CBA
- ▶ Payment on banking holidays (*søgnehelligdagsbetaling* in Danish) according to the CBA
- ▶ Pension contributions according to the CBA
- ▶ Holiday payments according to the CBA
- ▶ Floating holidays (*feriefridage*) according to the CBA

Julie Gerdes

julie.gerdes@dk.ey.com



Riitta Sedig



Finland

Outdated legislation undergoing reforms

What do Finland and an eight-hour workday have in common? They both turn 100 this year!

The eight-hour workday has long been regulated in Finnish legislation and is still part of the Working Hours Act (605/1996), which took effect in 1996. The act applies to work performed under an employment contract, or within a state or municipal officeholder's service relationship. It does not apply to management.

Companies generally deviate from employment law through collective agreements, which supersede the applicable provisions. Special legislation also regulates the working hours of young employees and seamen.

Regular working hours

Working hours include the time that employees spend on work and the time they are required to be at the employer's disposal. Travel time is not included unless it is part of performing work.

The regular working time is 8 hours a day and 40 hours a week. The act provides some flexibility, making it possible to arrange hours so that they average 40 over a period of up to 52 weeks. Sunday work performed as part of regular working hours is compensated with twice the regular wage.

Under CBAs, many industries have a reduced working week of 37.5 hours. Shorter working hours can also result from collective agreements or practice.

The act has become a bit outdated as it does not apply to remote work, an increasingly popular trend.

Exceeding regular hours

Any work beyond regular hours is considered additional work or overtime.

Additional work is done on the employer's initiative and does not exceed the regular daily working hours defined by law. The employee's consent is required unless additional work is part of the contract. The remuneration for additional work must be in line with the wage paid for agreed working hours.

Overtime is work done on the employer's initiative that exceeds the regular daily working hours. The employee's consent is required.

The maximum overtime is 138 hours over 4 months and 250 hours during a calendar year. Overtime pay amounts to 150% of the regular wage for the first two hours and twice the regular wage for additional hours. By agreement, additional work or overtime can also be compensated with free time.

Recent and upcoming reforms

In summer 2016, a highly debated pact was launched to improve the competitiveness of labor and businesses and boost economic growth.

Annual working time was extended by an average of 24 hours for full-time workers, with no impact on earnings as of the start of 2017.

This extension was not implemented through legislation, but through agreements between trade unions and employers' federations within each industry.

The current interpretation is that only employees who are subject to collective agreements are bound by the extension.

Adding the extra working time

Methods for implementing the extra time have varied. Some industries have changed three traditional midweek holidays into working days. Others have added a 30 minutes to each working week.

Some employers have taken a creative approach by allowing employees to exercise for the additional 24 hours.

Furthermore, the Finnish Government has begun efforts to reform the Working Hours Act. The working group's deadline is June 2017.

Riitta Sedig

riitta.sedig@fi.ey.com

Anna Rautioaho

anna.rautioaho@fi.ey.com



France



Roselyn Sands

Flexibility changes to French working time and hour laws

France has 2 major systems for tracking employee working time: a weekly hourly system and a days per year system, each one with its own particular set of rules.

Weekly hourly system

Working time for employees in France under the weekly hourly system is 35 hours per week.

Beyond that, workers must receive overtime at an increased rate and, in certain cases, additional time off as well.

Each year, the French Government sets the legal minimum gross monthly salary for a 35-hour working week. In 2017, the legal minimum gross monthly salary is €1,480.27 (€9, 76 hourly). Collective bargaining agreements may enhance that and provide for a higher minimum wage.

As we explain below, a new law of August 2016 seeking to create greater flexibility, reworks the general principles of the French Labor Code and its general architecture with respect to working time.

Days per year system

For certain categories of employees – generally managers– work time can be organized more flexibly than the standard 35-hour week.

Collective bargaining agreements and/or individual employment contracts may set a fixed number of workdays per year. Since working time is calculated in days, there is no hourly overtime, yet the employee is entitled to a certain number of additional days off during the year to make up for the total extra hours worked throughout the year.

Abuses have occurred with employees working excessively, and as such, employee

health & safety concerns has led to modifications in the law to guard against overworking.

Rewriting the Labor Code for the weekly hourly system

Under the new law effective August 2016, company-wide collective bargaining may result in a certain greater flexibility for employers on working time,

Under the new structure, the French Labor Code has 3 categories of working time rules as follows:

1. Rules that must be enforced as written in the Labor Code, with no possibility for flexibility through company-wide collective bargaining.
2. Rules that may be modified by company-wide collective bargaining if agreed to by at least 50% of the representative unions, or 30% of the representative unions and 50% of the employees.
3. Limits on the extent to which the rules in 2) can be modified.

Overtime provides a good example of how the new architecture of the French Labor Code is designed.

The new Labor Code provides that:

Additional overtime must necessarily be paid to employees. This rule must be enforced as it stands. Today, overtime is paid 25% extra for the first eight hours but a company-wide bargaining agreement can dictate a lesser amount; however the company-wide bargaining agreement cannot provide that overtime be paid less than 10%.

As such, a company can continue to pay employees 25% overtime for the first 8 hours of overtime, or it can collectively bargain anywhere as long as employees receive at least 10% more for overtime.

Rewriting the Labor Code for the days per year system

To reduce the excessive work in this system, two changes have been made.

1. Employers must meet with each employee on an annual basis to discuss work life balance and to ensure that the work schedule is not excessive.
2. The new “right to disconnect”.

The right to “disconnect”

Although the new law seeks to increase employer flexibility in organizing its workforce, it also seeks to safeguard employee rights on work-life balance and health and safety.

In particular, it introduces a right to “disconnect” for employees of businesses with more than 50 workers. In these businesses, employees are entitled to “disconnect” from the job after working hours, particularly from electronic devices. The goal is to balance an employee’s workload and private life.

However, the law does not clearly define what is required in order to allow each company to negotiate the right balance to the right to “disconnect.” Businesses concerned must negotiate with their union representatives during the annual negotiation on work-life balance to define this right and its specific rules. If no agreement is reached, businesses must publish a policy that explicitly details employee rights to disconnect.

Failure to do so does not trigger any direct sanction under the new law, at least not for now.

Roselyn Sands

roselyn.sands@ey-avocats.com

Astrid Merceron

astrid.merceron@ey-avocats.com



George Svanadze



Georgia

Rules for overtime compensation

According to Article 17(3) of the Labor Code of Georgia, work is deemed overtime when an adult employee, upon agreement, works beyond 40 hours a week.

The threshold is 36 hours for minors aged 16 to 18 and 24 hours for minors aged 14 to 16. Under Article 17(4) of the Labor Code, overtime is compensated by the hour based on an increased pay rate. The parties can set the rate and, under Article 17(5), agree to substitute additional time.

The Labor Code says the minimum compensation for overtime should be the hourly increased pay rate, but it does not set a minimum increase.

Court cases

Despite the lack of established case law, interpretations of increased pay rate can be found in court decisions.

According to a decision of the Supreme Court of Georgia on 31 July 2015, parties agreed on overtime compensation of 20% of the pay rate on working days and 25% on holidays. The court has ruled that the amount complies with the law. However, it declined a claim related to overtime compensation, based on the absence of factual and legal grounds.

On 27 May 2015, the court found that compensating overtime at 1.5 times the pay rate – determined by a collective agreement – complies with the law.

A Supreme Court case on 10 April 2014 focused on whether the single pay rate, not the increased pay rate, is acceptable for overtime compensation.

The Appeal Court ruled that the single rate should suffice despite the conflict between what the employee requested and what is prescribed in the Labor Code. The Supreme Court has not discussed or modified the decision. Thus, there is some question about whether the employee has the autonomy to request overtime compensation below the minimum defined by the Labor Code.

On 29 September 2010, the Supreme Court did not admit a claim, but it did note that the Appeal Court was incorrect when it said overtime should not be compensated if the employee worked on holidays without a prior agreement with the employer.

The Supreme Court clarified that whether the employee was actually working on holidays should be determined. It has not discussed whether the employee should notify the employer about the necessity of overtime.

Lack of clarity

The Labor Code does not clarify how much additional time off an employee should receive for overtime, and case law does not exist in this area.

Article 14(1) of the Labor Code says working time in enterprises that have operating conditions requiring more than 8 hours of uninterrupted production or work processes should not exceed 48 hours a week, not including breaks and rest time. The ordinance of the Government of Georgia lists the industries with such operating conditions.

But the Labor Code defines neither the overtime threshold nor the minimum compensation. So it's unclear whether overtime work begins beyond 48 hours or beyond 40 hours. Questions could also be raised about whether overtime compensation for such work should be the same as for normal work.

The court system and the outcome of labor litigation could help fill these gaps and answer questions related to the Labor Code.

George Svanadze

george.svanadze@ge.ey.com

Elene Sul Khanishvili

elene.sul khanishvili@ge.ey.com



Germany



Dr. Karsten Umnuss

Overview of wage and hour law

Employers must take care to observe the provisions of the German Working Hours Act (*Arbeitszeitgesetz*) and the German Law on Minimum Wage (*Mindestlohngesetz*). Accompanying regulations, such as CBAs, may also apply.

Working time

According to the German Working Hours Act, the maximum working time is 48 hours per week or 8 hours per day. Working days are from Monday to Saturday.

Exceptions allow up to 10 hours per day if the average over 6 calendar months does not exceed 8 hours per day.

Under the Working Hours Act, an employee is entitled to a 30-minute break if working 6 to 9 hours and a 45-minute break if working more than 9 hours. The rest time can be split into segments of at least 15 minutes. There is a mandatory break after six hours, at the latest.

After finishing work, the employer is entitled to at least 11 hours of uninterrupted rest.

On-call service

There are two types of on-call service.

With one, employees must remain at their workplace, or at a place chosen by the employer, so they can start working as soon as they are asked (*Bereitschaftsdienst*).

With the other type of on-call service, employees can stay anywhere as long as they can start work when requested (*Rufbereitschaft*). They must remain reachable via mobile phone or beeper.

In contrast with *Bereitschaftsdienst*, which is considered working time under the Working Hours Act, *Rufbereitschaft* is rest time that is interrupted on demand.

Travel time

A distinction must be made between time spent commuting or traveling and time spent working.

- ▶ **Commuting time** relates to all distances covered during regular working hours for business reasons – on or off the premises – within the boundaries of the district where the business is located.
- ▶ **Traveling time** relates to journeys outside the boundaries made on the employer's instructions, irrespective of the working hours applying to the business.

It is questionable whether commuting time and traveling time are considered working time within the Working Hours Act. The answer depends largely on the destination, and whether the travel is closely connected to work (e.g., for salespeople) and directed by the employer.

A journey to and from the regular workplace (commuting time) cannot be claimed as working time, so the employer is not obliged to pay the employee for the everyday trip to the office.

Journeys to and from external assignments (traveling time) where the travel is closely connected to the work or is directed by the employer are considered working time that must be compensated. The amount can vary from regular remuneration as governed in a separate agreement.

Overtime

Generally, the employer must pay for any overtime served in its interest, at its request or at least with its knowing tolerance.

Some employees have regular remuneration that exceeds the respective contribution ceiling in the statutory pension scheme. Others, such as attorneys, render "highly valued" services. For these

employees, any overtime work can be deemed as compensated with regular remuneration. For other employees, only a specific number of overtime hours – a threshold that should be stated clearly – may be deemed compensated within regular remuneration.

Night and shift work

Night and shift work is allowed under appropriate working conditions.

Night work is served for two to eight hours during nighttime (11:00 p.m. to 6:00 a.m.).

Night workers are employees who normally work during the night in rotating shifts, or on at least 48 days per calendar year, because of how their working time is organized.

Shift work is characterized by several employees working one after the other in compliance with a work schedule repeated in regular intervals.

Minimum wage

As of 1 January 2017, the minimum wage has risen to €8.84 gross per hour. Minimum wages are also often fixed by CBAs in different industries. With certain exceptions, all employees over age 18 are entitled to minimum wage, whether for part-time work, full-time work or marginal employment.

Dr. Karsten Umnuss

karsten.umnuss@de.ey.com

Lisa Bornemann

lisa.bornemann@de.ey.com



Maria Rigaki



Focusing on compliance to promote hiring

The Greek employment market is facing severe stress because of high unemployment, especially among young people. Labor authorities are focusing intently on compliance with working-hour legislation to urge employers to hire people rather than using overtime to meet their operational needs.

Under Greek labor law, working hours include *contractually agreed working hours* and *legal working hours*:

- ▶ The National Collective Labor Agreement of 14 February 1984¹ sets the contractually agreed working hours of all employees at 40 hours per week for companies that occupy their personnel for either 5 or 6 days per week.
- ▶ The legal working hours are the maximum working hours permitted by law – 9 per day and 45 per week for companies that occupy their personnel for 5 days, and 8 per day and 48 per week for companies that occupy their personnel for 6 days.

Overwork vs. overtime

Work that exceeds the contractually agreed working hours – i.e., 40 per week – but not the legal working hours is considered overwork. In a 5-day system, employees can be occupied for 5 hours per week in excess of the contractually agreed 40 working hours (overwork from the 41st to the 45th hour). In a 6-day system, they can be occupied for 8 additional hours per week (overwork from the 41st to 48th hour).

Overwork must be compensated with a 20% supplement of the hourly wage, with no further reporting requirements.

Work that exceeds the legal working hours – i.e., 9 hours per day – is considered overtime. Overtime work must be remunerated with a supplementary amount that depends on whether the overtime work is legal or illegal.

What makes it legal?

Overtime is considered legal if:

- ▶ It does not exceed the limits set by law – 2 hours per day and 120 per year (overtime work beyond the yearly

limit requires a permit from the Greek Ministry of Labor).

- ▶ It is reported in the Overtime Book before the employee performs it
- ▶ Each employee's overtime hours are reported in the online system of the Ministry of Labor within the first 15 days of the month following the one when the work occurred

For legal overtime, the remuneration is:

- ▶ The hourly wage, supplemented by 40% for the first 120 hours per year
- ▶ The hourly wage, supplemented by 60% for work beyond 120 hours

For illegal overtime, the remuneration is the hourly wage, supplemented by 80%. Even if the employee is paid for illegal overtime, the employer still faces liability for non-compliance with reporting requirements.

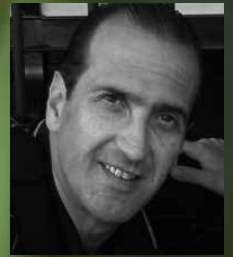
Conclusion

Monitoring overtime creates extensive reporting obligations and places a heavy administrative workload on human resources teams, taking time from more valuable functions.

1. In some cases, sector collective labor agreements may provide for a slightly different contractually agreed working hours schedule.



Guatemala



Oscar A. Pineda Chavarría

New labor framework is taking shape

The Congress of the Republic of Guatemala recently issued Decree No. 2-2017 to ratify Convention No. 175 of the International Labor Organization, which provides a legal framework for jurisdictions – such as Guatemala – with no specific legislation regulating part-time and hourly work.

Lacking such a regulation, Guatemala had to rely on the definitions of the workday in the Political Constitution of the Republic and in the Labor Code.

Article 102(g) of the Constitution establishes that: “Those who, by law, by custom or by agreement with employers, work less than 40 hours a week daytime, 36 in a night shift or 42 in a mixed day shall be entitled to receive full weekly wages.”

This definition indicates that the ordinary workday is full time, but that a shorter day still confers the right to payment of a full minimum wage.

The constitutional article is developed further in Article 120 of the Labor Code: “Permanent workers who, by legal provision or by agreement with employers, work less than 48 hours a week ... are entitled to receive in full the salary corresponding to the ordinary daytime week.”

Clashing ideas

Clearly, there is a collision: the legislation somehow regulates part-time and hourly work, but it also protects the right of workers to receive full wages even when they work part time.

Despite that discord, part-time work and hourly work are common in Guatemala. But a problem can arise when part-time labor relations are terminated. The worker, citing the articles indicated, could complain to a labor judge about the readjustment of salary and benefits.

Before Convention No. 175 was ratified, such workers also lacked access to social security plans, since they did not earn the minimum wage required by the Guatemalan Social Security Institute to be enrolled as covered employees.

Two approaches

There are two approaches to this current state.

The first holds that the convention modifies the regular day shift and establishes a reduced version, making it necessary to carry out reforms. That would mean repealing Article 102(g) of the Constitution and Article 120 of the Labor Code to make the ratified convention operative and effective.

The second holds that the convention establishes an entirely new workday for part-time and hourly work. Thus, no modifications are needed, and the new part-time workday is immediately applicable once the legal approval process is complete.

The author’s opinion is consistent with the second approach.

Benefits of the convention

The adoption of Convention No. 175 brings the part-time and hourly workforce into a legal framework, with benefits such as access to social security plans.

Nonconforming sectors that opt for the first approach will present the relevant legal challenges, and the Constitutional Court will have the last word.

We hope that the final result will be the recognition of a new type of workday that fully incorporates the part-time workforce. Such a move would:

- ▶ Stimulate the economy
- ▶ Provide legal certainty to the parties involved and to companies that wish to base their operations in Guatemala
- ▶ Establish the conditions necessary to formalize a key part of the country’s labor reality

Oscar A. Pineda Chavarría

oscar.pineda@integralelegal.net



Harry Lin



Hong Kong

Working hours and wage law

Hong Kong has long trailed many other jurisdictions with adopting minimum wage legislation or standard working hour protection.

The labor sector has traditionally maintained a competitive advantage because employment laws allow for considerable flexibility.

In recent years, however, the labor sector has shown increased support for improving employee rights and benefits through legislation related to minimum wage and standard working hours.

Minimum Wage Ordinance

The Minimum Wage Ordinance (MWO, Cap. 608) was first enforced on 1 May 2011. The initial statutory minimum wage was HK\$28 per hour (around US\$3.70).

Since then, the minimum wage has been reviewed every two years. On 1 May 2013, it rose to HK\$30 (US\$4). On 1 May 2015, it increased to HK\$32.40 (US\$4.33).

The next increase – to HK\$34.50 (US\$4.60) – is set for early May 2017.

The MWO applies to all Hong Kong employees, regardless of whether they are hired on a “continuous contract,” as defined under Cap. 57.

However, some classes of employees are exempt, such as those engaged under an apprenticeship contract, foreign domestic helpers, student interns and work experience students during exempt student employment.

Employers that fail to pay the statutory minimum wage can be fined HK\$350,000 and imprisoned for up to three years.

Working hours

Hong Kong has no legislation addressing standard working hours.

According to a 2016 report, the average working week is 50.1 hours – the most of 71 cities in the world.¹

According to the *Report of the Policy Study on Standard Working Hours*, published by the Labor Department in June 2012, nearly 85% of the workforce exceeded 40 hours a week.

To achieve reasonable working hours, promote work-life balance and protect occupational safety and health, the Hong Kong Government set up a Standard Working Hours Committee (SWHC) in April 2013 to study regulating standard working hours.

The SWHC was originally expected to submit its first report in November 2016, but was given a two-month extension.

The working hours policy has received mixed reviews from the public. And the Government is under immense pressure to finalize it before Chief Executive Leung Chun-ying’s term ends in March 2017.

The SWHC submitted its report² to the Chief Executive on 27 January 2017, with these major recommendations:

- ▶ Mandating that employers enter into written contracts with lower-income employees, including terms on working hours and overtime compensation

- ▶ Setting up industry-based committees to engage with sectors that have relatively long working hours, with an eye toward formulating sector-specific guidelines
- ▶ Setting up a system to monitor implementation of the recommendations on a two-year basis

It is unclear when these changes will roll out.

Conclusion

Despite the latest developments, Hong Kong still has a long way to go on employee rights and benefits.

Protections afforded to employees in many other jurisdictions remain quite foreign to Hong Kong.

The Labor Department has only recently contemplated “equal pay for equal work” to narrow the gender pay gap.

As long as labor market flexibility is protected through the parties’ freedom of contract, it will be up to employers and employees to negotiate employment terms that protect workers’ rights and benefits.

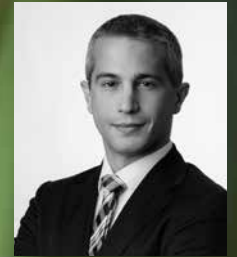
1. “HK has the longest working week of 71 cities,” *China Daily*, http://www.chinadailyasia.com/hknews/2016-05/25/content_15439024.html, accessed on 16 February 2017.

2. *Executive Summary of the Report of the Standard Working Hours Committee*, http://www.swhc.org.hk/en/SWHC_Report_ES.pdf, accessed on 16 February 2017.

Renee Mark
renee.mark@laa.hk



Hungary



Gabor Jagicza

New form of performance-based compensation

Employee Share Ownership Scheme

Under Hungarian law, the Employee Share Ownership Scheme (MRP) is intended to serve as an advantageous motivational tool for employers. The legal framework introducing the MRP was established over two decades ago, but the scheme has not entirely lived up to its promise.

As a result, the legislator decided to overhaul the structure and introduce the remuneration MRP, a securities-based approach that offers a highly favorable tax treatment compared with traditional bonus schemes.

Setting up an MRP

To apply the scheme, companies must set up an MRP organization and register it with the competent ordinary court. The group acts as an intermediary between the founder of the MRP organization (the employer) and those who receive remuneration.

The founder can be a foreign or Hungarian company, but it must be entitled to issue securities. The founder can provide the registered capital of the MRP organization as a cash or in-kind contribution.

If the employer provides cash, it also becomes a member of the organization. If the employer makes in-kind contributions (i.e., securities), only the employee participants become members.

An MRP organization has its own independent managers who are excluded from the incentive: an authorized representative (proxy) and executive officer(s).

Potential beneficiaries

MRP participants can be employees or executive officers of the employer or of companies over which the employer has direct or indirect majority control.

An MRP remuneration policy must be prepared that specifies the performance criteria for participants. The criteria are based on measurable corporate KPIs, as well as other KPIs.

If participants fulfill the KPIs, they are entitled to either securities or cash from the redemption or sale of securities through the MRP organization.

Advantages

With MRPs, employers and employees benefit from favorable taxation. A total cost saving of 39% can be achieved, and employees may receive 64% higher net income at the same employer cost level.

Comments

MRPs can be used by a wide range of companies from almost all industries. In 2016, the largest companies introduced the scheme, including banks and businesses in the telecommunication, construction, agricultural, transportation and energy sectors.

Ivan Sefer

ivan.sefer@hu.ey.com

Gabor Jagicza

gabor.jagicza@hu.ey.com



Anirudh Mukherjee



Employment of women in night shifts

Female employees are furthering India's economic development in equal proportion to their male counterparts, so gender parity is quintessential to all facets of employment, including recruitment, pay, growth and work conditions.

The current law on the employment of women for night shifts is contained in the Factories Act of 1948 and the relevant shops and establishments (S&E) acts, which vary by state. Under Section 66(1)(b) of the Factories Act, factories can employ women in shifts between 6:00 a.m. and 7:00 p.m. Employers can obtain exemptions, but in no event are women allowed to work between 10:00 p.m. and 5:00 a.m.

Similarly, under most S&Es, shops and other commercial establishments cannot have women work between 9:00 p.m. and 7:00 a.m. during summer and between 8:00 p.m. and 8:00 a.m. during winter. Some states provide exemptions to certain establishments, such as hospitals, and to women in management positions.

Government initiatives

As more and more women join the workforce, the Indian Government has taken multiple initiatives to encourage their employment, including introducing the Model Shops and Establishments (Regulation of Employment and Conditions of Service) Bill, 2016 (Model S&E). States such as Andhra Pradesh and Telangana have, subject to certain conditions, permitted categories of establishments to place women in night shifts.

The Model S&E seeks to protect women from discrimination in recruitment, training, transfers, promotions or wages. It contains provisions to enable women to work night shifts if the employer provides shelter, a respite room, a night crèche, a women's toilet, door-to-door transportation and security. The Model S&E also restricts shifts (including the rest interval) to a maximum of 10.5 hours (12 hours if the work is urgent or intermittent).

States are not required to adopt the Model S&E. They can also align their existing S&Es with it or retain their S&Es.

What the judiciary says

A similar approach to using women for night shifts at factories has also found favor with the Indian judiciary. Several high courts, including Gujarat and Madras, declared Section 66(1)(b) of the Factories Act to be beyond the powers of the Indian Constitution. The courts held that it is incumbent on the employer to take safety and security measures, including transportation, for female employees who work night shifts.

Following the judiciary's lead, the Maharashtra Government amended the Factories Act within its state to allow women to work night shifts, contingent on adequate security.

The Central Government has introduced the Factories (Amendment) Bill, 2014, which seeks to allow women to work night hours in a factory if they consent and if the employer adds adequate safeguards. The bill awaits approval from Parliament.

What employers should do

Employers operating shops or other commercial establishments in states that have not aligned their S&Es with the Model S&E must comply with the relevant S&E and apply for specific exemptions if they intend to engage women in night shifts.

Employers can make a good case for an exemption if they engage in these leading practices, based on an analysis of some of the exemptions granted:

- ▶ Obtain consent from female employees to work night shifts
- ▶ Provide a transportation facility with proper security
- ▶ Contractually agree to give night shift allowances to employees
- ▶ Provide a separate well-lit washroom for women, a night crèche, shelter, etc.
- ▶ Fully comply with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Anirudh Mukherjee

anirudh.mukherjee@pdslegal.com

Ankita Jain

ankita5.jain@pdslegal.com



Italy



Stefania Radoccia

An overview of wages and working time

According to Article 36 of the Italian Constitution, "Any worker is entitled to a remuneration which should be proportionate to the quantity and quality of his efforts and which, in any case, should be capable of granting the employee and his family the chance to conduct a free and decent existence." This provision defines the principle of "just remuneration."

Any salary should take into account the complexity, responsibility and competence required to fulfill the job tasks. The salary also serves the fundamental function of emancipating employees from need, allowing them to exercise fully their civil and political rights.

How are wages set?

The primary actors in wage determination are the collective parties. Establishing standard labor costs has traditionally been one of the main matters agreed upon collectively.

Individual parties in the employment relationship can negotiate a pay rate above

the collective standards for the relevant job task (the *superminimo*). In practice, employers tend to offer higher salaries to attract employees with remarkable skills and experience.

Case law shows a wide range of determinations on just remuneration. Considerable adjustments are provided above the pay rates set by collective agreements, in view of the specific circumstances (employee or employer conditions, job market in the area, etc.).

Working time and overtime

The organic legislation of working time is provided in Legislative Decree No. 66/2003. This regulation is aimed at striking a balance between protecting employees' fundamental rights and enhancing organizational flexibility.

Article 3 sets "normal" time at 40 hours per week. The decree defines overtime (*lavoro straordinario*) as work performed beyond normal time. Given the limitations set by Article 4 – a maximum of 48 weekly hours, including overtime – it is up to collective agreements to provide specific regulations.

In the absence of a collective regulation, the law lays out two subsidiary provisions:

- ▶ The sides can agree to up to 250 hours of overtime.
- ▶ The employer can unilaterally mandate overtime under certain circumstances.

Reduced work schedules

Italian employment law also provides for reduced work schedules. The oldest form is represented by the part-time work contract, regulated by Legislative Decree No. 81/2015 (which replaced Legislative Decree No. 61/2000).

Part-time employment contracts have three forms:

- ▶ "Horizontal," with a reduction in the daily work schedule
- ▶ "Vertical," a full daily schedule restricted to predetermined periods during the week, month or year
- ▶ "Mixed," a combination of the other forms

Stefania Radoccia

stefania.radoccia@it.ey.com



Junya Kubota



Inspections uncover violations of overtime rules

From April to September 2016, the Labor Standards Inspection Offices (LSIOs) conducted special inspections of workplaces suspected of violating limits on working hours – specifically, having employees work more than 80 hours of overtime per month.

In a report released on 17 January 2017, the Japanese Government said the LSIOs inspected 10,059 workplaces and found 6,659 labor standard violations (66.1%). Among those, 4,416 had employees work overtime illegally, 637 did not pay statutory overtime allowance and 1,043 did not take the required measures to protect workers' health from long hours.

The LSIOs have clearly sharpened their focus on long working hours. In 2015, they conducted similar special inspections of places where employees were working more than 100 hours of overtime per month. And recently, criminal investigations related to long working hours have reportedly targeted some major corporations.

What the law says

Under the Labor Standards Act (LSA), employees cannot work more than 40 hours per week or more than 8 hours per day for each day of the week (except for managerial positions).

The employer can extend working hours if it has a written agreement with:

- ▶ A labor union organized by a majority of workers (in cases where a union exists)
- ▶ A person representing a majority of workers (in cases where no union exists)

The employer must notify the relevant government agency of the agreement – known as a “36-agreement” because it is executed under Article 36 of the LSA – and must pay an overtime work allowance that cannot be less than what the LSA stipulates. The 36-agreement must specify why the overtime is necessary and the length of the extra working hours.

The administrative notice from the relevant agency stipulates the maximum extra working hours (e.g., 45 per month and 360 per year). In temporary and extraordinary circumstances, an employer can exceed the limits by having a special clause in the 36-agreement.

The Government's report says the 4,416 workplaces with illegal overtime included employers that did not have 36-agreements or that exceeded limits set in 36-agreements.

How violations are punished

If an employer had employees work overtime without a 36-agreement or beyond the limits set in a 36-agreement, a natural person who is in charge of human

resources could be imprisoned, with required labor, for up to six months or fined up to JPY300,000. The employing entity itself could also be fined up to JPY300,000.

Unpaid statutory overtime allowance must be paid with interest, and courts may order an employer to make an additional payment of that identical amount. If a worker suffers illness due to long working hours, the employer might have to pay damages. Although (mandatory) Industrial Accident Compensation Insurance would apply first, those payments are unlikely to cover all damages, especially if a worker died or was disabled.

More stringent regulations possible

The Government reportedly plans to submit a bill to Congress to amend the LSA by tightening the rules for long working hours, including setting a clear maximum and strengthening criminal punishment.

Employers should be aware of not only the current regulations but also the planned amendments, which could take effect soon. Even without the amendments, more stringent enforcement is expected.

Junya Kubota

junya.kubota@jp.ey.com



Mexico



Diego E. Gonzalez Ramos

Efficiency: work shift vs. salary

In Mexico, companies that improve the efficiency of work shifts by adopting the limits allowed under the Labor Law could reap benefits that include reducing or eliminating overtime pay.

Mexico has three types of work shifts:

- ▶ Diurnal, between 6:00 a.m. and 8:00 p.m., with a maximum length of eight hours
- ▶ Night, between 8:00 p.m. and 6:00 a.m., with a maximum length of seven hours
- ▶ Mixed, with a maximum length of 7.5 hours and no more than 3.5 hours of night work

Employees must be given at least 30 minutes to rest during their work shifts, which will be considered working time if they cannot leave the workplace. They are also entitled to one rest day for every 6 workdays, so the maximum working week is 48 hours for diurnal, 42 for night and 45 for mixed.

Overtime

Shifts can be extended by three hours a day up to three times a week. These hours are considered overtime and must be paid at twice the economic cost of a single regular hour. If an employee works more than nine hours of overtime in the same week, that time must be paid at three times a single regular hour. The company could be fined for exceeding the legal limit for overtime.

Overtime must be authorized by the company; otherwise, employees might extend their shifts at will to receive higher pay.

Work during rest days

Work during rest days, whether weekly or mandatory, is a separate concept from overtime, with a different treatment.

Weekly rest is a day when the employee does not go to the workplace but receives a salary payment per every six working days. The purpose is to preserve the worker's mental and physical health.

Mandatory rest days are granted on the main national holidays. Employees are not entitled to claim a worked rest day as overtime, and the payment is calculated differently. A worked rest day must be paid at double the cost of an ordinary working day.

Wages

As long as the minimum wage for a daily shift is respected, the employee and the employer are free to agree on a salary amount. Salary can be set per unit of time, as long as payment is established for every hour of work and the shifts do not exceed their limits. But these agreements are rare, as the salary must be superior to the daily minimum wage. It is more convenient for companies to base salaries on a complete work shift rather than an hourly shift.

What companies should do

Having an efficiently distributed weekly work shift avoids repeated extensions and minimizes overtime, reducing the company's costs. Companies should always meet their work needs but avoid overtime when possible, since it represents double or triple costs and could result in fines if used repeatedly or excessively.

Overtime should not be confused with work during rest days. If an employee is scheduled to work from Monday to Saturday but is needed at work on Sunday, the extra hours do not constitute overtime.

Employers should also evaluate the payment methods allowed by the Labor Law, including salary agreements, to select the one that best suits their needs.

Diego E. Gonzalez Ramos

diego.e.gonzalez.ramos@mx.ey.com



Joost van Ladesteijn



Netherlands

Min-max contracts

One of the most common employment contracts for the contingent workforce in the Netherlands is the “min-max” contract. Parties agree on a certain minimum and maximum number of working hours per period.

In principle, the employee is entitled to the salary of the minimum guaranteed working hours.

Parties can deviate from the salary payment obligation during the first six months of the contract if the employee has not performed work (e.g., because no work is available). If asked, the employee is obliged to exceed minimum working hours but not the agreed maximum.

Strict rules

This arrangement provides a flexible system of applicable working hours and wage payment. But it is also governed by strict rules:

1. During the first six months, parties may derogate from the salary payment obligation, to the employee's detriment, through a written contract or a scheme made by or on behalf of a competent administrative authority.

After six months, the employer is obliged to pay the salary for the minimum working hours, even if the employee has not carried out the

work. The six months may be extended through a collective labor agreement or a scheme made by or on behalf of a competent administrative authority for jobs specified in the agreement or the scheme, provided that the activities are of a one-off nature with no fixed scope.

2. At a certain point, the employee may invoke the presumption of working hours. This measure aims to protect employees if their total working hours have not been clearly defined or if they frequently work more than the contracted minimum.

An employee's contracted working hours in any month are presumed to amount to the average monthly hours worked over the preceding three months, provided that the employment contract has lasted at least three months (or any more representative period, e.g., one year).

Based on case law, employees with a min-max contract could successfully claim that their minimum working hours should rise to the higher average number of working hours.

Consequently, they are also entitled to a prorated higher wage.

The increase in minimum working hours will, in principle, not exceed the maximum hours set in the contract.

An illustrative example

The following example illustrates the possible consequences of a min-max contract.

The parties agreed to 15 to 30 working hours a week. The employee is entitled to be paid for at least 15 working hours per week. If the employee has regularly worked 27 hours a week for 3 consecutive months, the employee can claim that the contracted minimum working hours should change to 27 per week, starting with the 4th month (with retroactive effect).

Consequently, the employee is entitled to a salary based on 27 hours.

What to do

The min-max contract can be a smart way to manage contingent workers, but the above-mentioned legal principles may counter the envisioned flexibility.

Therefore, it is imperative to:

- ▶ Set a reasonable minimum number of hours, matched to the work available
- ▶ Assign the employee to work the minimum as much as possible
- ▶ Monitor the pattern of actual working hours

Joost van Ladesteijn

joost.van.ladesteijn@hvglaw.nl

Emilie Boot

emilie.boot@hvglaw.nl

New Zealand



Christie Hall

Wage and hour law

A number of laws govern wage and hour conditions for New Zealand employees.

Minimum wage

The Minimum Wage Act 1983 sets out New Zealand's minimum wage provisions. The minimum gross adult hourly rate is NZ\$15.75 as of 1 April 2017. Beginning and training rates are paid at 80% of the full rate, and rates typically rise each year.

Payment of wages and salary

Under the Wages Protection Act 1983:

- ▶ Wages and salary must be paid in cash unless the employee agrees otherwise.
- ▶ The employer must pay the full amount, with no deductions the employee has not approved.

In practice, most employment agreements state that wages and salary will be electronically transferred into the employee's bank account. Most agreements also contain a general deductions clause that allows employers to deduct from an employee's pay in certain circumstances, such as an overpayment or a leave payment when the employee had no leave balance.

Recent amendments to the Employment Relations Act 2000 (ERA) require employers to consult with employees before they make a specific deduction pursuant to a general deductions clause.

Working hours

An employment agreement cannot set more than 40 hours per week (not including overtime) unless the employer

and employee agree. If both parties agree, there is no maximum number of working hours. Employers must provide a safe and healthy work environment, which includes managing fatigue.

Overtime

Hours worked in excess of the employment agreement are considered overtime. As long as employers meet health and safety requirements, there is no cap on how much overtime they can request.

Overtime does not require a higher pay rate unless an employee is working on a public holiday (when time and a half is paid). Some employers pay double time or time and a half, but they are not required to. Salaried employees may not be paid extra for overtime if their employment agreement states that their salary includes reasonable overtime. But employers should confirm that the hourly rate equivalent does not fall below minimum wage levels.

Availability and compensation

Recent amendments to the ERA prohibit "zero hour contracts" – where an employee must be available to work but is not guaranteed working hours and is paid only for hours worked.

An employment agreement must set out guaranteed hours of work, including the days when the hours will be worked, the start and finish times, and any variability on these features. When an employee is required to be available for additional hours, the employer must include an availability provision stating its genuine reasons for requiring the availability.

An employer must also offer "reasonable compensation" based on several factors, including:

- ▶ The number of hours the employee must be available
- ▶ How this compares with agreed hours
- ▶ The employee's usual pay rate
- ▶ Any restrictions on activities

For shift workers, employment agreements must specify a period of reasonable notice if a shift is canceled and establish a compensation payment if the required notice is not given. If the agreement lacks a notice period and compensation provision, the employee is entitled to full pay for any canceled shifts.

These amendments took effect on 1 April 2016 and have not yet been tested by case law.

Working on weekends

As long as employers observe shop trading restrictions on certain public holidays, they can require employees to work on Saturdays or Sundays, without higher pay. Some employees may be unable to work on certain days for religious reasons, and employers are expected to make reasonable accommodations.

Young workers

Employees under 16 may only be employed part time, as they are required to attend school. They cannot work during school hours or between 10:00 p.m. and 6:00 a.m.

Christie Hall

christie.hall@nz.ey.com

Renee Yoon

renee.yoon@nz.ey.com



Jane Wesenberg



Norway

Increased flexibility, but still strict regulation of working hours

In 2015, the Norwegian Government adopted a series of amendments to the rules on working hours and overtime in the Working Environment Act, with the intent of giving employers more flexibility in their workforce. The rules remain stringent, however, and employers should be aware of the limitations, because violations bring serious consequences.

Work in Norway cannot exceed 40 hours per 7 days or 9 hours per 24 hours, though several exceptions apply to both. The limits are laid out in the Working Environment Act, but additional restrictions can be set in employment contracts or CBAs. The statutory limit on the number of working hours cannot be waived in the employment contract.

Using a fixed average

Normal working hours may be calculated based on a fixed average. That means employees can exceed the limits for certain periods if they work correspondingly shorter hours at other times. The average hours worked in the agreed period must be within the statutory limits.

Using a fixed average requires a written agreement between the employer and the individual employee, or it must be part of a CBA. The Labor Inspection Authority can also grant dispensation to an employer to use a fixed average.

Overtime work and pay

Overtime is not permitted unless there is an exceptional and time-limited need. It cannot be used to satisfy a regular need for work capacity.

The Working Environment Act limits overtime per day, per week and per consecutive weeks. Some of these limits were amended in 2015:

- ▶ The general limit for overtime is 10 hours per 7 days, 25 hours per 4 consecutive weeks and 200 hours per 52 weeks. Total working hours (normal working hours plus overtime) must not exceed 13 hours per 24 hours or 48 hours per 7 days. The limit of 48 hours per 7 days may be calculated according to a fixed average over 8 weeks. However, total working hours cannot exceed 69 hours in any given week.
- ▶ In undertakings bound by a CBA, the employer and the employees' representatives may agree on extended overtime. In 2015, the limit was raised from 15 to 20 hours per 7 days, and from 40 to 50 hours per 4 consecutive weeks. Both sides can agree on an exception to the 13-working-hours-per-24-hours rule. But working more than 16 hours per 24 hours is prohibited.
- ▶ Upon application, the Labor Inspection Authority may permit overtime of up to 25 hours per 7 days (increased from 20 hours in 2015) and up to 200 hours over 26 weeks.

Overtime must be compensated with at least a 40% supplement to ordinary pay. CBAs often provide for more generous supplements.

The employee can agree with the employer to take time off in lieu of overtime on a one-to-one basis – i.e., one hour off for every one hour of overtime. However, the supplement of at least 40% must still be paid and cannot be compensated through time off.

Exempt from the rules

Many of the working-hour rules in the Working Environment Act, including those for overtime, do not apply to employees in managerial or particularly independent positions. These employees can exceed the limits and are not entitled to overtime pay. However, the working hours of all employees must be arranged to prevent physical or mental strain and to promote safety.

If a position is considered managerial or particularly independent, the employment contract should say so, and it should also state that any overtime pay is considered part of the ordinary salary.

Jane Wesenberg

jane.wesenberg@no.ey.com

Helene Hermansen

helene.hermansen@no.ey.com



Jose Ignacio Castro

A brief overview of wage and hour laws

Under Peruvian legislation, working time cannot exceed 8 hours per day or 48 hours per week unless the activities require alternative or accumulative workdays. In such cases, the average hours must not exceed the above-mentioned limits.

Employees must have at least a 45-minute meal break – time that is not included in the workday, except under an agreement between employees and the employer.

Overtime

All duties performed voluntarily beyond the work schedule are considered overtime. For the first two hours, the employer must pay 25% above the employee's hourly wage. After that, the overtime surcharge is 35%.

The employer must authorize the overtime, and it is advisable to use an authorization form that includes:

- ▶ The date
- ▶ The extra hours to be worked
- ▶ The reason for the overtime
- ▶ The signatures of the employee and supervisor

If the employer forces an employee to work overtime, it must pay a rate equal to 100% of the work hour value.

The amount of overtime must be registered in the payroll and on employee pay slips. The payment must be made at the same time as the regular salary.

Employees can enter into a written agreement with their employer to compensate overtime with days off. The compensation must be made within the following month unless the sides agree otherwise.

The Labor Authority can fine employers that do not pay the hours worked as overtime or do not follow regulations.

Exemptions for management

Management personnel and employees who are not under immediate supervision or who perform services intermittently, with inactive periods, are not subject to the employer's work schedule and, therefore, are not entitled to overtime payments. Such employees do not have to record their assistance in the Attendance Control Registry.

In accordance with Peru's labor laws, management personnel include those who:

- ▶ Represent the employer in front of employees or third parties
- ▶ Administrate or supervise activities
- ▶ Are responsible for the business
- ▶ Are not under immediate supervision and perform duties outside the workplace, either partly or totally

Minimum wage

The minimum wage is PEN850 (US\$257) per month. Employees hired under the part-time regime (no more than four hours per day) will receive a salary proportional to the hours worked.

Minimum-wage employees who work at night (10:00 p.m. to 6:00 a.m.) are entitled to an additional 35% of the minimum wage (US\$347 total). The overtime rate will be based on this percentage.

Recent ruling on workday

The Supreme Court recently recognized that the time workers take to change clothes or put on protective equipment is part of the employer's workday (Cas. Lab. 9387-2014).

Employees are at the employer's disposal as soon as they enter the workplace, and the employer can give them orders during this time. Therefore, those minutes must be included in the workday.

Although the decision is not mandatory, it states the court's criteria in this matter.

Jose Ignacio Castro
jose-ignacio.castro@pe.ey.com

Mariana Barreto
mariana.barreto@pe.ey.com



Michał Balicki



New requirements for remunerating civil law service providers

On 1 January 2017, an important amendment to the Act on the Minimum Remuneration for Work took effect.

Previously, Polish laws regulated only remuneration for employees. Nothing governed pay for personnel providing services on legal grounds other than labor laws, such as freelancers.

The new provisions seek to counteract the excessive use of civil law contracts and low pay rates for service providers. At the same time, the legislation imposes new obligations on entities benefiting from their services.

Establishing – and protecting – workers' minimum pay

The Act on the Minimum Remuneration for Work establishes a statutory minimum hourly rate for a service provider working under a civil law contract.

The hourly rate, to be indexed yearly, amounts to PLN13 (about €3) in 2017.

The legislation also introduces mechanisms for protecting minimum pay.

A service provider or freelancer hired for a period exceeding one month must be paid in cash at least monthly. Moreover, service providers cannot renounce their right to receive at least the minimum hourly rate and cannot transfer that right to another person.

The parties should specify the manner for confirming hours directly in the contract.

If the contract omits the information, the service provider should notify the other party of hours in written or electronic form.

The new requirements do not apply to all types of contracts with service providers.

The most important exception is when the service provider decides the time and place of work and is entitled only to a commission fee.

Parties to such arrangements are not obliged to observe minimum pay requirements.

Sanctions for non-compliance

The Act on the Minimum Remuneration for Work introduces sanctions for non-compliance.

A person who concludes a civil law service contract and does not observe minimum hourly pay standards could be fined PLN1,000 (about €232) to PLN30,000 (about €6,955).

The National Labor Inspectorate is responsible for controlling compliance with the regulations.

By applying strict rules to the remuneration of service providers, Polish legislature hopes to promote the use of employment contracts.

At the same time, the new legislation adversely affected businesses based on civil law, such as the security sector and facility management services. The cost of remuneration significantly increased, which may force companies to seek savings in other business areas or negotiate higher prices for services.

Michał Balicki
michal.balicki@pl.ey.com

Jakub.Kowal
jakub.kowal@pl.ey.com



Portugal



Rodrigo Serra Lourenço

Exemption from fixed working hours regime

The Portuguese exemption from the fixed working hours regime offers an interesting approach to working time limits and overtime costs.

It must first be noted that the name is deceptive. In fact, the exemption from the working hours regime serves mainly as a derogation of normal time limits, whereby employees are compelled to work additional hours when requested without the right to overtime pay. The exemption comprises three alternative methods to organize working time:

- ▶ Observing a work schedule that falls outside the weekly and daily time limits (rigid exemption)
- ▶ Permitting a limited increase in hours on any normal day (limited exemption)
- ▶ Allowing a virtually unlimited increase in working hours on any normal day (full exemption)

The last type, which is the most common, allows the employer to extend the employee's work schedule on any workday considered necessary, even without prior notice.

In return, the employee is entitled to a special monthly allowance worth no less than one hour of overtime per normal workday (paid at 25% over the normal rate).

The full exemption applies only to the normal workdays of the employees in question.

It was debated whether the full exemption was bound by the limit of 200 additional hours per year, after which overtime is illegal.

A decision by the Portuguese Supreme Court held that the limit does not apply to the full exemption. Therefore, work can be performed past that limit.

Considering the standard legal rate for overtime pay, the exemption from the working hours regime has proved cost-efficient.

Conditions for use

The exemption is permitted only when the work involves:

- ▶ Management positions or trust, or audit or support for those positions
- ▶ Preparatory or complementary jobs that can only be executed outside the normal working hour limits (e.g., cleaning and maintenance)
- ▶ Telework and other autonomous work outside the employer's facilities
- ▶ Other situations specified in CBAs

Although these requirements can be construed as restrictive, the regime is commonly used in some sectors.

One option to consider for justifying the exemption is the regular exercise of autonomous work outside the employer's facilities.

Although this rule has been applied to situations where employees spend most of their time traveling or performing external tasks without supervision, it is rather open-ended. All that's required is the regular exercise of autonomous work outside the employer's facilities.

The influence of technology

Work routines that are emerging in connection with new technologies – such as allowing employees to spend some of their time working from their households – are likely to widen the application of this regime.

Companies strongly support these trends because they see the benefits of a better work-life balance, as well as an opportunity to implement the exemption from the working hours regime.

Rodrigo Serra Lourenço
rodrigo.lourenco@rrp.pt



Nicoleta Gheorghe



Romania

Government increases minimum wage

As of 1 February 2017, the Romanian Government increased the gross minimum wage from RON1,250 (€277) to RON1,450 (€322) for a full-time average working program of 166 hours per month. It does not include bonuses or other benefits.

The hourly figure is RON8.735 (€1.95).

Employers that pay below the minimum may face administrative fines reaching RON2,000 (€440) for each non-compliant employment contract.

Employees can also claim in court any unpaid salary and damages suffered when the employer breached its obligations. A claim can be filed within three years of the date the employee was entitled to receive the amounts.

Standard working time

The Romanian Labor Code provides a standard working time of 8 hours per day and 40 hours per week for full-time employment contracts. For part-time contracts, the standard working week must be less than 40 hours.

As a rule, working time is distributed evenly – eight hours per day for five consecutive days. Flexible and unequal work schedules are also allowed.

Weekly rest

After 5 days of work, employees are entitled to a rest of 48 consecutive hours, usually on Saturdays and Sundays. For certain types of businesses or work cycles, where the activity may not be ceased during weekends, rest may be granted on other weekdays.

These special cases are acknowledged in the employer's internal rules or under CBAs.

Overtime

Work performed outside regular time, at the employer's request, qualifies as overtime. As a rule, working time, including overtime, cannot exceed 48 hours per week.

Exceptionally, working time can cross this threshold if the average working week during a reference period of 4 months does not surpass 48 hours.

According to the Labor Code, employers can also agree, through CBAs, on reference periods of 6 to 12 months, provided that they meet specific conditions.

Overtime requires the employee's consent, except for force majeure cases, or for urgent work meant to prevent accidents or overcome the consequences of accidents.

As a rule, overtime is compensated with free time within 60 calendar days. If that is not possible, the employee is entitled to an indemnity of at least 75% of the hourly gross base salary. Overtime is not permitted in part-time contracts.

Night work

Employees perform night work if they carry out at least three hours of work daily between 10:00 p.m. and 6:00 a.m. or they perform at least 30% of their monthly work between 10:00 p.m. and 6:00 a.m.

Employees performing at least three hours of night work per workday are entitled either to work one hour less per day (with no salary decrease) or receive compensation of 25% of the hourly gross base salary.

Annual paid leave

All employees are entitled to at least 20 days of annual paid leave. Unused vacation may be compensated with cash only when the employment contract is terminated.

Nicoleta Gheorghe

nicoleta.gheorghe@ro.ey.com

Anca Atanasiu

anca.atanasiu@ro.ey.com



Russia



Daria Zakharova

Parliament tightens salary payment rules

In turbulent economic times, Russian businesses occasionally delay salary payments. Parliament responded to this potentially destabilizing trend by amending several employment laws – all to hold employers accountable for payment delays. The revisions took effect in October 2016.

A new administrative violation

A new type of administrative violation was added to the Russian Code of Administrative Offenses (a summary of penalties for non-compliance with various areas of law). Non-payment or incomplete payment of salaries or other amounts resulting from employment relationships is now punishable by a fine up to RUR100,000 (about €1,600). The responsible company officers may also be barred from holding certain positions for up to three years, and the violation might qualify as a criminal offense.

Even law-abiding companies, such as Russian subdivisions of foreign multinationals, could suffer from the novelty. Besides salary, the new sanction refers to other amounts resulting from employment relationships – an addition that significantly broadens the area of application. For example, the Labor Code requires up-front payments for vacation time, no later than three days before

the vacation starts. In practice, many employers do not follow this requirement, simply paying the salary on established payment dates.

Timing of payments

The existing requirement to pay salaries each half-month is supplemented with an addition stating that *employers are required to pay salary to employees no later than 15 calendar days after the period for which it is assessed*. As minor as it seems, this amendment caused extensive discussions among human resources department heads and employment law practitioners at the end of 2016.

The reason for the anxiety is simple: under Russian law, salary includes base wages, compensatory payments (e.g., for work in the Far North) and stimulating payments, such as bonuses, which became the greatest area of concern.

A yearly bonus is hardly ever paid 15 days after year-end. Assessment, calculation and payment arrangements typically take 30 to 60 days.

Conflicting unofficial comments about the new requirement contributed to the confusion, but the situation has largely stabilized. The prevailing view is that bonuses are exempt from the 15-day requirement as long as the bonus policy envisages a different payment term.

More time to make claims

An extended limitation period is introduced for employee claims in connection with non-payment or incomplete payment of salary and other amounts.

Previously, the Labor Code established two types of limitation period: one month for claims related to unjust termination and three months for claims related to other employment rights.

Now, a one-year limitation period applies to salary-related claims. Given the broad interpretation of *salary* and *other payments*, this novelty significantly extends employees' opportunities to engage in court battles with employers.

Higher interest rate

An increased daily interest rate is established for late payments to employees. The previous reference was to 1:300 of the Central Bank's refinancing rate (currently a 10% annual rate) for a day of delay. That is replaced with 1:150 of the Central Bank's key rate (currently also 10%).

In light of these changes, we recommend that all companies operating in Russia review their salary practices, paying special attention to the accuracy of *other payments* made during the life cycle of an employment relationship.

Daria Zakharova
daria.zakharova@ru.ey.com

Oleg Shumilov
oleg.shumilov@ru.ey.com



Marijanti Babic



Wage and hour regulations

The Serbian Labor Law regulates wages and working time, with the latest amendments adopted in 2014. Adoption of new legislation appears unlikely in the near future.

Working time

As a general rule, 40 hours a week is considered standard full-time work. Internal employment-related acts can reduce the working week to 36 hours.

For jobs with increased risk – those that are particularly difficult or can harm the health of employees – full working time could decrease by up to 10 hours a week, depending on the risk assessed by relevant authorities.

The Labor Law limits overtime to 10 hours a week and daily work to 12 hours. Overtime work by health professionals may be regulated by a special law.

Reallocation of working hours

Employers can reallocate working hours if required by the seasonal nature of business activities.

With reallocation, the working week is limited to 60 hours. And the total working hours over six months cannot exceed the legal limit.

The reallocation can be extended and last nine months if stipulated under a CBA.

Employees can work beyond the mandatory limits only if they have consented to the excessive hours. Employee consent cannot be replaced by approval from the labor authorities.

With a reallocation, overtime work does not apply. But employees who agree to excessive hours are entitled to overtime pay. Reallocations cannot be used for employees in jobs with increased risk.

Wages

Employees are entitled to higher pay for:

- ▶ Work during state holidays – at least 110% of the base salary
- ▶ Night shifts – at least 26% of the base salary (provided that such work is not already factored in)
- ▶ Overtime – at least 26% of the base salary

Employees also receive compensation for years of service with the current employer – 0.4% of the base salary for each year.

The Serbian Government sets the minimum wage each year.

Leading practices

If employers violate the rules for wages and working hours, they could be liable for an offense and a fine, as well as a civil claim by employees.

Reallocation of hours should be used with seasonal work. In practice, the main issues with reallocations arise when years of service are calculated.

No clear practice has emerged for calculating years of service (especially if employment is terminated during the reallocation).

Depending on the nature of the seasonal work, companies should consider engaging additional contingent workers rather than reallocating hours.

Employers are free to provide beneficial rights that exceed the mandatory minimum.

Marijanti Babic
marijanti.babic@rs.ey.com

Sofija Stefanovic
sofija.stefanovic@rs.ey.com



Singapore



Jennifer Chih

Employment Act

The Employment Act (EA) (Cap. 91) is the principal legislation that governs Singaporean labor law, prescribing minimum rights, benefits and protections for employees. The EA covers all employees who are under a service contract, except seafarers, domestic workers, managers and executives with a monthly basic salary of more than SG\$4,500, and those employed by the Government or a statutory board. Foreigners who satisfy the criteria are also protected. It is not possible to contract out of the EA.

Provisions on rest days, working hours and overtime pay, among others, are set out in Part IV of the EA and apply only to:

- ▶ A workman (doing manual labor) earning a basic monthly salary of up to SG\$4,500
Or
- ▶ A non-workman who is covered by the EA and earns a basic monthly salary of up to SG\$2,500

A workman is generally someone whose work involves manual labor more than 50% of the time (Part IV employees).

For all other employees, rest days, working hours and overtime pay are a matter of contractual agreement.

Hours of work

For Part IV employees, maximum working hours, breaks and minimum overtime pay are regulated. Overtime is defined as all work beyond normal working hours (excluding breaks).

Subject to exceptions, an employee who works 5 days or less a week can have normal working hours of up to 9 hours a day and 44 hours a week. If the employee is required to work more than 5 days, the normal working hours are up to 8 hours a day and 44 hours a week.

Including overtime, employees cannot work more than 12 hours a day. Over a month, an employee can work up to 72 overtime hours. In limited situations, an employer can apply to the Ministry of Manpower for special approval.

Overtime pay

If employees – at the employer's request – work beyond their normal hours, they are entitled to overtime pay at 1.5 times the basic hourly rate. The overtime rate for non-workmen is capped at the salary level of SG\$2,250 or at an hourly rate of SG\$11.80. Overtime payments must be made within 14 days after the last day of the salary period.

Failure to pay an employee for overtime work is punishable by a fine of up to SG\$5,000. For subsequent offenses, employers can be fined up to SG\$10,000 or imprisoned for up to 12 months.

Progressive Wage Model

Singapore has not implemented a minimum wage for all workers, whether local or foreign. However, the Progressive Wage Model (PWM) was developed in 2014 as a productivity-based wage progression pathway that aims to increase the salaries of Singaporean permanent resident workers in the cleaning, security and landscape sectors through skills upgrades and productivity improvements.

The PWM imposes minimum salary requirements for different jobs in these sectors and is regulated by the licensing authorities for cleaning, landscape and security. Failure to fulfill these salary requirements can prevent employers from obtaining or renewing their licenses.

Jennifer Chih
jennifer.chih@pkw.com.sg



Robert Kovacik



Slovak Republic

Wage and hours: basic requirements

The rights to remuneration, adequate rest and working time limits are essential components of an employment relationship, enacted by the Constitution of the Slovak Republic and regulated by the Labor Code.

Certain working conditions for public administration employees are regulated by Act No. 553/2003 (as amended). Wage and working time requirements stipulated by the Labor Code apply to all employees, whether in public administration or in the private sector.

Working time

The working week of non-shift employees, or those who work on a single-shift pattern, cannot exceed 40 hours. If work is conducted in two shifts, the maximum is 38.75 hours. In a three-shift or continuous operation, the limit is 37.5.

A maximum of 33.5 hours applies to employees working with chemical carcinogens.

If the shift exceeds 6 hours, employees have the right to at least a 30-minute break for rest and food. Employees younger than

16 can work a maximum of 30 hours per week. Workers aged 16 to 18 can work 37.5 hours per week.

Overtime

The employee can agree to overtime work, and the employer can order it under statutory conditions. With certain exceptions, an employer can mandate overtime only to meet temporary and urgent increases in demand or to serve the public interest. Even then, the continuous rest between shifts cannot be less than eight hours.

The Labor Code caps overtime at 400 hours per calendar year. The employer can order the first 150 hours without the employee's consent (for the reasons stated above), but the next 250 must be the result of an agreement with the employee.

Employees are entitled to extra leave or overtime pay. They may agree that their monthly wage already includes compensation for up to 150 hours of overtime per calendar year.

Vacation entitlement

Employees are entitled to at least four weeks of paid vacation in a calendar year – five weeks when they reach age 33.

Wage and wage surcharge

The minimum wage is governed by a special regulation. Every year, the Slovak Government adjusts the wage for the following year. As of 1 January 2017, it is €435 per month and €2.5 per hour.

The minimum wage differs by profession and depends on the degree of difficulty, complexity and responsibility. Employers must assign a degree of difficulty to each position in compliance with criteria set by the Labor Code. The minimum wage entitlement is a multiple of the minimum hourly wage and the minimum wage coefficient. There are six degrees of work difficulty, and the coefficient varies from one to two.

Employees are also entitled to wage surcharges in circumstances set forth by the Labor Code:

- ▶ Overtime – at least 25% of average earnings
- ▶ Night work – at least 20% of the minimum wage
- ▶ Holiday work – at least 50% of average earnings, or extra leave if the employee agrees

Soňa Hanková

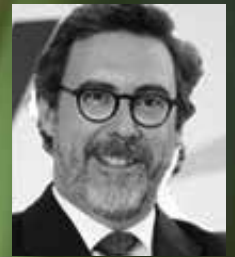
sona.hankova@sk.ey.com

Michaela Zahoráková

michaela.zahorakova@sk.ey.com



Spain



Raúl García González

Compensation of working hours

In Spain, working time is regulated by the following sources:

- ▶ The Workers' Statute, which sets minimum employment standards
- ▶ CBAs
- ▶ Each worker's employment contract

In this section, we will analyze the most important issues with working time and compensation.

Working time

The maximum working time is 40 hours per week (on an annual average). The employer is entitled to distribute up to 10% of working time irregularly during the year.

At least 12 hours must elapse between the end of one working day and the beginning of the next. Employees are entitled to minimum weekly rest time of 1.5 uninterrupted days.

They are also entitled to at least 30 natural days per year of paid holidays. Employers cannot substitute compensation for those. Night work is compensated as determined in the collective negotiation unless the employee's salary has been fixed based on the nature of the work or unless the sides have agreed to use rest time as compensation. Night work is defined as 10:00 p.m. to 6:00 a.m.

Overtime

The maximum overtime is 80 hours per year, restricted to full-time workers. Overtime work is voluntary.

Overtime performed to prevent or repair extraordinary and urgent damage does not count toward the 80-hour limit, but these hours will be paid as overtime.

Paid overtime counts toward the 80-hour limit, but not overtime compensated with rest time.

Overtime pay must at least equal the ordinary working hour or be compensated with time off.

In the absence of an agreement or provision in the CBA, overtime will be compensated with equivalent rest periods within four months of the work.

Mandatory recording

Employers must record all working hours. The Labor Inspectorate recently started a campaign to control working hours, and a court ruling on 4 December 2015 made it mandatory for all companies to record working hours.

Recording must occur daily – through an IT or handwritten system – and include the exact time when each employee enters and leaves the company. Before these strict controls, only factories, mills and plants recorded hours this way, not professional services companies. Now, the Labor Inspectorate can fine any employer that violates the recording obligation or exceeds working-hour limits.

Supplementary hours

Extra time performed by part-time employees – known as “supplementary hours” – is governed by a specific

regulation and is paid as ordinary time (not overtime).

Supplementary hours can be worked only under a written agreement with the part-time employee. They cannot exceed 30% of the workday, and only part-time employees whose weekly working time exceeds 10 hours, averaged annually, can work these hours.

Working on a bank holiday or during weekly rest

Under the Workers' Statute, employees are entitled to a maximum of 14 paid bank holidays per year. The national bank holidays are:

- ▶ Christmas
- ▶ New Year
- ▶ 1 May (work holiday)
- ▶ 12 October (national holiday)

If employees have to work on a bank holiday or during weekly rest based on technical or organizational grounds, they will be compensated with rest time or a 75% surcharge of the normal hour. The employer and employee have to agree on the compensation.

Conclusion

Companies must heed various regulations on working time. Because compensation varies based on the situation, employers should seek professional advice to comply with the law.

Gracia Rivas Hernández

gracia.rivashernandez@es.ey.com

Beatriz Reina Ibáñez

beatriz.reinaibanez@es.ey.com



Sylvia E. Grisel



Switzerland

Wage and working time

Two important topics currently occupy Swiss employers' mind: recording of working time and equal pay for women and men.

New recording rules

Depending on the business sector, weekly working time is capped by law at 45 or 50 hours.

Work beyond those thresholds is allowed only under limited conditions.

Restrictive regulations also apply to breaks, rest time, and night and Sunday work. To comply with these rules, employers are obliged to keep detailed records of hours worked each day and week, start and finish times, and any breaks taken by employees.

Given the ever-changing realities of working life and the difficulties that companies face in maintaining detailed records for certain employee categories with flexible work schedules, two new legal provisions have been introduced. These provisions, in effect since 1 January 2016, allow the record-keeping mandate to be waived to an extent.

According to Article 73a of Ordinance 1 on the Employment Act (EmpO 1), the recording requirement may be waived under a collective labor agreement if the employees satisfy these conditions:

- ▶ They have significant autonomy in their work and determine their own working hours
- ▶ They earn a gross annual salary of at least CHF120,000 or the relevant pro rata amount for part-time employees
- ▶ They have an individual written agreement to waive the requirement

In practice, the social partners must define which employee categories satisfy this condition when negotiating collective agreements.

Absent such an agreement, Article 73b of EmpO 1 provides that the employees' representative or a majority of company employees may agree with the employer to record only the daily hours worked by those who have significant discretion in managing their working hours. Only those free to determine at least one-quarter of their work schedule are eligible for simplified time recording. Negotiations will be held with a staff committee or an ad hoc project group before the simplified recording method is submitted to the workforce for majority approval.

Gender equality

Swiss law prohibits gender discrimination in the workplace, particularly with:

- ▶ Hiring
- ▶ Duty allocation
- ▶ Working conditions
- ▶ Pay
- ▶ Basic and continuing education and training
- ▶ Promotion and dismissal

The equal-pay principle has been set forth in the Federal Constitution for 35 years. Despite this, a wage disparity persists between men and women for equivalent work.

Therefore, the Federal Council has recommended stricter rules. A proposal calls for modifying the Federal Act on Gender Equality (GEA) to mandate regular salary analyses to assess discrimination in enterprises with 50 or more workers. These assessments would take place every four years – with a third-party review – and employees would be informed of the results.

The effort to modify the GEA should be complete in 2017.

Sylvia E. Grisel
sylvia.grisel@ch.ey.com



Turkey



Mehmet Küçükkaya

Working time and overtime: a closer look

The Turkish Labor Code (TLC) limits working time to 45 hours per week to prevent employees' health from deteriorating.

Those hours can be divided equally among the days of a week unless otherwise stated in an employment contract. If the employer and employee agree, the hours can be divided unequally, with a maximum of 11 hours a day.

Overtime regulations

Overtime – work that exceeds 45 hours a week – is allowed for purposes such as the general interests of the country and the need to increase production.

Employee approval is required, and total overtime cannot surpass 270 hours per year.

Overtime is subject to a pay increase of 50% over the regular hourly wage.

As an alternative, employees can ask that their overtime be paid as free time (1.5 hours for each hour). If the employer does not obtain the employee's written consent for overtime or neglects to make overtime payments, it could face a fine of TRY295 for each employee.

In practice, the terms of an employment contract can specify that overtime payment is part of the monthly wage. If a worker's overtime exceeds 270 hours in a year, however, the employee can request additional payment.

Weekly rest day and work on national holidays

Under the TLC, employees can take a rest of at least 24 uninterrupted hours (the weekly rest day) within a seven-day period. The employer must pay the daily wage for the unworked rest day.

The employment contract can regulate working on the weekly rest day or a national holiday. Otherwise, the employee's consent must be obtained.

Termination of employment agreement related to overtime

If a conflict arises regarding overtime hours, the employee has the burden of proof. According to Supreme Court precedents, payroll signed by the employee will be accepted as evidence. Recorded entrance and exit hours, internal correspondence and witness testimony can also be cited.

The nature of work will also be considered in overtime determinations.

If an employee has consented to overtime but refuses to work, the employer has cause to terminate the employment agreement.

On the other hand, the employee can terminate the employment agreement with valid cause if overtime exceeds 270 hours in a year.

Wage regulations

Under Turkish regulations, wages are paid in cash to the employee in return for work. In principle, the wage, the premium and other receivables can be paid into an employee's personal bank account. Wages must be paid at least monthly.

Minimum wage

The TLC stipulates a minimum wage to enhance the social and economic circumstances of employees. The Ministry of Labor and Social Security determines the minimum wage, which is TRY1,777.50 gross per month for 2017.

Conclusion

The TLC limits working hours to protect employees, and regulates fines for violations involving working hours and overtime. For conditions not regulated by the TLC, labor law practices and Supreme Court precedents prevail.

Mehmet Küçükkaya
mehmet.kucukkaya@tr.ey.com

Cansu Kurtkara
cansu.kurtkara@tr.ey.com



Halyna Khomenko



Ukraine

Labor regulations date back to the Soviet era

Wages, working hours, vacations and other employment matters are governed by the Labor Code of Ukraine, which was adopted under the Soviet Union in 1971. The Labor Code contains many restrictions because it was designed around the idea that employees need greater state protection than employers do.

Employers, for example, cannot engage certain categories of employees to work overtime or at night.

Working hours

The standard working week should not exceed 40 hours, with 8 hours a day.

An employer can set a five-day working week (with two days off) or a six-day working week (with one day off). In the latter case, the workday is limited to seven hours.

Regardless, employees are entitled to minimum uninterrupted rest of at least 42 hours per week and a daily lunch break of up to 2 hours. The length of lunch breaks is established by each company's internal regulations, and the most common practice is a one-hour break.

Nighttime work is generally permissible. The standard night shift should be one hour shorter than standard daily work. An employer cannot engage pregnant women and minors in nighttime work.

For some categories of employees, a CBA can establish irregular working hours if normal working time cannot be estimated. Such employees are entitled to an additional one to seven days of annual vacation.

Workdays before state holidays are one hour shorter.

Overtime

Employees can work overtime only in limited cases prescribed by law. An employee cannot exceed 4 hours of overtime during 2 consecutive days or 120 hours per year.

Overtime is paid at double the hourly rate and cannot be compensated with additional time off.

Payment of salary

An employee's salary should be paid in the national currency at least twice a month, with not more than 16 calendar days between payouts. If the payment date falls on a weekend, a statutory holiday or a non-working, the salary should be paid on the preceding day.

The law does not prohibit fixing the salary amount in a foreign currency and paying equivalents to employees in the national currency. Considering the long-standing unsteadiness of the Ukrainian currency, many employers link the salary amounts to one of the hard currencies.

On 1 January 2017, the statutory minimum monthly wage was doubled to UAH3,200.

Time off work

Annual vacation: employees are entitled to at least 24 calendar days of annual paid leave.

Sick leave: employees' are entitled to this, and the amount depends on job tenure and ranges from 50% to 100% of the average monthly salary.

Maternity and paternity leave: women are entitled to three years of maternity leave to care for a child following a vacation related to pregnancy and childbirth. Their jobs are preserved during the leave. Men can take three years of paternity leave (in full or in part) instead of the child's mother.

Legal developments

Parliament is currently considering a new draft Labor Code aimed at balancing employer-employee relations, harmonizing the law with EU requirements and addressing unsettled matters.

For example, the draft sets an employee's annual vacation at 28 calendar days, up from 24. The change is driven by provisions of the European Social Charter, to which Ukraine is a party.

Halyna Khomenko
halyna.khomenko@ua.ey.com

Olga Gorbanovskaya
olga.gorbanovskaya@ua.ey.com



United Kingdom



Justin Roberts

Broad definition of “worker” shapes policies

In the UK, working time, rest breaks and vacation time are regulated by the Working Time Regulations 1998 (WTR). The WTR implemented the 1993 European directive on working time, which has since been repealed and consolidated.

The WTR applies not only to those who work under employment contracts but also to those who work under any contract whereby they perform work or services for another party, as long as the other party is not a client of any undertaking carried on by the individual.

This wider classification of workers is increasingly significant. Individuals who work in the “gig” economy, and who were previously deemed self-employed, are now being considered workers by the courts and are gaining protections under the WTR.

Working time

In general, a worker's average working time should not exceed 48 hours over 7 days. This limit includes overtime as well as time worked for other employers.

Workers can exceed that limit in a week as long as their average weekly time, measured over the appropriate reference period, does not exceed 48 hours. The reference period varies by profession, but is typically 17 weeks. Exceptions to the 48-hour limit apply to certain sectors and types of workers.

The limit on average working time also does not apply if the worker has agreed in writing to work in excess of 48 hours. Such agreements must meet formal requirements and can be revoked by the worker with seven days' notice (unless the parties have agreed to a longer notice period, which cannot exceed three months).

Rest breaks

The WTR entitles workers to:

- ▶ A daily rest period of at least 11 consecutive hours
- ▶ A weekly uninterrupted rest period of at least 24 hours in each 7-day period (or 48 hours in a 14-day period, at the employer's election)
- ▶ An uninterrupted rest break of 20 minutes if daily working time exceeds 6 hours (this is to take place away from the worker's workstation)

Employees may have to work during what would otherwise be rest periods or breaks if they work in a certain sector, are a particular type of worker or are subject to a collective agreement that varies the rest entitlement.

Vacation time

The WTR provides for 28 days of vacation, including public and bank holidays.

There have been significant developments recently in how employees should be paid for vacation. Previously, pay was calculated based on the definition of a week's pay in the Employment Rights Act 1996. For

many employees, that did not include most elements of their variable pay.

Because of recent decisions by both European and UK courts, employers now must calculate vacation pay so it represents “normal remuneration,” with elements of variable pay, such as commissions, overtime, and some allowances and incentive bonuses.

Although the elements involved are clearer, uncertainty remains over how to calculate vacation pay, particularly what reference period to use when an employee has significant variable pay.

Post-Brexit considerations

Since the WTR implements a European directive on working time, it's uncertain how the WTR will be interpreted as the UK leaves the EU. Also unclear is what status ongoing decisions of the European courts will have.

In its white paper on Brexit, the UK Government said it: “will maintain the protections and standards that benefit workers. Moreover, this Government has committed not only to safeguard the rights of workers set out in European legislation, but to enhance them.”

Accordingly, significant change seems unlikely in the short term, though some divergence from the EU position is possible in due course.

Justin Roberts

jroberts4@uk.ey.com

Nick Logan

nlogan@uk.ey.com



Contacts for Labor & Employment Law services

For further information, please contact:

EY Global and EY EMEA Labor & Employment Law Leader

Roselyn Sands

Direct: +33 1 55 61 12 99
Mobile: +33 6 71 63 92 22
Email: roselyn.sands@ey-avocats.com

Angola

Ricardo Veloso
Email: ricardo.veloso@pt.ey.com

Albania

Jona Bica
Email: jona.bica@al.ey.com

Argentina

Jorge Garnier
Email: jorge.garnier@ar.ey.com

Australia

Catherine Quayle
Email: catherine.quayle@au.ey.com

Austria

Helen Pelzmann
Email: helen.pelzmann@eylaw.at

Azerbaijan

Arzu Hajiyeva
Email: arzu.hajiyeva@az.ey.com

Belgium

Malissa Begtas
Email: malissa.begtas@hvglaw.be

Brazil

Carlos A. Antonaglia
Email: carlos.a.antonaglia@br.ey.com

Bulgaria

Tanya Stivasareva
Email: tanya.stivasareva@bg.ey.com

Canada

Marie-France Chartrand
Email: marie-france.chartrand@ca.ey.com

Chile

Nancy Ibaceta Muñoz
Email: nancy.ibaceta@cl.ey.com

China (mainland)

Jane Dong
Email: jane-j.dong@cn.ey.com

Colombia

Carlos Mario Sandoval
Email: carlos.sandoval@co.ey.com

Costa Rica

Alberto Sáenz
Email: alberto.saenz@integralelegal.net

Czech Republic

Ondřej Havránek
Email: ondrej.havranek@cz.ey.com

Denmark

Julie Gerdes
Email: julie.gerdes@dk.ey.com

El Salvador

Irene Arrieta de Díaz
Email: irene.arrieta@integralelegal.net

Estonia

Hedi Wahtramae
Email: hedi.wahtramae@ee.ey.com

Finland

Riitta Sedig
Email: riitta.sedig@fi.ey.com

France

Roselyn Sands
Email: roselyn.sands@ey-avocats.com

Georgia

George Svanadze
Email: george.svanadze@ge.ey.com

Germany

Karsten Umnuß
Email: karsten.umnuss@de.ey.com

Greece

Maria Rigaki
Email: maria.rigaki@gr.ey.com

Guatemala

Oscar A. Pineda Chavarría
Email: oscar.pineda@integralelegal.net

Hong Kong

Harry Lin
Email: harry.lin@laa.hk

Hungary

Ivan Sefer
Email: ivan.sefer@hu.ey.com

India

Anirudh Mukherjee
Email: anirudh.mukherjee@pdslegal.com

Italy

Stefania Radoccia
Email: stefania.radoccia@it.ey.com

Japan

Junya Kubota
Email: junya.kubota@jp.ey.com

Kazakhstan

Borys Lobovyk
Email: borys.lobovyk@kz.ey.com

Labor & Employment Law Newsletter Coordinator

Sanjee Balas-Jayas

Direct: + 33 1 55 61 11 36

Email: sanjee.balas@ey-avocats.com

Lithuania

Julija Lisovskaja

Email: julija.lisovskaja@lt.ey.com

Mexico

Diego Gonzalez Aguirre

Email: diego.gonzalez.aguirre@mx.ey.com

Montenegro

Marijanti Babic

Email: marijanti.babic@rs.ey.com

Mozambique

Rodrigo Lourenco

Email: rodrigo.lourenco@pt.ey.com

Netherlands

Joost van Ladesteijn

Email: joost.van.ladesteijn@hvglaw.nl

New Zealand

Christie Hall

Email: christie.hall@nz.ey.com

Nicaragua

Santiago Alvira

Email: santiago.alvira@integralelegal.net

Norway

Jane Wesenberg

Email: jane.wesenberg@no.ey.com

Peru

Oscar Pineda

Email: oscar.pineda@integralelegal.net

Poland

Michał Balicki

Email: michal.balicki@pl.ey.com

Portugal

Rodrigo Serra Lourenço

Email: rodrigo.lourenco@rrp.pt

Romania

Nicoleta Gheorghe

Email: nicoleta.gheorghe@ro.ey.com

Russia

Daria Zakharova

Email: daria.zakharova@ru.ey.com

Serbia

Marijanti Babic

Email: marijanti.babic@rs.ey.com

Singapore

Jennifer Chih

Email: jennifer.chih@pkw.com.sg

Slovak Republic

Robert Kovacik

Email: robert.kovacik@sk.ey.com

South Korea

Jae Shik Kim

Email: jskim@kr.ey.com

Spain

Raul Luis Garcia Gonzalez

Email: raulluis.garciagonzalez@es.ey.com

Sweden

Paula Hogeus

Email: paula.hogeus@se.ey.com

Switzerland

Sylvia Grisel

Email: sylvia.grisel@ch.ey.com

Taiwan

Helen Fang

Email: helen.fang@tw.ey.com

Turkey

Mehmet Kucukkaya

Email: mehmet.kucukkaya@tr.ey.com

Ukraine

Halyna Khomenko

Email: halyna.khomenko@ua.ey.com

United Kingdom

Justin Roberts

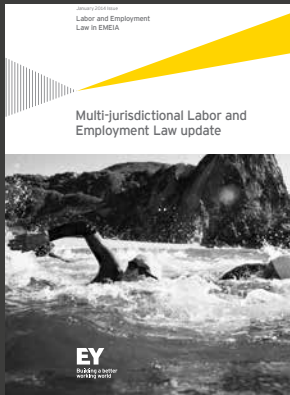
Email: jroberts4@uk.ey.com

Vietnam

Rod Cameron

Email: rod.cameron@vn.ey.com

Our recent publications



January 2014: Redundancies
To download the report, [click here](#).



June 2014: Flexibility in work
To download the report, [click here](#).



December 2014: Health and safety
To download the report, [click here](#).



April 2015: Discrimination in the workplace
To download the report, [click here](#).



July 2015: Restrictive covenants
To download the report, [click here](#).



December 2015: Dispute resolution
To download the report, [click here](#).



Spring 2016: The contingent workforce
To download the report, [click here](#).



Fall 2016 : Employment Law Challenges in Mobility and Posting of Workers
To download the report, [click here](#).



Spring 2017 : Wage & Hour Law
To download the report, [click here](#).

For more information, please visit the [EY Global Law website](#).



About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

EY member firms do not provide advice on US law.

© 2017 EYGM Limited.
All Rights Reserved.

EYG no. 01372-172Gbl

BMC Agency
GA 0000_09874

ED None



In line with EY's commitment to minimize its impact on the environment, this document has been printed on paper with a high recycled content.

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax or other professional advice. Please refer to your advisors for specific advice.

ey.com