

Legal Alert

December 2015

Amended provisions on work-time recording in Swiss companies

On 4 November 2015, the Federal Council decided to introduce two new articles - 73a and 73b, concerning the recording of working hours for employees - to Ordinance 1 of the Employment Act (EmpO 1).

From 1 January 2016, these new provisions, which apply to all companies in Switzerland, will enable the requirement to keep systematic and detailed records of employees' working hours to be waived to a certain extent.

The Employment Act and its ordinance oblige employers to keep detailed records stating the number of hours worked each day and week, work start and finish times and any breaks taken.

Given the ever-changing realities of working life and the difficulty experienced by companies in maintaining detailed records for certain employee categories with increasingly flexible work schedules, a consultation process for the draft revision of EmpO 1 was launched in 2012.

The text of the new provisions of the Ordinance was now approved by the Federal Council. They will enter into force on 1 January 2016.

Key changes

A. Exemption from timekeeping requirement (Art. 73a EmpO 1)

The requirement to record working time may be **waived** on the basis of a **collective employment agreement** if the employees concerned satisfy all of the following conditions:

- ▶ they enjoy a significant degree of autonomy in their work and, in the majority of cases, are able to determine their own working hours;
- ▶ they earn a gross annual salary of at least CHF 120,000 (including bonus) or the relevant pro rata amount for part-time employees;
- ▶ they have concluded an individual written agreement to waive the timekeeping requirement.

Therefore, this dispensation will only apply to those workers who are free to set their own work schedule for at least half of their working time. The mere fact that they enjoy flexible working hours is not enough in itself. In practice, the social partners will have to define which specific employee categories satisfy this condition when negotiating collective labour agreements.

B. Simplified work-time recording (Art. 73b EmpO 1)

In the absence of a collective employment agreement, the employee representatives or majority of employees in a company may agree with the employer to simplify the recording of working time, i.e. to record only the number of hours worked in a day for those employees who have significant discretion in managing their own working hours. Negotiations will be held with a staff committee or an ad hoc project group before the proposed simplified method of recording working hours is submitted to the workforce for approval by the majority.

Moreover, only those members of staff who are free to determine at least one quarter of their work schedule are eligible for simplified timekeeping.

Recommendations

The introduction of the new articles 73a and 73b to EmpO 1 does not exempt companies from their obligation to comply with the law regarding working time and statutory breaks. In addition, the rules on compensating additional work and the restrictions on working at night and on Sundays naturally remain in force.

In a first step, EY can help you verify whether your company applies and complies with all the rules set forth in the Employment Act and its ordinances.

As a second step, we can help your business implement the new rules on work-time recording by defining the categories of employee to which articles 73a and 73b could apply.

Taking proactive measures will enable you to:

- ▶ verify that your internal regulations comply with the legislation in force and are being applied correctly, letting you anticipate all the risks related to the health and safety of your workforce;
- ▶ adapt your internal regulations to the new set of rules;
- ▶ reduce your administrative burden by simplifying work-time recording for certain employee categories;
- ▶ have a positive effect on your image as a company and employer.

Please do not hesitate to contact our team for further information on the subject.

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BKR 1512-463
ED None

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