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► **EU-ILO PROJECT**

**“TOWARDS SAFE, HEALTHY AND
DECLARED WORK IN UKRAINE”**

WORKING TIME

**On-line training series
International and EU Labour Standards
Background paper**

June, 2020

This material was developed within the EU-ILO Project “Towards safe, healthy and declared work in Ukraine” www.ilo.org/shd4Ukraine.

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► EXECUTIVE SUMMARY

Working time arrangements are key elements of the employment relationship and have always been a central issue in the world of work.

The number of hours worked, the length and number of rest periods and how they are organized in a day, week, month or year, have important consequences for workers, employers and the States.

The International Labour Standards and EU Directives on working time establish the framework for the regulation, at national level, of several aspects of working time, including hours of work, breaks, daily and weekly rest periods, annual paid leave and night work, upholding the principles that labour is not a commodity and that the improvement of workers' safety and health at work is an objective which should not be subordinated to purely economic considerations.

They are both aimed at properly balance the need to ensure the safety, health and well-being of workers and the sustainability of the organizations in which they are employed, promoting decent working conditions and prosperity for all.

The present background paper, on Working Time, was prepared under the scope of the Activity 1.3.2 of the EU funded and ILO implemented technical cooperation project "Towards safe, healthy and declared work in Ukraine"¹, and is intended to support the projects' online training series on International and EU Labour Standards targeting policy decision-makers and legal acts' drafting experts, in particular regarding its module on working time.

It is expected that it may provide them with the technical support, knowledge and guidance on how to better align Ukrainian legal framework

¹ Additional information at: <https://ilo.org/shd4Ukraine> and <https://www.facebook.com/shd4Ukraine>.

with International and European Labour Standards² and best practices on working time, supporting the implementation of the EU-Ukraine Association Agreement and fostering decent working conditions for all in Ukraine.

It should not be seen, however, neither as an ILO code of practice or official guidelines, nor as a replacement of the positions of the ILO supervisory bodies.

Kyiv, 21 June 2020

António J. Robalo Santos

Manager of the EU-ILO Project

“Towards safe, healthy and declared work in Ukraine”

ILO Office for Central and Eastern Europe

² In particular, with the ILO Conventions 1, 14, 30, 47, 106, 132 and 171; ILO Recommendation 116; and EU Directives 2003/88/EC, 2002/15/EC and 92/85/EEC.

► WORKING TIME

Working time arrangements (working time, rest and the organization of working hours and rest periods) are key elements of the employment relationship.

The number of hours worked, the length and number of rest periods and how they are organized in a day, week, month or year, have important consequences for workers, employers and the States (ILO, 2018).

Working time is probably the working condition that has the greatest impact on the daily life of workers (possibly, only preceded by wages). Working hours and their organization, besides their influence on the quality of work, may also have a substantial effect on workers' lives outside workplaces. They can also have deep impacts on the physical and mental health and well-being of workers, their safety and health at work and their earning capacity (ILO, 2018).

The working hours and their organization, on the other hand, are also of paramount importance to employers. They may also have a substantial impact on their efficiency / productivity, effectiveness / profitability and, ultimately, on their competitiveness sustainability.

From a more general and nation-wide economic and social point of view, working time can also have a far-reaching impact on economy, industry competitiveness, employment and public services and infrastructures, while allowing to address social challenges as the work-life balance and the protection of workers' safety, health and well-being.

Is thus clear why working hours and rest periods have always been a central issue in the world of work, perpetuating the principle that labour is not a commodity, as enshrined in the Treaty of Versailles of 1919 (League of Nations, 1919) and in the Declaration of Philadelphia of 1944 (ILO, 1944) but, instead, a human right, as established in Article 24 of the Universal Declaration of Human Rights (UN, 1948).

Main concerns were, historically, the excessive hours of work and the need to protect workers' safety and health, by limiting working hours and providing adequate periods for rest and recuperation, including weekly rest and annual paid leave. The recognition that working excessive hours pose a danger to workers' health and to their families justified, moreover, that the first ever adopted ILO Convention was, precisely, on working time: Hours of Work (Industry) Convention, 1919 (No. 1) (ILO, 1919).

Nowadays, ILO standards on working time provide a framework for regulating hours of work, daily and weekly rest periods, annual paid leave, night work and part-time work³.

Besides the above first Convention, they include, inter alia: Weekly Rest (Industry) Convention, 1921 (No. 14); Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); Forty-Hour Week Convention, 1935 (No. 47); Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); Reduction of Hours of Work Recommendation, 1962 (No. 116); Holidays with Pay Convention (Revised), 1970 (No. 132); and Night Work Convention, 1990 (No. 171) (ILO, 1921, 1930, 1935, 1957, 1962, 1970, 1990)⁴.

The regulation of working time, however, have never been so important, considering the fast transformations and consequent challenges that are currently shaping world of work, with particular impact on the working time practices and work organization features. Globalization and consequent intensification of competition and disruptive innovations on transportation systems and information and communication technologies, along with changing patterns on consumer preferences are inducing businesses to implement new and more flexible forms of organization of work and labour relations, including temporal, functional and spatial flexibility, outsourcing and “offshoring” of manufacturing and services provision.

³ Part-time work will be specifically addressed in a specific following Background paper “Part-time work”.

⁴ From the aforesaid instruments, Ukraine has ratified Conventions 14 (19/06/1968), 47 (10/08/1956), 106 (19/06/1968) and 132 (25/10/2001); it did not ratified Conventions 1, 30 and 171. Moreover, the following are with interim status and may be denounced: 1 (currently open for denunciation); 30 (from 29 Aug 2023 to 29 Aug 2024); 47 (from 23 Jun 2027 to 23 Jun 2028) and 132 (from 30 Jun 2023 to 30 Jun 2024).

In addition, the profound demographic changes (e.g., increased participation of women in labour market, shift from the traditional “male breadwinner” household to dual-earner ones, and the recent concerns regarding work-life balance needs and working time preferences) are leading to an increasing number of different flexible work arrangements, ranging from the conventional full-time, “9 to 5” model, through flexi-time arrangements, part-time work, hours averaging, working time banks, concentrated working hours and teleworking, to “work sharing”⁵ practices and to the proliferation of jobs with short or highly variable hours.

ILO concerns about working time are also shared by the EU.

The working time legal framework in EU countries is essentially based on the Directive 2003/88/EC of the European Parliament and of the Council, of 4 November 2003, concerning certain aspects of the organization of working time (European Parliament & European Council, 2003).

According to Article 424 of the EU-Ukraine Association Agreement and its Annex XL to Chapter 21, Ukraine undertook to gradually approximate its legislation to EU Directive 2003/88/EC, within the timetable to be defined by the Association Council, upon the entry into force of the Agreement.

The *acquis communautaire* on working time also integrates other community legal instruments, including the Directive 2002/15/EC, of the European Parliament and of the Council, of 11 March 2002, on the organization of the working time of persons performing mobile road transport activities (European Parliament, 2002), the Regulation (EC) No. 561/2006, of the European Parliament and of the Council, of 15 March 2006, on the harmonization of certain social legislation relating to road transport⁶ (European Parliament, 2006), and the Council Directive 97/81/EC, of 15 December 1997, concerning the Framework Agreement on part-time work⁷ concluded by UNICE, CEEP and the ETUC (European Council, 1997).

⁵ Reduction of working time to spread a reduced volume of work over the same (or similar) number of workers to avoid layoffs.

⁶ Amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85.

⁷ Part-time work will be specifically addressed in a specific following Background paper “Part-time work”.

Directive 2003/88/EC is based on the principle that the improvement of workers' safety and health at work is an objective which should not be subordinated to purely economic considerations. It provides that all community workers have adequate rest periods, must be granted minimum daily, weekly and annual periods of rest and adequate breaks, and that there is a maximum limit on weekly working hours.

Considering the research which shows that the human body is more sensitive at night to environmental disturbances and also to certain burdensome forms of work organization and that long periods of night work can be detrimental to the health of workers and can endanger safety at the workplace, it also foresees, *inter alia*: limitation of the duration of periods of night work, including overtime; entitlement of night workers to free health assessment prior to their assignment and thereafter at regular intervals and that whenever possible they should be transferred to day work for which they are suited if they suffer from health problems; obligation of employers who regularly use night workers to bring this information to the attention of the competent authorities if they so request.

In addition, it also provides that the level of safety and health protection of night and shift workers is adapted to the nature of their work and that the organization and functioning of protection and prevention services and resources is efficient.

Furthermore, and considering that specific working conditions may have detrimental effects on the safety and health of workers, it foresees that the organization of work according to a certain pattern must take into account the general principle of prevention of adapting work to the worker.

► INTERNATIONAL AND EU LABOUR STANDARDS ON WORKING TIME

Main ILO applicable standards

Working time have long been at the center of the debates regarding the world of work, not only between workers and employers, but also within society at large (ILO, 2018).

ILO standards on working time establish the foundations for the regulation of several different, yet interconnected, domains of working time, inter alia, hours of work, daily and weekly rest periods, annual paid leave, night work and part-time work⁸. They include, in particular: Hours of Work (Industry) Convention, 1919 (No. 1); Weekly Rest (Industry) Convention, 1921 (No. 14); Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); Forty-Hour Week Convention, 1935 (No. 47); Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); Reduction of Hours of Work Recommendation, 1962 (No. 116); Holidays with Pay Convention (Revised), 1970 (No. 132); and Night Work Convention, 1990 (No. 171).

Regarding working hours, Conventions 1 and 30 set the general standard at 48 regular hours of work per week, with a maximum of eight hours per day.

The rationale behind the combination of the two principles in one instrument is explained by the fact that an eight-hour day alone would result in a 56-hour week if work is carried out for seven days a week. In contrast, a 48-hour week ensures that average hours of work do not exceed eight hours a day over a six-day week (ILO, 2018). This also implies an acknowledgment of the principle of 24 hours of rest a week, set forward by Conventions 14 and 106, which set the general standard that workers shall enjoy a rest period of at least 24 consecutive hours every seven days.

⁸ Part-time work will be specifically addressed in a specific following Background paper “Part-time work”.

Convention 47 and Recommendation 116, on the other and, set out the principle of the 40-hour work week.

As for the annual leave, Convention 132 provides that every person to whom the convention applies shall enjoy at least three working weeks of annual paid holiday for one year of service.

In what concerns night work, Convention 171 defines night work as the work performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m, and requires that ratifying states take measures required by the nature of night work for the protection of night workers. It also requires alternatives to night work to be offered to women for specified periods during and after pregnancy.

Hours of Work (Industry) Convention, 1919 (No. 1)

ILO Convention 1 establishes that the working hours of persons employed in any public or private industrial undertaking, shall not exceed eight in the day and forty-eight in the week.

Several exceptions on its application, however, are foreseen:

- ▶ Industrial undertaking in which only members of the same family are employed;
- ▶ Do not apply to persons holding positions of supervision or management, nor to persons employed in a confidential capacity;
- ▶ When by law, custom, or agreement between employers' and workers' organizations (or, where no such organizations exist, between employers' and workers' representatives), the hours of work on one or more days of the week are less than eight, the limit of eight hours may be exceeded on the remaining days of the week by the sanction of the competent public authority (or by agreement between such organizations or representatives), if the daily limit of eight hours is not exceeded by more than one hour;
- ▶ In case of shift workers it shall be possible to work in excess of eight hours in any one day and forty-eight hours in any one week, if the

average number of hours over a period of three weeks or less does not exceed eight per day and forty-eight per week;

- ▶ The limits may be exceeded, so far as may be necessary to avoid serious interference with the ordinary working of the undertaking, in cases of accident (actual or threatened), urgent work to be done to machinery or plant, or «force majeure»;
- ▶ The limits may be exceeded, in processes which by their nature have to be carried on continuously by a succession of shifts, if the working hours do not exceed on average fifty-six in the week and do not affect any legally foreseen rest days to workers in such processes in compensation for the weekly rest day;
- ▶ Where the limits cannot be applied, agreements between workers' and employers' organizations establishing longer daily work limits may be given the force of regulations if the Government so decides. But, in that case, the average number of hours worked per week, over the number of weeks covered by such agreement, shall not exceed forty-eight.

In addition, Convention 1 foresees that Member States shall determine, after consultation with the organizations of employers and workers concerned (if they exist):

- ▶ The permanent exceptions that may be allowed in preparatory or complementary work which must necessarily be carried outside the above limits, or for certain classes of workers whose work is essentially intermittent;
- ▶ The temporary exceptions that may be allowed, so that establishments may deal with exceptional cases of pressure of work;
- ▶ The maximum of additional hours in each instance;
- ▶ The rate of pay for overtime, which shall not be less than one and one-quarter times the regular rate.

The Convention also foresees that every employer shall be required to:

- ▶ Notify⁹ about the hours at which work begins and ends, and where work is carried by shifts, the hours at which each shift begins and ends, in a way that the duration of the work shall not exceed the above limits;
- ▶ When the preceding is notified, it shall not be changed, except with such notice and in such manner as may be approved by the Government;
- ▶ Notify in the same way such rest intervals accorded during the period of work is not reckoned as part of the working hours;
- ▶ Keep a record in each country of all additional hours worked¹⁰.

Weekly Rest (Industry) Convention, 1921 (No. 14)

This Convention provides that all staff employed in any public or private industrial undertaking shall enjoy, in every period of seven days, a period of rest, comprising at least twenty-four consecutive hours, which, whenever possible, shall be fixed so as to coincide with the days already established (by the traditions or customs of the country or district) and be granted simultaneously to all staff.

The following exceptions may be exercised by Member States:

- ▶ To exclude from its application persons employed in industrial undertakings in which only the members of one single family are employed;
- ▶ To authorize total or partial exceptions (including suspensions or diminutions), provided that special regard is given to humanitarian and economic considerations and after consultation with responsible associations of employers and workers (if exist) and, in that case, it shall, as far as possible, provide for compensatory periods of rest for the suspensions or diminutions made (except in cases where agreements or customs already provide for such periods).

⁹ By means of the posting of notices in conspicuous places in the works or other suitable place, or by such other method as may be approved by the Government.

¹⁰ In pursuance of Articles 3 and 6 of this Convention.

In order to facilitate its application, this Convention also provides that each employer, director, or manager, shall be obliged to make known the days and hours of collective rest (where the weekly rest is given to the whole of the staff collectively), by means of notices posted conspicuously in the establishment or any other convenient place (or in any other manner approved by the Government). It also foresees that, where the rest period is not granted to the whole of the staff collectively, each employer, director, or manager shall to make known the workers or employees subject to a special system of rest, and to indicate that system, by means of a schedule drawn up in accordance with the method approved by the legislation of the country, or by a regulation of the competent authority.

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)

This Convention applies to commercial or trading establishments and establishments and administrative services in which the persons employed are mainly engaged in office work.

It does not apply, however, to shall not apply to persons employed in the following establishments:

- ▶ Establishments for the treatment or the care of the sick, infirm, destitute, or mentally unfit;
- ▶ Hotels, restaurants, boarding-houses, clubs, cafés and other refreshment houses;
- ▶ Theatres and places of public amusement.

In addition, the competent authority in each country may exempt from its application:

- ▶ Establishments in which only members of the employer's family are employed;
- ▶ Offices in which the staff is engaged in connection with the administration of public authority;
- ▶ Persons occupying positions of management or employed in a confidential capacity;

- ▶ Travelers and representatives, because they work outside the establishment.

According to this Convention, hours of work¹¹ of persons to whom this Convention applies shall not exceed forty-eight hours in the week and eight hours in the day.

The Convention foresees, however, that the maximum forty-eight hours of work in the week may be so arranged that hours of work in any day do not exceed ten hours.

In addition, it foresees that, in exceptional cases, where the circumstances in which the work has to be performed do not allow the application of the above limits (forty-eight hours in the week and eight hours in the day and ten hours of work in any day within a forty-eight hours work week), public authority regulations may allow hours of work to be distributed over a period longer than the week, if:

- ▶ The average hours of work over the number of weeks included in the period do not exceed forty-eight hours in the week; and
- ▶ The hours of work in any day do not exceed ten hours.

Moreover, the Convention provides that, in case of hours of work which have been lost due to a general interruption of work resulting from local holidays, accidents or force majeure, the hours of work in the day may be increased for the purpose of making up the hours of work that were lost, if:

- ▶ Hours of work which have been lost are not made up on more than thirty days in the year and shall be made up within a reasonable lapse of time;
- ▶ The increase in hours of work in the day shall not exceed one hour;
- ▶ Hours of work in the day shall not exceed ten.

¹¹ Here defined as “the time during which the persons employed are at the disposal of the employer; it does not include rest periods during which the persons employed are not at the disposal of the employer”.

Furthermore, the Convention provides that public authorities' regulations shall determine the permanent and temporary exceptions to the above provisions that should be granted.

Permanent exceptions may be allowed for:

- ▶ Certain classes of persons whose work is inherently intermittent (e.g., caretakers and persons employed to look after working premises and warehouses);
- ▶ Classes of persons directly engaged in preparatory or complementary work which must necessarily be carried on outside the limits laid down for the hours of work of the rest of the persons employed in the establishment;
- ▶ Shops and other establishments where the nature of the work, the size of the population or the number of persons employed render inapplicable the working hours fixed above.

Temporary exceptions, on the other hand, may be granted in the following cases:

- ▶ Accident (actual or threatened), force majeure, or urgent work to machinery or plant (but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment);
- ▶ To prevent the loss of perishable goods or avoid endangering the technical results of the work;

To allow for special work such as stocktaking and the preparation of balance sheets, settlement days, liquidations, and the balancing and closing of accounts;

- ▶ To enable establishments to deal with cases of abnormal pressure of work due to special circumstances (if the employer cannot ordinarily be expected to resort to other measures).

Regarding the above permanent and temporary exceptions, the aforesaid public authorities' regulations shall determine the number of additional hours of work which may be allowed in the day, with the exception of the

temporary exceptions related to accidents, force majeure, or urgent work to machinery or plant. As for the temporary exceptions, public authorities' regulations shall determine, in addition, the number of additional hours of work which may be allowed in the year.

The rate of pay for the additional hours of work permitted under temporary exceptions (with the exception of the ones regarding accidents, force majeure, or urgent work to machinery or plant) shall not be less than one-and-a-quarter times the regular rate.

Finally, and in order to ensure effective enforcement of its provisions, the Convention also provides that:

- ▶ Necessary measures, in the form of penalties and to ensure adequate inspection, shall be taken;
- ▶ Every employer shall be required to:
 - Notify the times at which hours of work begin and end, and, where work is carried on by shifts, the times at which each shift begins and ends¹². In addition, it shall be made an offence to employ any person outside the times fixed in accordance with the latter;
 - Notify the rest periods granted to the persons employed which are not included in the hours of work¹³. It shall be made an offence to employ any person during the periods fixed in accordance with the latter;
 - Keep a record of all additional hours of work performed under the above mentioned temporary exceptions and of the payments made in respect thereof¹⁴.

¹² Through the posting of notices in conspicuous positions in the establishment or other suitable place, or by such method as may be approved by the competent authority.

¹³ Ibidem.

¹⁴ In the form prescribed by the competent authority.

Forty-Hour Week Convention, 1935 (No. 47)

This convention approves the principle of a forty-hour week, without the reduction of the standard of living and the implementation and facilitation of the appropriate measures to ensure it.

It also foresees the commitment of the ratifying Member States to apply it to classes of employment in accordance with the detailed provision to be prescribed by such separate Conventions as are ratified by that Member.

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)

This Convention applies to all persons (including apprentices) employed in public or private trading establishments, establishments, institutions and administrative services in which the persons employed are mainly engaged in office work¹⁵.

It shall also apply, as the Member State may specify in the declaration accompanying its ratification, to persons employed in establishments, institutions and administrative services providing personal services; post and telecommunications services; newspaper undertakings; and theatres and places of public entertainment.

In addition, and in so far as the persons concerned are not employed in the above establishments and are not subject to national regulations or other arrangements concerning weekly rest in industry, mines, transport or agriculture, it also applies to all persons employed in the trading branches of any other establishments, in the branches of any other establishments in which the persons employed are mainly engaged in office work, and in mixed commercial and industrial establishments.

The Convention foresees, however, that measures should be taken in order to exclude from its application establishments in which only members of the employer's family who are not or cannot be considered to be wage earners are employed, as well as persons holding high managerial positions.

¹⁵ Including offices of persons engaged in the liberal professions.

All persons to whom this Convention applies shall be entitled to an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days, which, wherever possible, shall:

- ▶ Be granted simultaneously to all the persons concerned in each establishment;
- ▶ Coincide with the day of the week established as a day of rest by the traditions or customs of the country or district;
- ▶ Respect the traditions and customs of religious minorities.

In so far as wages are regulated by laws and regulations or subject to the control of administrative authorities, there shall be no reduction of the income of persons covered by this Convention as a result of the application of the measures it foresees.

The Convention also provides that, where an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days cannot be ensured¹⁶, measures may be taken¹⁷ to apply special weekly rest schemes to specified categories of persons or specified types of establishments. In this case, all persons to whom such special schemes apply shall be entitled, in respect of each period of seven days, to rest of a total duration at least equivalent to the above 24 hours period.

Moreover, the Convention foresees that temporary exemptions may be granted in each country:

- ▶ In case of accident (actual or threatened), force majeure or urgent work to premises and equipment¹⁸;
- ▶ In the event of abnormal pressure of work due to special circumstances¹⁹;
- ▶ In order to prevent the loss of perishable goods.

¹⁶ Due to the nature of the work, the nature of the service performed by the establishment, the size of the population to be served, or the number of persons employed.

¹⁷ By the competent authority or through the appropriate machinery in each country, in consultation with the representative employers' and workers' organizations concerned (where such exist).

¹⁸ But only so far as may be necessary to avoid serious interference with the ordinary working of the establishment.

¹⁹ In this case, only if the employer cannot ordinarily be expected to resort to other measures.

However, where such temporary exemptions are granted, the persons concerned shall be entitled to compensatory rest of a total duration at least equivalent to the above 24 hours period.

Finally, the Convention foresees the implementation of appropriate measures to ensure the proper administration of regulations or provisions concerning the weekly rest and its enforcement, namely by means of adequate inspection or otherwise and in the form of penalties.

Reduction of Hours of Work Recommendation, 1962 (No. 116)

ILO Recommendation 116, on the reduction of hours of work, was designed to supplement and facilitate the implementation of existing international instruments by indicating practical measures for the progressive reduction of hours of work, taking into account the different economic and social conditions in the various countries, as well as the variety of national practices for the regulation of hours and other conditions of work, and by outlining, in broad terms, methods by which such practical measures might be applied (ILO, 2018).

It starts by defining some general principles that should be applied by Member States, on their efforts to progressively reduce hours of work, in particular:

- ▶ Formulation and implementation of a national policy to promote the adoption of the principle of the progressive reduction of normal hours of work²⁰ and its application by means appropriate to the methods for regulating hours of work, in order to achieve the social standard of forty-hour week, without any resulting reduction workers' wages²¹.
- ▶ This principle may be given effect through laws or regulations, collective agreements, or arbitration awards, by a combination of these various means, or in any other manner consistent with national practice;

²⁰ "Normal hours of work" are defined in this Recommendation as the number of hours fixed in each country by or in pursuance of laws or regulations, collective agreements or arbitration awards, or, where not so fixed, the number of hours in excess of which any time worked is remunerated at overtime rates or forms an exception to the recognised rules or custom of the establishment or of the process concerned.

²¹ As foreseen in the Forty-Hour Week Convention, 1935 (No. 47).

- ▶ Where normal working week exceeds forty-eight hours, immediate steps should be taken to bring it down to this level without any reduction on wages.
- ▶ Where normal weekly hours of work are either forty-eight or less, measures to progressively reduce them should be sought and implemented²². They should consider:
 - Each country's level of economic development and the extent to which it may reduce hours of work without: reducing total production or productivity; endangering its economic growth, the development of new industries or its competitive position in international trade; and without creating inflation, which would reduce workers' real income;
 - The achieved or achievable progress in raising productivity, through modern technology, automation and management techniques;
 - The need to improve standards of living in countries still in development processes;
 - The preferences of sectoral employers' and workers' organizations on the manner to reduce working hours.
- ▶ The principle of the progressive reduction of normal hours of work may be applied by stages, in particular: stages spaced over time; stages, progressively encompassing branches or sectors of the national economy; a combination of the two preceding arrangements; or other arrangements more appropriate to national circumstances and to conditions in each sector.
- ▶ In carrying out measures for progressively reducing hours of work, priority should be given to industries and occupations which involve a particularly heavy physical or mental strain or health risks for the workers concerned, particularly where these consist mainly of women and young persons.

²² In a manner suited to the particular national circumstances and the conditions in each sector.

As for the determination of hours of work, this Instrument recommends that, when special conditions in certain branches of activity or technical needs so justify, it should be allowed to calculate them as an average over a period longer than one week. In this case, however, a maximum length of the period over which the hours of work may be averaged should be fixed by the competent authority or body in each country.

In addition, this Recommendation foresees that special provisions may be formulated with regard to processes which, by reason of their nature, have to be carried on continuously by a succession of shifts. Such special provisions, nevertheless, should be formulated in a way that ensures that normal hours of work as an average in continuous processes do not exceed the normal hours of work fixed for the economic activity concerned.

It also recommends Member States to determine the circumstances and limits in which permanently, temporary and periodic exceptions to the normal hours of work may be permitted.

As for permanent exceptions, they may apply in work which is essentially intermittent; in certain exceptional cases required in the public interest; and in operations which for technical reasons must necessarily be carried on outside the limits laid down for the general working of the undertaking, part of the undertaking, or shift.

The temporary exceptions may be applied in situations such as: accident (actual or threatened; urgent work to be done to machinery or plant; cases of force majeure; abnormal pressure of work; to make up time lost through collective stoppages of work²³; and national emergencies.

The periodic exceptions are foreseen for annual stocktaking and the preparation of annual balance sheets and for specified seasonal activities.

Moreover, the Recommendation also foresees that all hours worked in excess of the normal hours should be considered overtime (unless they are taken into account in fixing remuneration).

²³ Due to accidents to materials, interruptions to the power supply, inclement weather, shortages of materials or transport facilities, and calamities.

Regarding the latter, it also foresees that the competent authority or body in each country should determine:

- ▶ The limits to the total number of hours of overtime which can be worked during a specified period (excepting for cases of force majeure);
- ▶ The rate(s) of remuneration for overtime, keeping in mind that overtime work should be remunerated at a higher rate(s) than normal hours of work and, in no case, at a rate less than one and one-quarter times the regular rate²⁴.

This Instrument also recommends that due consideration should be given to special vulnerable groups of workers (e.g., workers under 18 years of age, pregnant women, nursing mothers and persons with disabilities) and that the competent authority should make a practice of consulting the most representative employers' and workers' organizations on questions relating to its application.

In addition, employers should be required to keep and to produce for inspection (upon request), a record (in a form acceptable to the competent authority) of the hours of work, wages and overtime for each worker, and to notify²⁵ the concerned workers about:

- ▶ Times at which work begins and ends and, in case of shifts, time at which each shift begins and ends;
- ▶ Rest periods which are not included in the normal hours of work;
- ▶ Days worked during the week.

Finally, to ensure the effective enforcement of the measures foreseen to progressively reduce hours of work, the Recommendation advises the implementation of appropriate measures, such as adequate inspection or otherwise, and appropriate sanctions.

²⁴ As specified in Article 6, paragraph 2, of the Hours of Work (Industry) Convention, 1919 (No. 1).

²⁵ By the posting of notices in the establishment or by other methods approved by the competent authority.

Holidays with Pay Convention (Revised), 1970 (No. 132)

This Convention applies to all employed persons, excepting seafarers and, in so far as necessary and the competent authority or the appropriate machinery in a country so decides (after consultation with the employers' and workers' organizations), a limited categories of employed persons in respect of whose employment arise special problems of a substantial nature, relating to enforcement or to legislative or constitutional matters.

According to this Convention, every person to whom it applies shall be entitled to an annual paid holiday period with a length not less than three working weeks per year of service. In case, however, that the length of service of a person in any year²⁶ is less than that required for this full entitlement, that person shall be entitled, in respect of that year, to a holiday with pay proportionate to the length of service during that year.

Moreover, it provides that public and customary holidays (whether or not they fall during the annual holiday), shall not be counted as part of the above minimum annual holiday with pay, as well as the periods of incapacity for work resulting from sickness or injury (the latter, under conditions to be determined by each Member State).

This Convention also foresees that it may be required a minimum period of service for entitlement to any annual holiday with pay. In that case, the competent authority (or the appropriate machinery) shall determine the length of such qualifying period and how it should be calculated, taking into account that it shall not exceed six month and should include the involuntary workers' absences (e.g., due to illness, injury or maternity).

In addition, it establishes that every person taking the annual paid holiday period shall receive, in respect of the full period of that holiday and in advance of the holiday (unless otherwise provided in an agreement applicable to him and the employer), at least his normal or average

²⁶ This term year means "the calendar year or any other period of the same length determined by the competent authority or through the appropriate machinery in the country concerned".

remuneration²⁷, calculated in the manner determined by each Member State.

The division of the annual holiday with pay into parts may be authorized by Member States. In such a case, however, and on the condition that the length of service of the person concerned entitles him to such a period, one of the parts shall consist of at least two uninterrupted working weeks²⁸, which shall be granted and taken no later than one year, and the remainder of the annual holiday with pay no later than eighteen months, from the end of the year in respect of which the holiday entitlement has arisen.

Moreover, any part of the annual holiday which exceeds a stated minimum²⁹ may be postponed beyond the above specified period, with the consent of the employed person concerned, and up to a further specified time limit³⁰.

The Convention also establishes that the time at which the holiday is to be taken (which should consider work requirements and the employed persons' available opportunities for rest and relaxation) shall be determined by the employer after consultation with the worker concerned (or his representatives), unless it is fixed by regulation, collective agreement, arbitration award or other means consistent with national practice.

It also foresees that an employed person who has completed a minimum period of service required for entitlement to annual holiday with pay shall receive, upon termination of employment, a holiday with pay proportionate to the length of service for which he has not received such a holiday, or compensation in lieu thereof, or the equivalent holiday credit.

²⁷ Including the cash equivalent of any part of that remuneration which is paid in kind and which is not a permanent benefit continuing whether or not the person concerned is on holiday.

²⁸ Unless otherwise provided in an agreement applicable to the employer and the employed person concerned.

²⁹ To be determined by the competent authority after consultation with the organizations of employers and workers concerned, or through collective bargaining, or in such other manner consistent with national practice as may be appropriate under national conditions.

³⁰ Ibidem.

In addition, it provides that agreements to relinquish the right to the minimum annual holiday with pay of three working weeks for one year of service or to waive such a holiday, for compensation or otherwise, shall, as appropriate to national conditions, be null and void or be prohibited.

Furthermore, it foresees that special rules may be laid down in each country regarding cases in which the employed person engages, during the holiday, in a gainful activity conflicting with the purpose of the holiday.

Finally, it foresees the implementation of effective and appropriate measures to ensure proper application and enforcement of regulations or provisions concerning holidays with pay, by means of adequate inspection or otherwise.

Night Work Convention, 1990 (No. 171)

This Convention applies to all employed persons except those employed in agriculture, stock raising, fishing, maritime transport and inland navigation. It also foresees that, when its application may raise special problems of a substantial nature, and after consulting the representative organizations of employers and workers concerned, Member States may exclude from its application (wholly or partly) limited categories of workers.

Considering the specific nature of night work³¹, this Convention provides for the implementation³² of specific measures for night workers³³, in order to protect their health, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement,

³¹ Night work is defined by this Convention as all work which is performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m., determined by the competent authority after consulting the most representative organizations of employers and workers or by collective agreements.

³² Which may be applied progressively.

³³ Night worker is here defined as an employed person whose work requires performance of a substantial number of hours of night work which exceeds a specified limit fixed by the competent authority, after consulting the most representative organisations of employers and workers or by collective agreements.

and compensate them appropriately. They include, inter alia, measures in the fields of:

- ▶ Health surveillance;
- ▶ First-aid facilities and social services;
- ▶ Night worker's unfitness for night work, due to health reasons;
- ▶ Maternity protection for all workers performing night work;
- ▶ Compensation for night work; and
- ▶ Workers representatives' consultation.

In this context, the Convention provides that workers, at their request, shall have the right to undergo a health assessment³⁴ without charge and to receive advice on how to reduce or avoid health problems associated with their work:

- ▶ Before taking up an assignment as a night worker;
- ▶ At regular intervals during such an assignment;
- ▶ If they experience health problems during such an assignment, which are not caused by factors other than the performance of night work.

It also foresees that suitable first-aid facilities shall be made available for workers performing night work, including arrangements whereby such workers, where necessary, can be taken quickly to a place where appropriate treatment can be provided.

The Convention also provides that night workers certified as unfit for night work, due to health reasons, shall be transferred, whenever practicable, to a similar job for which they are fit and, when such transfer is not practicable, they shall be granted the same benefits as other workers who are unable to work or to secure employment. In addition, it foresees that a night worker certified as temporarily unfit for night work shall be given

³⁴ Which results shall not be transmitted to others without the workers' consent (except in the case of a finding of unfitness for night work) and shall not be used to their detriment.

the same protection against dismissal as other workers who are prevented from working for health reasons.

As for the maternity protection of all workers performing night work, the Convention provides for the implementation of measures³⁵ to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work, which may include the transfer to day work (where this is possible), the provision of social security benefits or an extension of maternity leave:

- ▶ Before and after childbirth, for a period of at least sixteen weeks of which at least eight weeks shall be before the expected date of childbirth;
- ▶ For additional periods in respect of which a medical certificate is produced stating that it is necessary for the health of the mother or child:
 - During pregnancy;
 - During a specified time beyond the period after childbirth³⁶.

Moreover, the Convention establishes that, during pregnancy, as well as during the above mentioned specified time beyond the period after childbirth:

- ▶ A woman worker shall not be dismissed, except for justifiable reasons not connected with pregnancy or childbirth;
- ▶ The income of the woman worker shall be maintained at a level sufficient for the upkeep of herself and her child in accordance with a suitable standard of living.
- ▶ A woman worker shall not lose the benefits regarding status, seniority and access to promotion which may be attached to her regular night work position.

³⁵ Which shall not have the effect of reducing the protection and benefits connected with maternity leave.

³⁶ Which length shall be determined by the competent authority after consulting the most representative organizations of employers and workers.

In addition, the Convention foresees that the compensation for night workers (in the form of working time, pay or similar benefits) shall recognize the nature of night work.

Furthermore, it foresees that appropriate social services shall be provided for night workers and, where necessary, for workers performing night work.

Finally, the Convention provides that before introducing work schedules requiring the services of night workers, the employer shall consult³⁷ the workers' representatives³⁸ concerned on:

- ▶ The details of such schedules;
- ▶ The forms of organization of night work that are best adapted to the establishment and its personnel; and
- ▶ The required occupational health measures and social services.

Main EU legal instruments

The main legal instruments framing the EU legislation on working time include the Directive 2003/88/EC, concerning certain aspects of the organization of working time, Directive 2002/15/EC, on the organization of the working time of persons performing mobile road transport activities, Regulation (EC) No. 561/2006, on the harmonization of certain social legislation relating to road transport, and Directive 97/81/EC, on part-time work³⁹.

EU Directive 2003/88/EC

The EU Directive 2003/88/EC lays down the minimum safety and health requirements for the organisation of working time, setting the minimum

³⁷ In establishments employing night workers this consultation shall take place regularly.

³⁸ Workers' representatives are here defined as persons who are recognized as such by national law or practice, in accordance with the Workers' Representatives Convention, 1971.

³⁹ Part-time work will not be addressed on the current training session.

periods of daily rest, weekly rest and annual leave, breaks and maximum weekly working time.

Besides protecting the safety and health of the generality of workers, it also aims to protect workers from negative health effects due to shift and night work, as well as from certain patterns of work.

This Directive applies to all sectors of activity, both public and private.

It does not apply, however, to:

- ▶ Seafarers [Art. 1(3)]; and
- ▶ Where other Community instruments contain more specific requirements relating to the organisation of working time for certain occupations or occupational activities [Art. 14].

Moreover, it contains several derogations and exceptions to its application, in particular concerning:

- ▶ Certain types of workers: managing executives or other persons with autonomous decision-taking powers, family workers, etc. [Art. 17(1)];
- ▶ Activities where the worker's place of work and his place of residence are distant from one another, including offshore work, or where the worker's different places of work are distant from one another [Art. 17(3)];
- ▶ Security and surveillance activities, requiring a permanent presence in order to protect property and persons [Art. 17(3)];
- ▶ Activities involving the need for continuity of service or production (e.g., hospitals, docks, airports, railway transport, press, radios, television, water, gas, electricity, agriculture, tourism and postal services) [Art. 17(3)];
- ▶ Provisions that may be derogated by collective agreements [Art. 18];
- ▶ Non application to mobile workers and offshore work of the provisions regarding daily rest, breaks, weekly rest period and length of night work [Art. 20];

- Non application to workers on board seagoing fishing vessels of the provisions regarding daily rest, maximum weekly working time and length of night work [Art. 21].

In addition to providing clear and legal definitions for several terms⁴⁰ related to working time, it establishes the obligation of Member States to take the necessary measures to ensure that national legislation implements the minimum safety and health requirements for the organisation of working time foreseen in the Directive.

In particular, to ensure that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period and that, per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours (plus the 11 hours' daily rest if possible).

Moreover, every worker is entitled to a rest break if the working day is longer than six hours. Details including duration and the terms on which it is granted, shall be laid down in collective agreements, agreements between the two sides of industry or by national legislation.

According to the Directive, the average working time for each seven-day period, including overtime, does not exceed 48 hours and every worker is entitled to paid annual leave of at least four weeks. This minimum period of paid annual leave cannot be replaced by an allowance, except where the employment relationship is terminated.

Member States shall also ensure that normal hours of work for night workers do not exceed an average of eight hours in any 24-hour period. They shall also ensure that night workers whose work involves special hazards or heavy physical or mental strain do not work more than eight hours in any period of 24 hours during which they perform night work.

Night workers are also entitled to a free health assessment before their assignment and to regular checks thereafter. Night workers suffering

⁴⁰ In concrete: «working time», «rest period», «adequate rest», «night time», «night worker», «shift work», «shift worker», «mobile worker», «adequate rest» and «offshore work».

from health problems recognised as being connected with the fact that they perform night work are to be transferred whenever possible to day work to which they are suited.

In addition, Member States shall ensure that night workers and shift workers have safety and health protection appropriate to the nature of their work and that appropriate protection and prevention services or facilities with regard to the safety and health of night workers and shift workers are equivalent to those applicable to other workers and are available at all times.

Furthermore, the Directive foresees that Member States shall take the measures necessary to ensure that an employer who intends to organise work according to a certain pattern takes into account the general principle of adapting work to the worker, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate, and of safety and health requirements, especially as regards breaks during working time.

The Directive also foresees some special provisions for offshore workers. In general, offshore workers are covered by the provisions of Directive 2003/88/EC. However, Member States may derogate from the provisions concerning daily rest, breaks, weekly rest periods, length of night work and reference periods for the application of rest periods and working time and lay down, by law or regulation, a reference period of not more than twelve months for calculating the maximum weekly working hours.

It is worth mentioning that the provisions of the EU framework Directive 89/391/EEC are fully applicable to minimum OSH requirements for the organization of working time (e.g., daily, weekly and annual rest, breaks, maximum weekly working time, and certain aspects of night work, shift work and patterns of work), without prejudice to more stringent and/or specific provisions contained in this specific Directive.

It is important to stress, however, that this Directive, however, shall not apply where other Community instruments contain more specific

requirements on the organization of working time for certain occupations or occupational activities.

Finally, this Directive shall not affect Member States' right to apply or introduce legislation more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the safety and health of workers, nor its implementation should constitute valid grounds for reducing the general level of protection already afforded to workers.

EU Directive 2002/15/EC

Directive 2002/15/EC lays down minimum requirements regarding the organisation of the working time for all persons performing mobile road transport activities, including self-employed drivers. It is aimed at improving road safety, the safety and health of the drivers, and preventing the distortion of competition.

It provides for specific provisions concerning the hours of work in road transport and supplements the provisions of Regulation (EC) 561/2006, which lays down common rules on drivers' driving time and rest periods.

It is important to note that the provisions of Directive 2002/15/EC take precedence over the relevant provisions of the basic Directive 2003/88/EC on working time, because it contains more specific provisions. It applies to all mobile workers performing road transport activities employed by undertakings established in a Member State, as well as to self-employed drivers and mobile workers who are not mentioned as such in the Regulation.

Besides the provision of several legal definitions⁴¹, it establishes that the average weekly working time in road transport may not exceed 48 hours.

⁴¹ In particular, «working time», «period of availability», «workstation», «mobile worker», «self-employed driver», «week», «night time» and «night work».

It can be extended to 60 hours only if an average of 48 hours per week is not exceeded within a period of four months.

Member States shall ensure that no worker works for more than six consecutive hours without a break. Working time shall be interrupted by a break of at least 30 minutes, if total working hours is between six and nine hours, and of at least 45 minutes, if total working hours is more than nine hours.

Measures are to be adopted that ensure that mobile workers and self-employed drivers who are not subject to Regulation (EC) No 561/2006 have an uninterrupted period of rest at the end of their daily work of at least 11 hours.

As for rest time, the provisions of Regulation (EC) 561/2006 are maintained.

Member States shall ensure that daily working time may not exceed eight hours (ten hours only if an average of eight hours a day is not exceeded within two months) for night workers. Records of the workers' working time have to be kept.

► IMPLICATIONS FOR POLICY DECISION-MAKERS AND LEGAL ACTS' DRAFTING EXPERTS

The International Labour Standards (ILS) and EU Directives, discussed earlier, establish the framework for the regulation, at national level, of several aspects of working time, including hours of work, daily and weekly rest periods, annual paid leave and night work, upholding the principles that labour is not a commodity and that the improvement of workers' safety and health at work is an objective which should not be subordinated to purely economic considerations.

They are both aimed at properly balance the need to ensure the safety, health and well-being of workers and the sustainability of the organizations in which they are employed, promoting decent working conditions and prosperity for all.

The scope of their application, nevertheless, is quite different: ILO Conventions are applicable to the ILO Constituents that ratify them, including the majority of the EU countries; EU Directives are binding to all EU countries, as well as to other countries, such as Ukraine, which voluntarily undertook to gradually approximate its legislation with their provisions.

The majority of the EU countries are also ILO Member States and, most of them, ratified the bulk of the ILO Conventions on working time, being therefore required to comply with the provisions of both standards.

The latter, however, is not as challenging as it might look at a first glance, since the EU directives are more recent, took into account the relevant ILS and, in spite of not being necessarily identical or equivalent to those of the ILS, they appear to be in line with them, observing (and, in some cases,

even going a bit further, than) the minimum standards laid down on the applicable ILO Standards⁴².

Considering the above, and building on the preceding presentation of the more important specific provisions of the relevant ILS and EU standards on working time, the following section will be devoted to sum them up by subject.

Concepts

Working time or hours of work

Any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national laws and/or practice [Dir. 2003/88, Art. 2(1)].

The time during which the persons employed are at the disposal of the employer; it does not include rest periods during which the persons employed are not at the disposal of the employer [C030, Art. 2].

Normal hours of work

The number of hours fixed in each country by or in pursuance of laws or regulations, collective agreements or arbitration awards, or, where not so fixed, the number of hours in excess of which any time worked is remunerated at overtime rates or forms an exception to the recognised rules or custom of the establishment or of the process concerned [R116, Para. 11]

Rest period

Any period which is not working time [Dir. 2003/88, Art. 2(2)].

⁴² See, for example, in the concerned EU Directives and ILO Standards, the provisions regarding: maximum weekly/daily working time (EU: average of 48 hours, including overtime, for each seven-day period; ILS: 48 regular hours of work per week, with a maximum of eight hours per day); daily rest (EU: period of 11 consecutive hours per 24-hour period; ILS: absent); weekly rest period (EU: 24 uninterrupted hours plus the 11 hours' daily rest; ILS: 24 consecutive hours in each period of 7 days); paid annual leave (EU: at least 4 weeks; ILS: at least 3 working weeks); length of night work (EU: night workers normal working do not exceed an average of 8 hours in any 24-hour period; ILS: absent); etc.

Night time or night work

Any period of not less than seven hours, as defined by national law, and which must include, in any case, the period between midnight and 5.00 [Dir. 2003/88, Art. 2(3)].

All work which is performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m., determined by the competent authority after consulting the most representative organizations of employers and workers or by collective agreements [C171, Art. 1(a)].

Night worker

Any worker, who, during night time, works at least three hours of his daily working time as a normal course; and, any worker who is likely during night time to work a certain proportion of his annual working time, as defined by national legislation, following consultation with the two sides of industry, or by collective agreements or agreements concluded between the two sides of industry at national or regional level [Dir. 2003/88, Art. 2(4)].

An employed person whose work requires performance of a substantial number of hours of night work which exceeds a specified limit fixed by the competent authority, after consulting the most representative organisations of employers and workers or by collective agreements [C171, Art. 1(b)].

Shift work

Any method of organising work in shifts whereby workers succeed each other at the same work stations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks [Dir. 2003/88, Art. 2(5)].

Shift worker

Any worker whose work schedule is part of shift work [Dir. 2003/88, Art. 2(6)].

Adequate rest

Means that workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term [Dir. 2003/88, Art. 2(9)].

Working time minimum OSH requirements

Daily rest

Directive 2003/88/EC provides that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period [Art. 3].

Breaks

Where the working day is longer than six hours, every worker is entitled to a rest break [Dir. 2003/88, Art. 4].

The details of such break (e.g., duration and the terms on which it is granted), should be laid down in collective agreements or agreements between the two sides of industry or, failing that, by national legislation.

Weekly rest period

According to Article 5 of Directive 2003/88/EC, every worker is entitled, per each seven-day period, to a minimum uninterrupted rest period of 24 hours plus the above mentioned 11 consecutive hours of daily rest.

If objective, technical or work organisation conditions so justify, at least a minimum rest period of 24 hours should be applied.

For the application of this provision, Member States may laid down a reference period not exceeding 14 days.

ILO Conventions 14 and 106 foresee that all persons to whom they apply shall be entitled to an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days which, whenever possible, shall be fixed so as to coincide with the days already established (by the traditions or customs of the country or district) and be granted simultaneously to all staff.

Maximum weekly working time

Directive 2003/88/EC establishes that the period of weekly working time is limited by means of laws, regulations or administrative provisions or by collective agreements or agreements between the two sides of industry.

Its Article 6 provides that the average working time for each seven-day period, including overtime, shall not exceed 48 hours.

For the application of these provisions, Member States may lay down a reference period not exceeding four months. The periods of paid annual leave and the periods of sick leave shall not be included or shall be neutral in the calculation of the average.

According to ILO Conventions 1 and 30, working hours of persons to whom they apply, shall not exceed eight in the day and forty-eight in the week.

ILO Convention 47, on the other hand, approves the principle of a forty-hour week, without the reduction of the standard of living, and the implementation and facilitation of the appropriate measures to ensure it, whereas ILO Recommendation 116, provides practical measures for the progressive reduction of hours of work in order to facilitate the achievement of the social standard of forty-hour week, without any resulting reduction workers' wages.

Paid annual leave

According to Article 7 of Directive 2003/88/EC, every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave⁴³.

In addition, it establishes that the minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

According to ILO Convention 132, every person to whom it applies shall be entitled to an annual paid holiday period with a length not less than three working weeks per year of service. In case the worker's length of service in any year is less than that required for this full entitlement, s/he shall be entitled, in respect of that year, to a holiday with pay proportionate to the length of service during that year.

In addition, it provides that agreements to relinquish the right to the above minimum annual holiday with pay or to waive such a holiday, for compensation or otherwise, shall be null and void or be prohibited.

Night work

Length of night work

According to Article 8 of Directive 2003/88/EC, normal hours of work for night workers shall not exceed an average of eight hours in any 24-hour period⁴⁴.

Night workers whose work involves special hazards or heavy physical or mental strain⁴⁵, however, shall not work more than eight hours in any period of 24 hours during which they perform night work [Art. 8(b)].

⁴³ Which should be laid down by national legislation and/or practice.

⁴⁴ For the application of this provision, Member States may laid down a reference period (which should not include the weekly rest period of 24 hours) defined after consultation of the two sides of industry or by collective agreements or agreements concluded between the two sides of industry at national or regional level (Article 16(c)).

⁴⁵ Work involving special hazards or heavy physical or mental strain shall be defined by national legislation and/or practice or by collective agreements or agreements concluded between the two sides of industry, taking account of the specific effects and hazards of night work.

Night workers' and shift workers' safety and health at work

Article 9 of Directive 2003/88/EC provides that night workers are entitled to a free health assessment⁴⁶ before their assignment and thereafter at regular intervals and, where they suffer from health problems recognized as being connected with the fact that they perform night work, they shall be transferred, whenever possible, to day work to which they are suited.

Article 10 foresees that Member States may make the work of certain categories of night workers subject to certain guarantees, in the case of workers who incur risks to their safety or health linked to night-time working⁴⁷, whereas Article 11 provides that employers who regularly uses night workers shall bring that information to the attention of the competent authorities if they so request.

In addition, and according to Article 12 of the Directive 2003/88/EC, night workers and shift workers shall have safety and health protection appropriate to the nature of their work and shall be entitled to appropriate protection and prevention services or facilities, equivalent to those applicable to other workers, which shall be available at all times.

ILO Convention 171 provides that workers shall have the right to free health assessment⁴⁸, if they so request, and to receive advice on how to reduce or avoid health problems associated with their work:

- ▶ Before taking up an assignment as a night worker;
- ▶ At regular intervals during such an assignment;
- ▶ If they experience health problems during such an assignment, which are not caused by factors other than the performance of night work.

⁴⁶ Which must comply with medical confidentiality and may be conducted within the national health system.

⁴⁷ Under conditions laid down by national legislation and/or practice.

⁴⁸ Which results shall not be transmitted to others without the workers' consent (except in the case of a finding of unfitness for night work) and shall not be used to their detriment.

It also foresees that workers performing night work shall be provided with suitable first-aid facilities, including arrangements to quickly take them to where appropriate treatment can be provided if needed.

The Convention also provides that night workers certified as unfit for night work, due to health reasons, shall be transferred, whenever practicable, to a similar job for which they are fit and, when such transfer is not practicable, they shall be granted the same benefits as other workers who are unable to work or to secure employment. In addition, it foresees that a night worker certified as temporarily unfit for night work shall be given the same protection against dismissal as other workers who are prevented from working for health reasons.

Furthermore, it foresees that appropriate social services shall be provided for night workers and, where necessary, for workers performing night work.

Maternity protection

In the EU legal framework, the special protection owed to maternity in relation to working time and, in more broad terms, with the occupational safety and health of pregnant workers and workers who have recently given birth or are breastfeeding, can be found in Council Directive No. 92/85/EEC, of 19 October 1992, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (European Council, 1992), which should be applied in connection with Article 14 of Directive 2003/88/EC⁴⁹ and with Article 15 of Directive No. 89/391/EEC, of 12 June 1989, concerning the introduction of measures to encourage improvements in the safety and health of workers at work⁵⁰ (European Council, 1989).

⁴⁹ Which states that Directive 2003/88/EC shall not apply where other Community instruments contain more specific requirements relating to the organization of working time for certain occupations or occupational activities.

⁵⁰ Which provides that particularly sensitive risk groups must be protected against the dangers which specifically affect them.

As such, and in accordance with Article 7 of Directive No. 92/85/EEC, pregnant workers and workers who have recently given birth or are breastfeeding are not obliged to perform night work during their pregnancy and for a period following childbirth⁵¹, subject to submission⁵² of a medical certificate stating that this is necessary for the safety or health of the worker concerned. In order to ensure that, the concerned workers should be provided⁵³ with the possibility of being transferred to daytime work or being granted with a leave from work or extension of maternity leave (where such a transfer is not technically and/or objectively feasible or cannot reasonably be required on duly substantiated grounds).

Directive 92/85/EEC also foresees that pregnant workers and workers who have recently given birth or are breastfeeding are entitled to a continuous period of maternity leave of at least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice, which must include compulsory maternity leave of at least two weeks allocated before and/or after confinement in accordance with national legislation and/or practice [Art. 8].

Moreover pregnant workers are entitled to time off, without loss of pay, in order to attend ante-natal examinations, if such examinations have to take place during working hours [Dir. 92/85, Art. 9].

In addition, and in order to guarantee pregnant workers and workers who have recently given birth or are breastfeeding the exercise of their health and safety protection rights, Article 10 of Directive 92/85/EEC provides that the dismissal of such workers shall be prohibited during the period from the beginning of their pregnancy to the end of the maternity leave, save in exceptional cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent.

⁵¹ Which shall be determined by the national authority competent for safety and health.

⁵² In accordance with the procedures laid down by the Member States.

⁵³ In accordance with national legislation and/or national practice.

If one of such worker is dismissed during the above period, the employer must cite duly substantiated grounds for her dismissal in writing.

Moreover, according to Articles 10 and 12 of Directive 92/85/EEC, Member States are required to take the necessary measures to protect pregnant workers and workers who have recently given birth or are breastfeeding from the consequences of unlawful dismissals and to introduce into national legislation the measures necessary to enable all workers who consider themselves harmed by failure to comply with the obligations arising from this Directive, to pursue their claims by judicial process and/or, in accordance with national laws and/or practices, by recourse to other competent authorities.

In addition, according to Article 11 of Directive 92/85/EEC, in the cases where the employer has to take the measures necessary to avoid the exposure of pregnant workers and workers who have recently given birth or are breastfeeding to occupational risks (pursuant Articles 5, 6 and 7 of the same Directive), by temporarily adjusting the working conditions and/or the working hours of the worker concerned (including the transfer of the worker concerned to daytime work or to another job, provision of a leave from work or extension of maternity leave), the employment rights, including the maintenance of a payment to, and/or entitlement to an adequate allowance for, such workers, must be ensured in accordance with national legislation and/or national practice.

Moreover, in the case of maternity leave, the following must be ensured to the concerned pregnant workers and workers who have recently given birth or are breastfeeding: the rights connected with the employment contract and the maintenance of the payment and/or entitlement to an adequate allowance, which shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health (subject to any ceiling laid down under national legislation).

In this respect, ILO Convention 171 provides for the implementation of measures to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work, which shall not have the effect of reducing the protection and benefits connected with maternity leave and may include the transfer to day work (where this is possible), the provision of social security benefits or an extension of maternity leave:

- ▶ Before and after childbirth: for a period of at least sixteen weeks (of which at least eight weeks shall be before the expected date of childbirth);
- ▶ For additional periods in respect of which a medical certificate is produced stating that it is necessary for the health of the mother or child:
 - During pregnancy;
 - During a specified time beyond the period after childbirth⁵⁴.

Moreover, this Convention also establishes that, during pregnancy, as well as during the above mentioned specified time beyond the period after childbirth, a woman worker: shall not be dismissed, except for justifiable reasons not connected with pregnancy or childbirth; shall not lose the benefits regarding status, seniority and access to promotion which may be attached to her regular night work, and her income shall be maintained at a level sufficient for the upkeep of herself and her child with a suitable standard of living.

Pattern of work

Regarding pattern of work, Article 13 of the Directive 2003/88/EC provides that an employer who intends to organise work according to a certain pattern, shall take into account the general principle of adapting work to the worker, with a view, in particular, to alleviating monotonous work

⁵⁴ Which length shall be determined by the competent authority after consulting the most representative organizations of employers and workers.

and work at a predetermined work rate, depending on the type of activity, and of safety and health requirements, especially as regards breaks during working time.

More favourable provisions and level of protection

At this point is important to highlight that, in general, both ILS and EU standards on working time provide that their provision shall not affect Member States' right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the safety and health of workers. In addition, both of them foresee, in general, that their ratification or transposition, as the case may be, shall not constitute valid grounds for reducing the general level of protection already afforded to workers.

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