



## XXVI MEETING OF EUROPEAN LABOUR COURT JUDGES 25-26 SEPTEMBER 2018, MADRID (SPAIN)

### WORKING TIME

National Reports<sup>1</sup> – Preparatory Questionnaire for the  
European Labour Court Judges Meeting

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### CONTENTS

3	BELGIUM
9	FINLAND
14	GERMANY
18	HUNGARY
27	IRELAND
31	ISRAEL
38	ITALY
42	LUXEMBOURG
49	NORWAY
58	SLOVENIA
64	SPAIN
68	SWEDEN

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<sup>1</sup> The views and opinions expressed therein are those of the authors and do not necessarily reflect those of the International Labour Organization.

# INTRODUCTION

The subject of working time is a central one in the field of work relation, and has been addressed and regulated by several conventions, directives, statutes, collective agreements and guidelines. The importance of these provisions stems from the potential risks associated with excessive hours of work and the need to protect employees' health and safety by limiting working hours and providing adequate periods for rest and recuperation, including daily and weekly rest, as well as paid annual leave.

However, it is important to note that no matter how comprehensive these provisions might be, they are not always sufficient in order to deal with challenges arising from recent (dramatic) changes in the workplace. In today's information-based economy, work can be performed from everywhere and at any time- regardless of the employee's official working time and place. This allows the employer greater flexibility in designing the work scheme, which has to adapt and even react as quickly as possible to unforeseeable events, conjectures or economic constraints that are less and less predictable, in order to remain competitive. Globalization and interaction with international markets- who are often located in different time zones- are yet another reason for the need for round the clock availability on part of the employees. As a result, a variety of flexible work arrangements that vary from the conventional full-time, "9 to 5" model may come into play, such as flexi-time arrangements, part-time work, hours averaging, working time accounts, etc., as well as "geographical" flexibility to the employees in the workplace, in such ways as telework, or working remotely. Though this flexibility might be seen by some employees as associated with a freer management of their working hours, it may also be perceived by others as a source of hardship likely to degrade their living conditions, as it blurs the boundaries between work and home. As a result, it becomes more difficult to successfully reconcile the conflicting demands of their paid work and personal lives, as development of information and communication technologies are enabling employees to be at the disposal of their employers well beyond their regular work hours. Therefore, it becomes increasingly harder for employees to fully disconnect from their work- even during their leisure time- and easier for employers to take advantage of this phenomena for their own benefit.

This questionnaire wishes to examine the different aspects of working time- its traditional concept and scope; the impact of globalization and digitalization of work might have had on the working time arrangements on each country's positive law- by addressing the changes in time and geographical flexibility; and the right to disconnect from work, outside the regular work hours.

## BELGIUM

**Question 1.** Does your country have laws or other provisions regulating employees' working hours?

**Answer:** Yes

**Question 2.** If so:

**2a) What are the general rules applicable to the duration of working hours?**

**Answer:**

In principle, working hours are limited to 8 hours per day and 40 hours per week (article 19, al. 1, Labour Act of 16 March 1971), but since 2003 the weekly working time is in reality reduced tot 38 hours.

**2b) Are there any general or specific exemptions from these rules regulating work time?**

**Yes** X

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

The exe(m)ptions are many and diverse.

The rules regulating work time do not apply to:

- persons employed by public authorities, except if the service has an industrial or commercial activity or in health care;
- persons working in a family undertaking where only relatives work under the sole authority of a parent;
- the sailing personnel of fishing companies;
- employees exercising a leading or confidential function as enumerated by a Royal Decree of 1965;
- house servants;
- sales representatives;
- home workers;
- physicians, veterinarians, dentists;
- aviation flight personnel.

The daily limit can be raised to 9 hours if the work schedule provides for at least an extra half day of rest, besides the Sunday rest (article 20, § 1, Labour Act), which nowadays is almost always the case.

The daily limit can be raised tot 10 hours for workers who can't return home every day because of the distance to the working place [a worker is considered unable to return home every day if he has to be away from home during more than 14 hours by using public transport] (article 20, § 2, Labour Act).

It is possible to deviate from the general daily and weekly limits by a collective labour agreement or by the labour regulation of an undertaking foreseeing in flexible working hours, in which case an average of 40 hours per week has to be respected over a period of 1 year, but working time can not exceed 9 hours per day and 45 hours per week (article 20bis Labour Act). Exceeding the general daily and weekly limits is also possible if a system of gliding work rosters has been installed in the undertaking (article 20ter Labour Act).

It is also allowed to exceed the daily and weekly limits for specific reasons, such as:

- work in consecutive shifts;
- continuous work;
- work to cope with an accident that has occurred or to prevent a threatening accident;
- to cope with an extraordinary augmentation of work;
- unforeseen necessity.

A Royal Decree can give permission for not applying the daily and weekly limits for certain branches of industry or categories of undertakings for which it is not possible to apply these limits (article 23 Labour Act) or for certain tasks, e.g. preparatory work that necessarily has to be done outside the normal work schedule of the undertaking (article 24, § 1, Labour Act).

**2c) Are there certain sectors of employment who have different working hours?**

**Yes** X

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** Working hours are regulated by different legislation in the diamond industry, building industry and the road transport branch.

**Question 3. In cases where the duration of work is regulated, is there a specific compensation paid for working over time? If so- are the overtime rates higher than the rates paid for regular working hours?**

**Yes** X

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

For this matter is considered as overtime: work done above 9 hours per day or 40 hours per week (article 29, § 2, Labour Act) [or above the lower limits set by a collective labour agreement (article 28, § 4, Labour Act)], except if it is done in accordance with the conditions set for flexible working hours, gliding work rosters, work in consecutive shifts, continuous work or in branches where according to a Royal Decree it isn't possible to apply the general limits.

Overtime has to be paid at a rate at of least 50 % higher than the rate paid for regular working hours and of at least 100 % higher if it is executed on a Sunday or a legal (bank)holiday (article 29, § 1, Labour Act). But a collective labour agreement can allow to change the overtime supplement for extra recuperation rest.

**Question 4. Are there any limitations with regard to the amount of overtime an employee may work?**

Yes X

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

As a rule, overtime is only permitted if the average working time over a certain period isn't longer than the standard working time. That period is in principle a trimester, but a longer period up to max. 1 year can be decided by Royal Decree, a collective labour agreement or by the labour regulation of the undertaking. Some extra hours are not taken into account to calculate the average working time (e.g. work to cope with an accident that has occurred or to prevent a threatening accident). Within the period to consider, the amount of overtime can never exceed the standard working time by more than 143 hours at any point (article 26bis, § 1bis, Labour Act).

There is an absolute limit to working time of 11 hours per day and 50 hours per week, even if several exemptions are simultaneously applicable, except for continuous work (absolute limit of 12 hours per day and 50 hours per week) and work to cope with an accident that has occurred or to prevent a threatening accident (article 27 Labour Act).

**Question 5. Is the employer responsible for ensuring his/her employees are given minimum hours of rest between shifts; adequate breaks throughout the work day; paid annual leave?**

Yes X

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

In principle whenever an employee has made overtime, he is entitled to recuperation rest. In any period of 24 hours, the employee is in principle entitled to a rest of 11 consecutive hours between the ending and the beginning a shift (article 38, § 1, Labour Act) and if this rest comes in addition to the Sunday rest, the employee is in principle entitled to a break of 35 consecutive hours. There are some exceptions, e.g. in road transportation the break of 35 consecutive hours in a period of 1 week can be interchanged with a break of 70 consecutive hours in a period of 2 weeks.

Also, the employees are not allowed to work for more than 6 hours without a pause, with an exemption for work to cope with an accident that has occurred or to prevent a threatening accident (article 38quater, §§ 1 and 4, Labour Act).

The right to annual paid leave is regulated by separate legislation. Basically the employee is in a calendar year entitled to 4 weeks of [for 92 % double] paid leave if he has worked the entire previous calendar year (2 days per month worked in the previous year in a 6-day week; which results in 20 days in a 5-day week). At least two weeks of the annual paid leave have to be taken up in one uninterrupted period.

**Question 6.** In your country- who is responsible for maintaining records of the employee's working hours? In cases in which such records are not kept- who carries the burden to prove said working time?

**Answer:**

In principle the employer has no obligation to maintain records of the employee's working hours. The burden of proof rests on the employee who is claiming having done overtime. If a system of gliding work rosters is applied in an undertaking, the employer has to make sure that working time is registered and the registration has to be kept for 5 years (article 20ter, § 5, Labour Act), but it doesn't change the burden of proof if the employer fails to comply.

As the result of a collective labour agreement in the road transportation branch, the driver has to write down his working time on weekly timesheets. These timesheets have to be countersigned and conserved by the employer. The employer who refuses to countersign or doesn't conserve these timesheets, has to prove that the data provided by the employee are incorrect.

**Question 7.** Whether your country has regulations on the duration of working hours or not- have any forms of flexible working hours been considered, such as successive fixed-term contract, interim, teleworking, part-time work, on-call work contract, occasional work, etc., by your legislature, the employers' and employees' organizations (via collective agreements), or the employers themselves (via internal regulations, employment contract, etc.)?

**Answer:**

Yes, all of these forms of flexibility have been considered. Some of the exe(m)ptions mentioned in the answers to previous questions are the result of the constant demand of employer's organisations for more flexibility. The possibility of closing successive fixed-term contracts without it's leading to a contract for an undetermined term, has been enlarged. Employers have tried to use some of these forms (successive fixed-term contract, interim work, on-call work contracts) to circumvent working time regulations, but at the end mostly unsuccessful.

**Question 8.** In your country, is it possible to work outside of the workplace, for example at home?

Yes X

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

The possibility of working at home has always existed. The 3 July 1978 Labour Contract Act now devotes an entire chapter to home workers. This type of labour was mostly used in the textile industry, e.g. for stitching fabrics.

Nowadays, also office work is often done (partly) from home.

**Question 9. If so:**

**What kind of control does the employer have over the employee's working hours? How is the working time being tracked?**

**Answer:**

In the traditional type of home work the employer has no control over the employee's working hours (the Labour Act's working time rules aren't applicable to these home workers – see Q. 2.b), but since wages are mostly determined by the number of pieces produced by the employee, the employer can rely on it that the employee does work the agreed amount of hours.

Nowadays it is often possible to monitor the employee's working hours when he is constantly connected with the computer at the office. I have no knowledge on how widespread this form of control is used. I suppose that in most cases the employer has to put trust in the employee working from home.

**Question 10. Working during off time-**

**10a) Does your country have any provisions- whether regulated by statutes, collective agreements, or even internal guidelines or employment contracts- addressing the issue of work during the employee's free time?**

**Answer:** Yes, since February 2017 it is possible for the employee to do overtime, voluntary and on his own initiative, for a maximum of 100 hours per calendar year [can be raised to up to 360 hours by a collective labour agreement declared generally binding by Royal Decree]. The consent of the employee has to be given explicitly, in advance and in writing, for a renewable period of 6 months. No compensation rest has to be accorded for voluntary overtime. (article 25*bis* Labour Act).

**10b) Is working outside scheduled working time an acceptable practice in your country? Do employees have the right to refuse to work during their time off? Do employees have the right or ability to completely disconnect from their job?**

**Answer:**

Except for some activities [e.g. work to cope with an accident that has occurred or to prevent a threatening accident, urgent machine repair that necessarily has to be done outside normal working hours] and the above mentioned voluntary overtime, it is forbidden to make or to let an employee work outside scheduled working time (article 38*bis* Labour Act). Failing to comply is a criminal offense.

**10c) If working outside of scheduled work hours is an acceptable practice- is there a mechanism to track the employee's actual work time under these circumstances? Is the employee entitled to any specific compensation for working during his free time?**

**Answer:**

Trade unions are very much opposed to this new possibility of voluntary doing overtime since there is no way make sure it is really voluntary and to check if the limit isn't exceeded.

The employee is still entitled to be paid at a higher rate (see Q.3) and at a reduced income tax rate.



**Question 1. Does your country have laws or other provisions regulating employees' working hours?**

**Answer:**

The Working Hours Act (1996) is a general act regulating working hours and it applies to both contractual and public-service employment relationships. There are also provisions on working hours in the Young Workers' Act, Seamen's Working Hours Act, the Act on Working Hours on Vessels in Domestic Traffic and the EU regulation on driving times and rest periods in road traffic. A new Working Hours Act will replace the Working Hours Act, 1996, in the near future. Government proposal for a new Working Hours Act will be submitted to the Parliament in Autumn 2018. The aim is to update the current Working Hours Act so that it better responds to the needs of working life in the 2020s. Also in many collective agreements there are provisions on working hours.

**Question 2. If so:**

**2a) What are the general rules applicable to the duration of working hours?**

**Answer:** According to the general provision in Working Hours Act, regular working hours shall not exceed eight hours a day or 40 hours a week. The regular weekly working hours can also be arranged in such a way that the average is 40 hours over a period of no more than 52 weeks. The time spent on work and the time an employee is required to be present at a place of work at the employer's disposal are considered working hours. Daily periods of rest are not included in working hours if the employee is free to leave the place of work during these times. Travel time is not included in working hours if it does not constitute work performance.

In certain branches and activities regular working hours can be arranged so that they do not exceed 120 hours during a three-week period or 80 hours during a two-week period (period-based work). The branches and activities where such arrangements are possible include for instance police, customs, post, telecommunication and radio services, hospitals, health centres, 24-hour day-care centres, welfare and other such institutions and prisons, passenger and goods transport, loading and unloading work on vessels and railway wagons, mechanical forest and forest improvement work, household work and children's day-care in the home of the employee, guard work, dairies, accommodation and catering establishments, cultural and recreational establishments and at film studios.

There is also a specific provision on daily working hours of a motor vehicle driver.

**2b) Are there any general or specific exemptions from these rules regulating work time?**

**Yes** x **No**

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

In the Working Hours Act there are provisions on regular working hours based on a collective agreement (regular working hours based on a collective agreement shall not exceed an average of 40 hours a week during a maximum of 52 weeks), local agreements, flexible working hours and reduced working hours.

In the Employment Contracts Act there are provisions on part-time work, parental leaves, variable working hours contracts (zero hours contracts) etc.

The Regional State Administrative Agency can grant permission for a departure from the general provision of the Working Hours Act.

**2c) Are there certain sectors of employment who have different working hours?**

**Yes** X **No**

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** The Working Hours Act does not apply to work which must be considered management of an undertaking, corporation or foundation; to employees who perform religious functions in religious communities; to work performed by an employee at home or otherwise in conditions where it cannot be considered a duty of the employer to monitor arrangement of the time spent on said work; to forest, forest improvement and timber-floating work or to related work; to reindeer husbandry; to fishing and processing of the catch immediately connected therewith; to work where the working hours have been separately prescribed (for instance Seamen's Working Hours Act) or which is covered by another act on working hours, under which it has been exempted from working hour restrictions (it has been enacted by decree that the Act does not apply to certain state civil servants such as judges and referendaries); to work performed by civil servants that is covered by the Act on the working hours of Defence Force civil servants or by civil servants of the Frontier Guards.

**Question 3. In cases where the duration of work is regulated, is there a specific compensation paid for working over time? If so- are the overtime rates higher than the rates paid for regular working hours?**

**Yes** X **No**

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** According to the Working Hours Act, the wage payable for the first two hours of overtime above the daily regular working hours shall be the regular wage plus 50 per cent, and for additional hours the regular wage plus 100 per cent. The regular wage plus 50 per cent is payable on hours exceeding the regular weekly working hours. By agreement, wages payable for additional work or overtime can also be partly or completely converted into corresponding free time during regular working hours.

**Question 4. Are there any limitations with regard to the amount of overtime an employee may work?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

According to the Working Hours Act, the maximum amount of overtime during a four-month period is 138 hours, though 250 hours must not be exceeded in a calendar year.

**Question 5. Is the employer responsible for ensuring his/her employees are given minimum hours of rest between shifts; adequate breaks throughout the work day; paid annual leave?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** In the Working Hours Act there are provisions on daily rest periods and weekly free time. If daily working hours exceed six and an employee's presence at the workplace is not necessitated by work continuity, the employee must be granted a regular rest period of at least one hour within the shift, during which s/he is free to leave the workplace. An employer and an employee can agree on a shorter rest period, but this may not be less than half an hour. If daily working hours exceed 10, employees are entitled to a rest period of up to half an hour following eight hours of work. If working hours in shift or period-based work exceed six, employees must be allowed a rest period of at least half an hour or an opportunity to eat while they are working.

During the 24 hours following the beginning of a work shift, employees must be given an uninterrupted rest period of at least 11 hours in the case of work referred to, for instance, in the general provision of the Act (8 hours a day).

Provisions on the right of employees to annual holidays are contained in the Annual Holidays Act. The act contains provisions on the accrual of annual holiday, pay during the annual holiday and the granting of the annual holiday and it applies to both private and public sector.

**Question 6. In your country- who is responsible for maintaining records of the employee's working hours? In cases in which such records are not kept- who carries the burden to prove said working time?**

**Answer:** Employers must register the hours worked and the relevant remunerations for each employee. The regular, additional, overtime, emergency and Sunday working hours and the relevant remunerations, or all hours worked and overtime, emergency and Sunday hours separately and the increases paid for them must be entered in the register.

**Question 7.** Whether your country has regulations on the duration of working hours or not- have any forms of flexible working hours been considered, such as successive fixed-term contract, interim, teleworking, part-time work, on-call work contract, occasional work, etc., by your legislature, the employers' and employees' organizations (via collective agreements), or the employers themselves (via internal regulations, employment contract, etc.)?

**Answer:** There are regulations on part-time work, variable hours contracts (zero hours contract) etc. On-call work contracts are becoming more common in certain branches. The new Working Hours Act would introduce a new working time arrangement for flexible working hours. It would mean that at least half of an employee's working time would be such that the employee can decide when and where to work. The flexible working hours arrangement would be based on an agreement between the employer and the employee. The new act would include provisions on working hours banks that would allow the introduction of the statutory working hours bank at all workplaces even in cases where it is not included in the collective agreement binding on the employer. A working hours bank would be a system for combining work and private life that allows employees to save and combine working hours, earned leave or monetary benefits exchanged for leave. It would increase the employees' possibilities to accumulate a longer leave and reconcile the demands of work and private life.

**Question 8.** In your country, is it possible to work outside of the workplace, for example at home?

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** Working at home or other such arrangements are based on an agreement between the employer and the employee. The aim of the new Working Hours Act is to enable more flexible working hours arrangements.

**Question 9.** If so:

**What kind of control does the employer have over the employee's working hours? How is the working time being tracked?**

**Answer:** Such arrangements are well suited to specialist work where specific goals and overall timetables are more important than working at specific hours. They are based on mutual trust.

**Question 10.** Working during off time-

**10a) Does your country have any provisions- whether regulated by statutes, collective agreements, or even internal guidelines or employment contracts- addressing the issue of work during the employee's free time?**

**Answer:** According to the Working Hours Act, an employer and an employee can agree that the employee is required to remain at home or otherwise available to be called in to work

when necessary. This so-called stand-by time is not included in working hours. The length and frequency of stand-by time must not excessively disrupt the employee's free time. Additional work refers to work done on the employer's initiative which does not exceed the regular working hours. Employees can be required to work additional hours only with their consent unless additional work has been agreed upon in their employment contract. In such cases, however, employees are entitled to refuse additional work on days which are entered as free time on the work shift schedule, provided they have a justifiable personal reason. Overtime refers to work carried out on the employer's initiative in addition to the regular working hours. The specific consent of the employee is required each time overtime is required. Employees can, however, give their consent for short set periods if the nature of the work arrangements so requires.

**10b) Is working outside scheduled working time an acceptable practice in your country? Do employees have the right to refuse to work during their time off? Do employees have the right or ability to completely disconnect from their job?**

**Answer:** In specialist work working outside scheduled working time is rather common practice.

**10c) If working outside of scheduled work hours is an acceptable practice- is there a mechanism to track the employee's actual work time under these circumstances? Is the employee entitled to any specific compensation for working during his free time?**

**Answer:** There is no specific compensation if working outside of scheduled work hours is not based on an agreement between the employer and employee.

## GERMANY

**Question 1.** Does your country have laws or other provisions regulating employees' working hours?

**Answer:**

Yes, statute law and collective agreements

**Question 2.** If so:

**2a) What are the general rules applicable to the duration of working hours?**

**Answer:** implementation of dir 2003/88 EC by Arbeitszeitgesetz (act on working time)

1) max 8 hours/d, 6-day-week (48 h/w); max 10 h/d if 48 h/w averaged within reference period of appr. 6 months (dir Art 19 subs 1)

2) derogative by coll. agreem. (dir Art 18): max 24 h/d, probably in violation of dir Art 3

3) derogative by individual opt-out (dir Art 22 subs 1a): no need to average 48 h/w if employee waives his/her statutory protection

4) new case law regarding legal status of driving to customer from home as first port of call: deemed working time (as opposed to way to office) both with regard to max working hours and to claim to remuneration according to Minimum Wage Act

**2b) Are there any general or specific exemptions from these rules regulating work time?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** hospitals, hotels, restaurants, media, arts (opera, orchestra, theatre), public transport, energy, agriculture

**2c) Are there certain sectors of employment who have different working hours?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Yes, civil servants with special status (judges, soldiers, "Beamte" – e.g. police, firemen, administrators)

**Question 3.** In cases where the duration of work is regulated, is there a specific compensation paid for working over time? If so- are the overtime rates higher than the rates paid for regular working hours?

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

No statutory compensation for over-time

Commonly ruled in coll. agreem., often including bonus payments

**Question 4. Are there any limitations with regard to the amount of overtime an employee may work?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Yes, rules on max working time apply

Below statutory and/or coll. agreem. maximum rules: Works agreem. (between works council – elected by workforce – and employer) often stipulate max. hours of overtime (daily, weekly, monthly, yearly) as part of individual accounts of working hours

**Question 5. Is the employer responsible for ensuring his/her employees are given minimum hours of rest between shifts; adequate breaks throughout the work day; paid annual leave?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Yes, all of those according to dir 2003/88:

- min daily rest: 11 h (derogatory to 9 h by coll. agreem.)
- min breaks: 30 min in case of daily working time > 6 h, 45 min > 9 h
- min 4 weeks annual paid leave (art 7 dir)

**Question 6. In your country- who is responsible for maintaining records of the employee's working hours? In cases in which such records are not kept- who carries the burden to prove said working time?**

**Answer:**

a) employer has to keep records – for lorry drivers: all working hours, regul. EC 561/2006

- for all other employees: only daily working time > 8 h

b) employee bears burden of proof if over-time pay is claimed;

however: easing of evidence; court may establish amount of overtime by circumstances and plausibility of claim

**Question 7. Whether your country has regulations on the duration of working hours or not- have any forms of flexible working hours been considered, such as successive fixed-term contract, interim, teleworking, part-time work, on-call work contract, occasional work, etc., by your legislature, the employers' and employees' organizations (via collective agreements), or the employers themselves (via internal regulations, employment contract, etc.)?**

**Answer:**

Yes, all of them

**Question 8.** In your country, is it possible to work outside of the workplace, for example at home?

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Yes, by agreement of the parties of employment contract

**Question 9.** If so:

What kind of control does the employer have over the employee's working hours? How is the working time being tracked?

**Answer:**

No statutory provision

Commonly ruled in works agreements (e.g. log-in protocol)

**Question 10.** Working during off time-

10a) Does your country have any provisions- whether regulated by statutes, collective agreements, or even internal guidelines or employment contracts- addressing the issue of work during the employee's free time?

**Answer:**

Statutes: no; coll. agreem.: yes, some (e.g. Volkswagen); works agreem.: possibly, haven't seen any dealing with this question

It is an ongoing topic of debate and on the list of unions ("work-life-balance")

10b) Is working outside scheduled working time an acceptable practice in your country? Do employees have the right to refuse to work during their time off? Do employees have the right or ability to completely disconnect from their job?

**Answer:**

Legally not accepted except in emergencies or in the form of stand-by duty

According to media reports it is quite common with white collar staff, especially in smaller tech companies

Legally employee may refuse to work during time off

Right: yes, unless stand-by; ability: mostly depends on career prospects or position



**10c) If working outside of scheduled work hours is an acceptable practice- is there a mechanism to track the employee's actual work time under these circumstances? Is the employee entitled to any specific compensation for working during his free time?**

**Answer:**

- no, unless e.g. log-in time is recorded
- financial compensation: working by order or by consent or by tolerating of employer is deemed over-time; payment of over-time depends on coll. agreem. or contract of employment; statutory claim for over-time payment only "if payment can reasonably be expected". The Federal Court denied such a reasonable expectation e.g. in the case of a solicitor employed in a law firm (because he had done a lot of over-time expecting to become a partner until the parties fell out).
- other "compensation" or legal benefits: ongoing legal debate whether a short period of work during statutory hours of rest (e.g. reading sms, 1 min telephone call) interrupts rest so that time of minimum rest – 11 hours – starts again or if "minima non curat praetor".

## HUNGARY

### **Question 1. Does your country have laws or other provisions regulating employees' working hours?**

**Answer:**

Yes, Act no. I of 2012 on the Labour Code (hereinafter: LC) regulates the working hours in the private sector. In Hungary, there are a number of labour law acts that set out the rules of employment in the public sector or for special groups of employees and also stipulate special rules on working time (e.g. for teachers, health care staff, employees of police and military services). However, in this questionnaire we primarily focus on the general rules on working time as regulated under the LC.

### **What are the general rules applicable to the duration of working hours? 2a):Question 2. If so**

**Answer:**

The LC differentiates between the terms of “daily working time” and “scheduled daily working time”. “Daily working time” means the amount of working hours agreed by the parties in the employment contract (within the framework of the LC and collective agreements). „Scheduled daily working time” means the amount of working hours scheduled for a specific working day.<sup>2</sup>

According to the general rule, the daily working time in full-time jobs amounts to eight hours („regular daily working time”).<sup>3</sup>

In general, scheduled working hours should equal to the daily working time every working day („equal work schedule”).

### **Are there any general or specific exemptions from these rules regulating work time? 2b)**

Yes  No

*If you answered “Yes”, please provide some examples or a brief list:*

**Answer:**

There are several exemptions to the general rule above. The most important ones are the followings.

- part-time or shorter full-time jobs

<sup>2</sup> LC, sec. 88(1)(2)

<sup>3</sup> LC, sec. 92(1)

Parties may agree on part-time employment, where the remuneration is proportionally less than the remuneration in comparable full-time jobs. Specific laws or an agreement of the parties, for instance on the grounds of health risks, may introduce shorter full-time jobs, where the daily working hours amount to less than 8 hours, however, the job shall be regarded as full-time employment in terms of remuneration.<sup>4</sup>

- Longer full-time employment

Based on an agreement between the parties, the daily working time in full-time jobs may be increased to not more than 12 hours daily for employees working in stand-by jobs, or who are relatives of the employer or the owner.<sup>5</sup>

- Unequal schedule of working

Compared to the equal schedule of working, as described at Question 2a), the employer may apply work time banking periods, within which it can schedule the actual daily working time unequally for each working day („unequal work schedule”). In this case, the amount of daily working time should be respected on the average of the work time banking period.<sup>6</sup> Should the employer use this method, the scheduled daily working time of an employee may not be less than 4 hours (with the exception of part-time work), and may not exceed 12 hours, the weekly working time of employees cannot exceed 48 hours.<sup>7</sup> In the cases of longer full-time employment, the scheduled daily working time must not exceed 24 hours, the weekly working time may not exceed 72 hours.<sup>8</sup>

Besides the work time banking periods, the LC envisages other schemes (so called payroll periods) for unequal work scheduling, but they are not common practice.<sup>9</sup>

- Flexible working hours

If the nature of the performed work allows, the employer may provide (in part or in whole) flexible working hours for the employee.<sup>10</sup> It is notable that flexibility may concern only the scheduling of working hours, but may not concern their amount, which is fixed in the parties' agreement.

**Are there certain sectors of employment who have different working hours c2)**

Yes  No

*If you answered “Yes”, please provide some examples or a brief list:*

- Act no. XLII of 2015 regulates the working hours of military professionals. The maximum of 48 hours per week is prescribed in case of on call service.
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<sup>4</sup> LC, sec. 92(4)(5)

<sup>5</sup> LC, sec. 92(2)

<sup>6</sup> LC, sec. 93, 94

<sup>7</sup> LC, sec. 99(2)

<sup>8</sup> LC, sec. 99(3)

<sup>9</sup> LC, sec 98

<sup>10</sup> LC, sec. 96(2)(3)

- Act no. CXC of 2011 on National Public Education provides specific, detailed rules on the work schedule of teachers, irrespective of whether they are employed by a public or private entity. The purposes of this special regulation include the adaptation of the work schedule of teachers to the operational schedule of educational institutions in order to ensure sufficient preparation time for actual teaching and other school activities and guarantee sufficient rest periods, etc.
- Act no. LXXXIV of 2003 on Certain Issues of Health Care Activities provides specific, detailed rules on the work schedule of health care service workers, irrespective of whether they are employed in the public or private sphere. The purposes of the special regulation are, with appropriate modifications, similar to the ones described related to the education sector. The regulation is highly criticized, because it gives rise to a severe overloading of health care workers.

**Question 3. In cases where the duration of work is regulated, is there a specific compensation paid for working over time? If so- are the overtime rates higher than the rates paid for regular working hours?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

In accordance with the relevant employment regulations or by agreement of the parties, employees shall be entitled to a 50 percent wage supplement or to (paid) time off for overtime work performed in addition to the daily working time.

Where overtime work is ordered on the scheduled weekly rest day (unpaid weekly rest period), a 100 percent wage supplement is to be paid. The wage supplement shall be 50 percent if the employer provides another weekly rest day (unpaid weekly rest period). Where overtime work is ordered on a public holiday, the employee is entitled to the same wage supplement.

These wage supplements should be granted in addition to the base salary.<sup>11</sup>

**Question 4. Are there any limitations with regard to the amount of overtime an employee may work?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

<sup>11</sup> LC, sec. 143

In terms of full-time jobs, 250 hours of overtime work can be ordered in a given calendar year. A collective agreement may increase this amount up to 300 hours.<sup>12</sup>

**Question 5. Is the employer responsible for ensuring his/her employees are given minimum hours of rest between shifts; adequate breaks throughout the work day; paid annual leave?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

The Fundamental Law of Hungary enshrines the fundamental right of all workers to a daily and a weekly rest period and to a paid annual leave.<sup>13</sup> The following provisions of the LC are designed to implement these fundamental rights.

- Rest breaks (throughout a working day)

If the scheduled daily working time or the duration of overtime work:

a) exceeds 6 hours, 20 minutes of break-time shall be provided;

b) exceeds 9 hours, an additional 25 minutes of break-time shall be provided.

The break-time provided to employees by agreement of the parties or in the collective agreement may not exceed 60 minutes (in order to avoid hidden ordering of split shifts).

The break-time shall be provided after not less than 3 and not more than 6 hours of work.

Under circumstances laid down in the LC, the employer shall be entitled to schedule break-times in several lots.<sup>14</sup>

For young workers the rules on break-time are more favourable.<sup>15</sup>

An individual employment contract or a collective agreement may deviate from the statutory law exclusively to the benefit of the employee.<sup>16</sup>

- Daily rest periods:

According to the general rule, at least 11 hours of uninterrupted rest period shall be provided after the conclusion of daily work and before the beginning of the next day's work ("daily rest period"). The daily rest period is at least 8 hours for employees working split shifts; continuous shifts; multiple shifts; or in seasonal jobs. However, in this case, the total duration of two consecutive daily rest periods is at least 22 hours.

<sup>12</sup> LC, sec. 109, 135(3)

<sup>13</sup> Fundamental Law of Hungary, Article XVII, sec. 4

<sup>14</sup> LC, sec. 103

<sup>15</sup> LC, sec. 114(3)(b)

<sup>16</sup> LC, sec. 43, 135(2)(f)

The daily rest period is at least 12 hours for young workers (under 18 years of age).

After an inactive stand-by period the employee is not entitled to a rest period.<sup>17</sup>

The aforementioned rules on daily rest periods shall apply in terms of work time banking schemes as well [see Question 2b)].

An individual employment contract or a collective agreement may deviate from the statutory law exclusively to the benefit of the employee.<sup>18</sup>

- Weekly rest day/weekly rest period

Employees are entitled to two rest days in a given week, or to an uninterrupted 48 hour-long weekly rest period.<sup>19</sup> In general the rest days should be scheduled to Saturday and Sunday (“general work schedule”),<sup>20</sup> however, an individual agreement may deviate from this scheme to the benefit of the worker, a collective agreement even to the detriment of the workers as well.<sup>21</sup> The employer may also unilaterally introduce a different work schedule in terms of the weekly rest period, provided it applies an unequal work schedule, as described at Question 2b) (work time banking period etc.). In this latter case, the LC lays down minimum standards for scheduling the weekly rest days of rest periods within a work time banking period, from which an individual employment contract or a collective agreement may deviate exclusively to the benefit of the employee.<sup>22</sup>

- Right to (paid) vacation

The amount of basic vacation time is 20 working days in a given calendar year for all workers (in part-time employment too). With respect to certain individual circumstances, employees may be eligible for extra vacation time, as follows.

Employees are entitled to 1-10 days extra vacation time gradually increasing by their age (1 working day over the age of 25; 10 working days over the age of 45).

Employees are entitled to extra vacation time in case of having a child or children (2 working days for 1 child, 4 working days for 2 children; a total of 7 working days for more than two children). The extra vacation time is increased for workers who have children with disabilities by 2 working days per child. Upon the birth of his child, a father is entitled to 5 days of extra vacation time, or to 7 days of extra vacation time in the case of twins.

Employees with specific disabilities are entitled to 5 working days of extra vacation time a year.<sup>23</sup>

Young workers (under 18 years of age), employees working underground or exposed to ionizing radiation are each entitled to 5 working days of extra vacation per year.<sup>24</sup>

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<sup>17</sup> LC, sec. 104, 114(3)(c)

<sup>18</sup> LC, sec. 43, 135(2)(f)

<sup>19</sup> LC, sec. 105-106

<sup>20</sup> LC, sec. 97(2)

<sup>21</sup> LC, sec. 43, 277

<sup>22</sup> LC, sec. 43, 105-106, 135(2)(f)

<sup>23</sup> LC, sec. 116 to 120

<sup>24</sup> LC, sec. 119

**Question 6.** In your country- who is responsible for maintaining records of the employee's working hours? In cases in which such records are not kept- who carries the burden to prove said working time?

**Answer:**

Employers have to keep records of the duration of regular working time and overtime; the duration of stand-by duty, and periods of leave, thus they have to prove the duration of working hours.<sup>25</sup>

In case of flexible working hours [see at Question 2b)], the records should cover only the periods of leave.<sup>26</sup>

Working time records are extensively supervised by the labour inspectorate authorities.

**Question 7.** Whether your country has regulations on the duration of working hours or not- have any forms of flexible working hours been considered, such as successive fixed-term contract, interim, teleworking, part-time work, on-call work contract, occasional work, etc., by your legislature, the employers' and employees' organizations (via collective agreements), or the employers themselves (via internal .?regulations, employment contract, etc

**Answer:**

Statutory law provides for the opportunity of introducing flexible working hours under circumstances described at Question 2b). Crucial is the nature of the job to be performed: whether it allows the autonomous organisation of work schedule for the workers or not. Interestingly, the LC in general allocates the right to decide on the introduction of flexible working hours to the employer, thus, no consent on the employee's part is required.<sup>27</sup> The employer may introduce flexible working hours in respect of an individual employee or for a group of employees (e.g. via an employer's policy). Obviously, the LC does not prevent the parties from agreeing, either by an individual agreement or by a collective agreement, to introduce flexible working hours.

The LC regulates some specific, atypical forms of employment, which are basically associated to flexible working hours. These are the followings.

- Telework

Teleworking means activities performed on a regular basis at a place other than the employer's facilities, using IT means, where the end product is delivered by way of these

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<sup>25</sup> LC, sec. 134

<sup>26</sup> LC, sec. 96(3)

<sup>27</sup> LC, sec. 96(2)

means.<sup>28</sup> Unless otherwise agreed by the parties, the teleworker's work schedule is flexible.<sup>29</sup>

- Outwork

The other type of home or remote working under Hungarian labour law is outworking. Outworkers may be employed in jobs that can be performed independently, and they are remunerated exclusively on the basis of the work done. The employment contract has to define the work to be performed by the employee, the place where the work is to be carried out and the method and extent of covering expenses. The employee's home or another place designated by the parties is construed as the place of work.<sup>30</sup> Primarily simple composition or packaging tasks are performed in the framework of outworking.

Unless otherwise agreed by the parties, the outworker's work schedule is flexible.<sup>31</sup>

- Executive employees

Unless otherwise agreed by the parties, the executive employee's (e.g. CEO and his/her deputy etc.) work schedule is flexible.<sup>32</sup>

- Job sharing workers

According to the LC, the job sharers' work schedule is also flexible,<sup>33</sup> even though it is not always a viable solution, if the nature of the job does not justify flexibility (for example sharing a help desk job to be performed in fixed business hours).

**Question 8. In your country, is it possible to work outside of the workplace, for example at home?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Yes, teleworking and outworking are regulated as atypical forms of employment. See in detail the answer given under Question 7.

**What kind of control does the employer have over the employee's :Question 9. If so working hours? How is the working time being tracked?**

**Answer:**

See the answers given under Questions 6 and 7.

<sup>28</sup> LC, sec. 196(1)

<sup>29</sup> LC, sec. 196(5)

<sup>30</sup> LC, sec. 198 to 200

<sup>31</sup> LC, sec. 199(4)

<sup>32</sup> LC, sec. 209(1)(4)

<sup>33</sup> LC, sec. 194(2)



However, if the parties agree on abandoning flexible working hours, the general rules are applicable on the scheduling and recording of working time. Nevertheless, it is not a common practice: employers typically prefer to allow flexible working time for remote employees, because thus they are not required to keep full records on working time.

The employers are usually totally unable to keep track of the working hours of their remote employees, which gives rise to the following concerns. As referred to above, flexibility in principle never applies to the amount of working time, it affects only the scheduling. Despite that, flexible working hours entail the risk of overloading the employees. It is actually very difficult for employees working remotely in flexible schemes to deliver evidence to their overtime working hours.

### **-Question 10. Working during off time**

**10a) Does your country have any provisions- whether regulated by statutes, collective agreements, or even internal guidelines or employment contracts- addressing the issue of work during the employee's free time?**

#### **Answer:**

Hungarian labour law, in compliance with the EU Directive on Organisation of Working Time and the relevant case-law of the CJEU, takes the position of binary categorisation of working and free time: every moment of the workers' life can be qualified either as working time or as free time, there is no third category.

If the employer requires the employee to work in his free time, it can order overtime work or interrupt the vacation of the employee under conditions laid down in the LC. It is notable that ordering overtime work does not need to be explicit: assigning job tasks to the employee by the employer knowing that they cannot be fulfilled within the formally ordered working time, or a tacit approval by the employer of performance of overtime work is regarded by the judicial practice as ordering overtime working.

The LC regulates the types of and the remuneration for stand-by work: the statutory law clearly defines the different categories of the employee's stand-by work which can be qualified as either working time or free time.<sup>34</sup>

However, in practice, this binary approach tends to prove to be too rigid. Predominantly in jobs performed by IT-tools, employees are often required to check their devices in their free time as well, and to perform some work at any time. On the other hand, employers are more and more often faced with the fact that their employees use their smart devices for private purposes during working time. It seems that digitalisation may call for the revision of the rigid binary approach in respect of working time and free time. However, Hungarian statutory law has not yet addressed this issue.<sup>35</sup>

<sup>34</sup> LC, sec. 107, 110, 143(2), 144

<sup>35</sup> The following, recent study scrutinizes the adaptation of the Hungarian working time regulation to the challenges of digitalisation (in Hungarian): Kártyás, G. et al: *A munkajog digitalizálása - A munkajog hozzáalkalmazása a digitális munkakörnyezethez és a változó munkavállalói kompetenciákhoz*; Közösen a Jövő Munkahelyeiért Alapítvány, 2016.; downloaded: <https://www.hsw.hu/kepek/hirek/2018/04/Z%C3%81R%C3%93TANULM%C3%81NY-Munkajog%20digitaliz%C3%A1l%C3%A1sa.pdf>

**10b) Is working outside scheduled working time an acceptable practice in your country? Do employees have the right to refuse to work during their time off? Do employees have the right or ability to completely disconnect from their job?**

**Answer:**

The LC regulates the limits and conditions of ordering overtime work (see partly the answer given under Question 5),<sup>36</sup> and stipulates that overtime work may be ordered without limitation in the interest of the prevention or mitigation of any imminent danger of accident, natural disaster or serious damage or of any danger to health or the environment.<sup>37</sup> Provided that the employer is entitled to order overtime work within the aforementioned limits, the employee is obliged to obey the instruction of the employer to take up overtime work. The parties to an employment contract have a mutual obligation to cooperate with one another,<sup>38</sup> including the obligation of the employee to keep a way for the employer to contact him.

As further referred to above, in the event of economic reasons of particular importance or any direct and consequential reason arising in connection with its operations, the employer may recall the employee from his annual leave.<sup>39</sup> For this purpose the employee is also obliged to maintain his availability.

Hence, the statutory law does not provide employees with the right to completely disconnect from their job.

**10c) If working outside of scheduled work hours is an acceptable practice- is there a mechanism to track the employee's actual work time under these circumstances? Is the employee entitled to any specific compensation for working during his free time?**

**Answer:**

If overtime work is formally ordered or at least takes place by the tacit approval of the employer, employees are entitled to compensation as described in the answer given under Question 3. If the annual leave is interrupted, and working time is ordered, all damages and costs of the employee shall be recovered.<sup>40</sup>

As referred to above in the answer given under Question 10a), the statutory law does not address the issue that employees may perform work beyond their working time.

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<sup>36</sup> LC, sec. 107-109

<sup>37</sup> LC, sec. 108(2)

<sup>38</sup> LC, sec. 6(2)

<sup>39</sup> LC, sec. 123(5)(b)

<sup>40</sup> LC, sec. 123(7)

## IRELAND

**Question 1.** Does your country have laws or other provisions regulating employees' working hours?

**Answer:** Yes. They are contained in the Organisation of Working Time Act 1997 which was enacted to transpose in domestic law the requirements of the European Working Time Directive (most recently Directive 2003/88/EC)

**Question 2.** If so:

**2a) What are the general rules applicable to the duration of working hours?**

**Answer:** In general, the maximum working hours are 48 per week measured over a reference period

**2b) Are there any general or specific exemptions from these rules regulating work time?**

Yes

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** There are exemptions. Examples include, cases of emergency, members of the security, police and emergency services.

**2c) Are there certain sectors of employment who have different working hours?**

Yes

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** Different regulations apply to mobile workers in road transport and civil aviation.

**Question 3.** In cases where the duration of work is regulated, is there a specific compensation paid for working over time? If so- are the overtime rates higher than the rates paid for regular working hours?

No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** There is no statutory requirement to pay over-time but generally compensatory rest must be provided. Overtime is normally paid to manual worker grades, paid after the worker had worked 39 hours per week. The norm is Time plus Half for hours in excess of normal finishing time, Time plus Half for the first four hours on a Saturday and Double Time for working on a Sunday.

**Question 4. Are there any limitations with regard to the amount of overtime an employee may work?**

**No**

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** Subject to the maximum of 48 hours per week there is no statutory limit on overtime

**Question 5. Is the employer responsible for ensuring his/her employees are given minimum hours of rest between shifts; adequate breaks throughout the work day; paid annual leave?**

**Yes**

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** Yes. There is a requirement to provide rest periods and intervals at work. In general a worker is entitled to a 15 minute break after 4.5 hours work or 30 minutes after 6 hours work, which can include the first 15 minutes.

There is a requirement to provide 11 hours rest in every 24 hour period

There is also a requirement to provide 24 hours rest in every 7 day period

**Question 6. In your country- who is responsible for maintaining records of the employee's working hours? In cases in which such records are not kept- who carries the burden to prove said working time?**

**Answer:** The employer is obligated to maintain records. In the absence of proper records the employer must prove that the Act was complied with

**Question 7. Whether your country has regulations on the duration of working hours or not- have any forms of flexible working hours been considered, such as successive fixed-term contract, interim, teleworking, part-time work, on-call work contract, occasional work, etc., by your legislature, the employers' and employees' organizations (via collective agreements), or the employers themselves (via internal regulations, employment contract, etc.)?**

**Answer:** All of these matters are a feature of employment in Ireland. Many are regulated by law, particularly fixed-term work and part-time work in line with European Union legislation. We have no legislation on the subject of teleworking, however, many companies have clearly developed policies which take account of restriction on working time as provided for under the Organisation of Working Time Act.

**Question 8.** In your country, is it possible to work outside of the workplace, for example at home?

Yes

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** Yes. There is no legal limitation on working from home and many companies facilitate employees to work from home.

**Question 9.** If so:

**What kind of control does the employer have over the employee's working hours? How is the working time being tracked?**

**Answer:** Many employers have clocking in systems. Many including the public sector also have flexitime systems.

The general mode of enforcement is through claims made by aggrieved workers under the Act. In certain sectors, for example, road transport it is also enforced by inspectors appointed by the relevant State agencies.

**Question 10.** Working during off time-

**10a) Does your country have any provisions- whether regulated by statutes, collective agreements, or even internal guidelines or employment contracts- addressing the issue of work during the employee's free time?**

**Answer:** No- but the limitation on working hours at 48 apply even where a worker has more than one job.

**10b) Is working outside scheduled working time an acceptable practice in your country? Do employees have the right to refuse to work during their time off? Do employees have the right or ability to completely disconnect from their job?**

**Answer:** It is an acceptable practice though relatively uncommon. Employees do not have a right to disconnect from their job in the sense that they are contractually obliged to attend work for their contract hours. Outside those hours they are free to do as they wish, subject to the statutory limit on working hours.

Many companies include in their Company/Union agreements, a provision which states that employees will be expected to work reasonable amounts of overtime when required by the employer.

**10c) If working outside of scheduled work hours is an acceptable practice- is there a mechanism to track the employee's actual work time under these circumstances? Is the employee entitled to any specific compensation for working during his free time?**

**Answer:** Where a worker has more than one job they are obliged to inform each employer and to disclose the hours that they work for the other. Subject to minimum wage legislation, there is not legal requirements on payments for work performed during a worker's "free time". See answer to Question 3 above regarding compensation for working outside normal hours.

## ISRAEL

### **Question 1. Does your country have laws or other provisions regulating employees' working hours?**

#### **Answer:**

Yes. Israel has laws, regulations and provisions in Collective Agreements and in the provisions of the Civil Service Rule Book pursuant to which civil servants are hired where the issue of working hours is addressed. The main one is Work and Rest Hours Law (1951), which among other things defines or discusses terms such as "working hours", "rest", "weekly rest", "overtime work" and more. This statute also lists sectors of workers that are not bound by it. Some other relevant statutes are, for example, Annual Leave Law (1951), Wage Protection Law (1958) and Youth Labour Law (1953).

### **Question 2. If so:**

#### **2a) What are the general rules applicable to the duration of working hours?**

#### **Answer:**

According to the main law discussed above (Work and Rest Hours Law (1951)) and the last Extension Order on this issue, a work day will not exceed eight hours – on a six days' work week; and will not exceed nine hours, on a five days' work week. A work week will not exceed 42 regular hours. These rules are relevant for most employees in Israel. Some of the other main provisions of the statute state that:

- When working at night or working on the day before the employee's weekly rest day, or a day before a holiday upon which the employee does not work, the work day will not exceed seven hours.
- A mandatory weekly rest day of 36 consecutive hours per week will be given for each employee. It is possible in exceptional cases to determine the employee will only be given 25 hours of consecutive rest - but no less than that. A Jewish person must take the day of rest on Saturday. Any Non-Jewish employee may choose either Saturday, Sunday or Friday as his rest day.
- Under some circumstances – either for a specific reason or specific need in a specific industry - it is possible to employ an employee in overtime, but only temporarily. For example: if an unforeseeable event occurs and this permit is needed to try and avoid a severe disturbance to the regular course of work or bodily injuries or damage to property; or to prepare an annual balance sheet, taking inventory and sales before a holiday provided that they do not work more than four hours on average. Any such overtime requires a daily report after performance thereof to the work supervisor and it is prohibited to continue to do so without a permit given after furnishing the report.
- Additionally, the Minister of Labour, Welfare and Social Services may grant a general permit to employ an employee overtime in the following cases: in an emergency situation and in order to render vital services; for non-industrial public services; for security reasons; in work involving the treatment of patients, old aged persons and children; in eating establishments, coffee shops, cultural enterprises, sports and entertainment; or in seasonal work.

- Accordingly, the Minister of Labour, Welfare and Social Services may grant a permit to work during the weekly rest hours if terminating the work during the Shabbat causes harm to the State's defense, persons or property, or to cause drastic impairment to the economy and the work process and the option of supplying essential services to the public.
- The law compels employees to pay an increased payment for working beyond the regular work day and during the rest hours and explains how the increased payment is calculated.
- The law defines what mandatory breaks the employer must provide an employee during the permitted working hours. For example, in any work day that exceeds six hours, the employee must receive 45 minutes break (30 minutes of which must be consecutive), for food and rest. During the 30 minutes break the employee should be free to leave the workplace. In case the situation does not enable the employee to leave, and he is forced to stay at the workplace, this half an hour will be considered as an integral part of the work time for that day.
- The employer is compelled to give an employee an opportunity to pray during working hours.
- The law compels a break from work for eight hours between one work day and the next.
- In case the workplace is open/ provides services during the night, the law prohibits an employer to schedule his employee to work in night shifts for more than one consecutive week within a three weeks period.
- The employer is forced to keep a work log in which he records the working hours of each and every employee.

**2b) Are there any general or specific exemptions from these rules regulating work time?**

**Yes**  **No**

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Yes, there are exemptions to the provisions stipulated in the Work and Rest Hours Law (1951). Firstly, there are certain types of work or employees that are altogether excluded from the scope of the law. Those are listed in article 30, and they are:

- Police officers and personnel of the prison service.
- Civil servants whose roles require them to be available for work also after their regular working hours.
- Sailors and fishermen.
- Aircraft crews.
- Employees serving in management positions or in roles requiring a special degree of personal trust. This section was interpreted by the Labour Courts to only include employees holding the highest management roles, such as CEOs and vice-presidents of companies. In various cases it was ruled that in order to decide whether this law applies to a relevant employee, for instance a middle level manager, the Court will examine the level of salary of that employee in comparison to the average national salary and the employer's objective ability to supervise that employee, in the various technological means that are at his disposal.
- Employees whose terms of employment and working circumstances do not allow the employer any control over the working hours. Here, too, as it is described above, the exception was interpreted in the case law extremely narrowly.

Second, there is an option for certain employers in specified sectors and fields to receive a permit from the Minister of Labour, Welfare and Social Services that allows work beyond the



regular work hours and during the rest day, as stipulated in the law. See answer #2a. Working during these special times is subject to the employer's duty to pay the employee increased wages.

**2c) Are there certain sectors of employment who have different working hours?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Yes. The Work and Rest Hours Law (1951) allows to determine longer work days or work weeks as necessary, for certain sectors - subject to the authorization granted by the Minister of Labour, Welfare and Social Services, as explained above, in specific regulations. This option will be usually expressed by the relevant Collective Agreement/ Extension Order applying to the specific field. Such an authorization may be given, for example, in certain jobs relating to agriculture and attending to animals; jobs requiring treating patients (pharmacies, old age home institutions and children's homes); jobs in eating establishments, hotels and coffee shops; jobs in security; civil servants and employees of local authorities in respect to work that is vital to the public which must be promulgated in the regulations. This relates to jobs that are not in the industrial field.

In addition, according to the law, the Minister of Labour, Welfare and Social Services may issue regulations that limit the number of hours of the "regular" work day or week and shorten them for certain sectors (or certain employees), if he believes such a limitation is necessary under the circumstances.

**Question 3. In cases where the duration of work is regulated, is there a specific compensation paid for working over time? If so- are the overtime rates higher than the rates paid for regular working hours?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Yes. In Israel, each hour the employee works beyond the "regular" work day (eight hours on a six days work week, and nine hours a day on a five days work week) will result in higher pay than a "regular" hourly rate. The first two additional hours will award the employee with an hourly rate that is equal to 125% of his regular hourly pay. For any additional hour after that, the employee will be paid 150% of his hourly rate, per hour.

In case the employee works on holidays, or at any time during his weekly rest day (which lasts for 36 hours), work that automatically entitles him to special compensation of 150% of his regular wage per hour starting with the very first hour of work, the hourly rates for the additional working hours will be increased by the same ratio, i.e. 175% of the regular hourly rate for the first two additional hours and 200% for every hour after that.

**Question 4. Are there any limitations with regard to the amount of overtime an employee may work?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Yes. According to a permit granted by the *Minister of Labour, Welfare and Social Services, Welfare and Social Services on March 2018, a work day will not exceed 12 hours- including overtime, and a work week will not consist of more than 16 additional hours. In addition, it is stated that a work week for an employee working only night shifts – where the regular work hours are limited to seven a night – will not exceed 58 hours- including overtime.*

**Question 5. Is the employer responsible for ensuring his/her employees are given minimum hours of rest between shifts; adequate breaks throughout the work day; paid annual leave?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Yes. Not only that it is the employer's responsibility to ensure the employee receives daily breaks, annual leave and rest days, he also carries the burden to prove that the employee indeed enjoy these social rights, in case the employee files a suit claiming these rights were not awarded to him. This is why the employer must keep thorough records for each of his employees, detailing the employee's attendance and days off. In addition, the employer must prove that the employee was paid separately for his annual leave days, and that it was not included in his regular monthly salary and on the other hand, that the employee was not only paid for the annual leave but did in fact use these vacation days. A failure to prove either claims will force the employer to pay the employee for the latter's social rights, even in reality the employee agreed to these arrangements in real time.

**Question 6. In your country- who is responsible for maintaining records of the employee's working hours? In cases in which such records are not kept- who carries the burden to prove said working time?**

**Answer:**

In Israel, it is the employer's responsibility to manage and keep attendance records of his employees, detailing their individual work hours. This obligation is stipulated in the Wage Protection Law (1958). The employer may use different means in order to comply with this obligation, such as installing reporting devices like GPS connected to the employees' cell phones or vehicles or mandating the employees to use clock in/out devices with their employee I.D. card or fingerprints.

In case the employer does not keep satisfactory records, and upon addressing a claim by an employee to receive payment for overtime work he did, the employer carries the burden to

prove that the employee was not available to work during the working hours he so alleges. If the employer fails to do so, and if the employee manages to prove a pattern of overtime work for the employer, the employee may be awarded payment for up to 60 additional hours per month. Obviously, if the employee kept his own attendance records, that were prepared in real-time, that suggest a work pattern of over 60 additional hours a month, the employee may be awarded a compensation for all the additional hours he worked, if he proves that he was indeed available at the employer's disposal during all of those hours.

It should be noted that there are employment contracts with provisions stating that the employee will be given a fixed salary, that is not dependent upon his actual work hours, and a sum of money that will be considered as payment for working overtime (as two separate components). This provision may be regarded as satisfactory by the Labour Court, as long as the payment for each of these components is reasonable in terms of the actual hourly rate and overtime rate and is in accordance to the stipulations regarding this issue stated in the Minimum Wage Law (1987) and the Work and Rest Hours Law (1951).

**Question 7. Whether your country has regulations on the duration of working hours or not- have any forms of flexible working hours been considered, such as successive fixed-term contract, interim, teleworking, part-time work, on-call work contract, occasional work, etc., by your legislature, the employers' and employees' organizations (via collective agreements), or the employers themselves (via internal regulations, employment contract, etc.)?**

**Answer:**

Yes. Israel has all of numerous forms of flexible working hours employment, for example: working from home (such as telemarketing); work for a global wage – for both regular work-time and overtime (as two separate components), where the exact hours are not being supervised; part-time work; work pursuant to a call-up/ seasonal work/ substitute work; flexi-hours work; etc.

These various forms of employment operate by virtue of individual agreements or by virtue of Collective Agreements. There are also specific laws permitting other forms of employment for employees in certain sectors, such as employees in cleaning jobs, that are employed through human resource companies, that part of their job is providing service in several locations and for different businesses at different times throughout the day.

**Question 8. In your country, is it possible to work outside of the workplace, for example at home?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Yes. In Israel there is a possibility for an employee to work outside of the workplace, even from his home. The caselaw recognizes that working from home does not rule out the existence of an employee-employer relationship. It was stated that in this age of technological advancement, in light of the development in electronic communication, working from home is regarded as any other work, and this option is much more acceptable than ever before.

**Question 9. If so:**

**What kind of control does the employer have over the employee's working hours? How is the working time being tracked?**

**Answer:**

The employer has a right to control the work outside the workplace - including work that is done at the employee's home. Such means of control are usually detailed in the employment contract and are designed to ensure that the work is actually being carried out during the hours the employee states that he worked, and in order to avoid any dispute in respect to the manner of payment for that kind of work. For example, the employer may install electronic processor on a computer that the employee uses for work, showing times the computer was on, and on which websites/ software the employee was on. The employer may also compel the employee to keep a record of the working hours; to install reporting devices at the employees' home; and preform inspection by using options available in cellular phones. As working from home still leaves quite a lot of control at the hands of the employee, in terms of his actual availability to the employer, if the employee claims he is entitled to overtime pay for his work from home, he is the one responsible for proving a constant work pattern that forces him to work overtime. For example, the employee needs to show that he was required to work from home by his supervisors, or that the employer was aware of that fact. In addition, the employee must present work-time logs, prepared in real-time, attesting to that work pattern. Records of numerous business emails or phone calls made by the employee in times that are beyond the regular working hours may also support the employee's claim.

**Question 10. Working during off time-**

**10a) Does your country have any provisions- whether regulated by statutes, collective agreements, or even internal guidelines or employment contracts- addressing the issue of work during the employee's free time?**

**Answer:**

The issue of work during the employee's free time is not regulated in Israel via legislation or Collective Agreements. It is possible that it is addressed in different sectors via a specific provision in the personal employment contract.

**10b) Is working outside scheduled working time an acceptable practice in your country? Do employees have the right to refuse to work during their time off? Do employees have the right or ability to completely disconnect from their job?**

**Answer:**

It seems that today, with the various ways and means to communicate with the employee at any given time or location, and the ability to perform numerous tasks related to the job from afar, it is not really possible to disconnect entirely from work at any time, even beyond the regular work hours. It should be noted that most if not all religious Jews observe the Shabbat zealously, so unless they serve in positions that force them to be available 24/7 (for instance,

doctors, members of the IDF, etc.), they cannot be reached during their rest day, and this is clear to their employers.

**10c) If working outside of scheduled work hours is an acceptable practice- is there a mechanism to track the employee's actual work time under these circumstances? Is the employee entitled to any specific compensation for working during his free time?**

**Answer:**

As mentioned above, it is very likely that an employee will have to engage in work assignments, even during his off time. In the absence of any regulation addressing this issue, it is left to the Labour Courts to determine whether the nature and the frequency of that "off-time" work are such that entitle the employee for any compensation, and if so- its amount. The Labour Courts will most likely be asked to examine evidence of communications between the employee and the employer during the employee's off-time, among other things, in order to make a decision on this subject.

**Question 1. Does your country have laws or other provisions regulating employees' working hours?**

**Answer:**

*Yes we do. We have a general law ( n. 66 of year 2003, implementing the European directive) which aims to establish a general regulation of the working time. According to this law the weekly amount of working hours is 40 hours.*

*We also have a constitutional provision ( art. 36 ) which states that the maximum of daily working hours have to be established by the law ( which means: not by the labour contract either individual or collective) e*

**Question 2. If so:**

**what are the general rules applicable to the duration of working hours? 2a)**

**Answer:**

*See previous answer.*

**Are there any general or specific exemptions from these rules regulating work time? 2b)**

Yes  No

**If you answered "Yes", please provide some examples or a brief list:**

**Answer:** *Yes. Among others: ship crews; flight crews; trucks drivers; school teachers*

**Are there certain sectors of employment who have different working hours? 2c)**

Yes  No

**If you answered "Yes", please provide some examples or a brief list:**

**Answer:** *Yes. Almost every production sector has its own work schedule, within the above mentioned general limits*

**Question 3. In cases where the duration of work is regulated, is there a specific compensation paid for working over time? If so- are the overtime rates higher than the rates paid for regular working hours?**

Yes  No

**If you answered “Yes”, please provide some examples or a brief list:**

**Answer:**

*Yes. Overtime is paid at a higher hourly rate*

**Question 4. Are there any limitations with regard to the amount of overtime an employee may work?**

Yes  No

**If you answered “Yes”, please provide some examples or a brief list:**

**Answer:**

*Yes. Collective agreements can establish the limit of the weekly overtime work. The maximum amount of the weekly working hours (overtime included) is 48 hours.*

**Question 5. Is the employer responsible for ensuring his/her employees are given minimum hours of rest between shifts; adequate breaks throughout the work day; paid annual leave?**

Yes  No

**If you answered “Yes”, please provide some examples or a brief list:**

**Answer:**

*Yes. It's the employer responsibility to organise the time table to include periods of rest.*

*As for the annual leave, the Italian Constitution ( art. 36 ) contains a specific provision about the worker's entitlement to enjoy a period of paid leave, the duration of which is fixed by the collective agreements*

*The above mentioned law n. 66 of the year 2003 grants to the workers a leave paid period of 4 weeks each year*

**Question 6. In your country- who is responsible for maintaining records of the employee's working hours? In cases in which such records are not kept- who carries the burden to prove said working time?**

**Answer:**

*It's the employer's responsibility to keep updated records of the worked hours and in case of missing or incomplete records the employer is subject to an administrative sanction. However if the amount*

*or the worked hours is disputed the worker has to prove the effective working hours. This is especially important when it comes to the payment of overtime hours*

**Question 7. Whether your country has regulations on the duration of working hours or not- have any forms of flexible working hours been considered, such as successive fixed-term contract, interim, teleworking, part-time work, on-call work contract, occasional work, etc., by your legislature, the employers' and employees' organizations (via collective agreements), or the employers themselves (via internal regulations, employment contract, etc.)?**

**Answer:**

*Yes. We ha regulations on all of the above mentioned items*

**Question 8. In your country, is it possible to work outside of the workplace, for example at home?**

Yes  No

**If you answered "Yes", please provide some examples or a brief list:**

**Answer:** *Yes. There is a general collective agreement dating back to the year 2004 which provides a general framework for this way of working.*

*Collective agreements in many sector provides that the employees to work at home generally once or twice a week. The sectors concerned are, among others, the chemical industry, the food production industry, the publishing industry, the tourism sector.*

**Question 9. If so:**

**What kind of control does the employer have over the employee's working hours? How is the working time being tracked?**

**Answer:** *generally speaking by connecting with him/her via Skype.*

**Question 10. Working during off time-**

**10a) Does your country have any provisions- whether regulated by statutes, collective agreements, or even internal guidelines or employment contracts- addressing the issue of work during the employee's free time?**

**Answer:**

*Not to my knowledge*



**10b) Is working outside scheduled working time an acceptable practice in your country? Do employees have the right to refuse to work during their time off? Do employees have the right or ability to completely disconnect from their job?**

**Answer:**

*Not generally.*

*Yes employees have the right refuse to work during their time off.*

*The right to totally disconnect from your job depends on the nature of the work. (Medical doctor, fireman, police etc.)*

10c) If working outside of scheduled work hours is an acceptable practice- is there a mechanism to track the employee's actual work time under these circumstances? Is the employee entitled to any specific compensation for working during his free time?

**Answer:**

*All practices stated above are regulated by collective agreements or individual contract.*

## LUXEMBOURG

**Question 1.** Does your country have laws or other provisions regulating employees' working hours?

**Answer:**

Yes. They can be found in Articles L. 211-1ff. of the Labour Code (*Code du travail*).

**Question 2.** If so:

**2a) What are the general rules applicable to the duration of working hours?**

**Answer:**

In accordance with EU-Law, the basic rules are :

- the regular daily work is limited to 8 hours
- the regular weekly work is limited to 40 hours (Art. L. 211-5 of the Labour Code)

**2b) Are there any general or specific exemptions from these rules regulating work time?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Some sectors are excluded from working time (Art. L. 211-2, L. 211-3), but our national legislation might not comply with European Law. This especially concerns:

- agriculture (a bill has however been deposited to regulate working time in agriculture).
- some family-type companies (small companies employing only the employer's close relatives)
- homeworkers (*salariés à domicile*)
- sales representatives
- fairground undertakings

**2c) Are there certain sectors of employment who have different working hours?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

1) For some sectors, the general rules on working time (L. 211ff.) do not apply, but the Labour Code provides a specific set of rules for them :

- employees in horeca sector (hotels, catering, restaurants, ...) (L. 212-2 ff.)
- mobile workers in road transportation (carriage of goods & passenger transports) (L. 214-1ff.)
- train drivers and attendants (L. 215-1ff.)
- in project : agriculture

2) In many sectors, social partners have a large freedom to negotiate and to organize their working time in collective agreements (L. 211-31), but a minimum legal framework must be respected. These sectors include security companies, hospitals, media sector, etc. (the list is the same as the one in Art. 17 of EU-Directive 2003/88/EC)

**Question 3.** In cases where the duration of work is regulated, is there a specific compensation paid for working over time? If so- are the overtime rates higher than the rates paid for regular working hours?

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Overtime should only be used in exceptional circumstances (Art. L. 211-22ff.), but in practice, many companies use overtime on a regular basis. Overtime normally requires the agreement of either the employee's delegates (*délégation du personnel*) or the Labour Inspectorate (*Inspection du travail et des Mines*), but this obligation is not systematically respected either.

One hour of overtime should be compensated by 1,5 hours of compensatory rest (L. 211-27). If this is "not possible", the overtime is financially compensated with an overtime premium of 40 % (which is, in practice, the most common solution).

A bill has been deposited in order to implement time-saving accounts in Luxembourg, so overtime could be credited to such an account and accumulated for future use.

Senior managers (*cadres supérieurs*) are not subject to strict working hours and are thus not entitled to overtime compensation either. Although there is a restrictive legal definition of senior managers, many companies tend to extensively (and even abusively) qualify employees as senior managers in order to avoid overtime payments.

**Question 4.** Are there any limitations with regard to the amount of overtime an employee may work?

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

As said, overtime should – in theory – only be used in exceptional circumstances.

The number of overtime hours is limited to 2 hours per day and under no circumstance, the daily working time may exceed 10 hours (L. 211-26)

For adolescents, overtime is by principle forbidden (L. 344-10). Pregnant women cannot be obliged to overtime work (L. 336-1). For part-time employees, more restrictive conditions apply.

**Question 5. Is the employer responsible for ensuring his/her employees are given minimum hours of rest between shifts; adequate breaks throughout the work day; paid annual leave?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

- The minimum daily rest is fixed to 11 consecutive hours (Art. L. 211-16 (3))
- The employee must get "adequate" breaks, but at least one break after 6 hours of work (L. 211-16). The Labour Code does not specify the duration of these breaks.
- Employees are entitled to a minimum of 25 days (i.e. 5 weeks) of paid annual leave.

The main purpose of these rules is to protect the employee's health and safety. As the employer is responsible for occupational health and safety, he is also responsible for ensuring his/her employees are given the minimum hours of rest and adequate breaks. Case law confirms that the employer is responsible (e.g. Cour of Appeal, 3e, 1.6.2017, 43432)

Any violation by the employer of these obligations is a criminal offence. If a labour accident would occur, the employer could be held liable if he did not respect the legislation on working time.

Concerning annual leave, the situation is not different from a legal point of view. Although it is up to the employee to ask for annual leave, the Labour Code clearly states that this annual leave has to be taken within the year and can only be carried over to the next year in exceptional situations (such as sickness, maternity leave, etc.). Thus, in my opinion, an employer must oblige an employee to go on annual leave, even if he didn't ask for. In practice however, many companies accept to postpone annual leave over many years. Some employees might thus only take very little annual leave and accumulate many weeks of holiday entitlement.

This practice, which might currently be illegal, will be formalized by the future law on time-saving accounts: annual leave exceeding the legal minimum of 25 days (for example because the collective agreement grants more days) can be put on the time-saving account for future use.

**Question 6. In your country- who is responsible for maintaining records of the employee's working hours? In cases in which such records are not kept- who carries the burden to prove said working time?**

**Answer:**

For a long time, the employer had an obligation to register all overtime work, annual leave, work on Sundays, on public holidays and night work.

Since 2017, every employer is obliged to record all worked hours (Art. L. 211-29). It appears however that many companies do not comply with this obligation.

The employee is deemed to have worked on his normal working hours. If the employer argues that he was absent from work, he has to prove it.

For any hours exceeding the regular working time, and especially for overtime work, the burden of proof lies on the employee. He must not only establish that he has done overtime, but also that the employer agreed with it. In practice, many claims for overtime payments are lost because the employee fails to bring sufficient evidence.

Case law did not yet specify what the impact on the burden of proof is if the employer failed to keep records.

**Question 7. Whether your country has regulations on the duration of working hours or not- have any forms of flexible working hours been considered, such as successive fixed-term contract, interim, teleworking, part-time work, on-call work contract, occasional work, etc., by your legislature, the employers' and employees' organizations (via collective agreements), or the employers themselves (via internal regulations, employment contract, etc.)?**

**Answer:**

- fixed-term contracts are regulated in a very restrictive way in Luxembourg. Successive fixed-term contracts are only admissible in exceptional cases.
- interim work is regulated in Luxembourg since 1994. Its use is also limited in time and requires an objective justification.
- there is a conventional framework on telework (*télétravail*), based on the European social partner's framework agreement. However, telework is very difficult to implement in Luxembourg. 50 % of our workforce are cross-border commuters living in Belgium, France or Germany. Performing telework from their home implies that they become subject to French, German or Belgian social security and tax law (which are less favourable).
- part-time work is regulated since 1993. Employer and employee can freely agree on part-time work. There is currently no entitlement to part-time work for employees, but discussion on this subject are ongoing. The working time of part-time workers is regulated more restrictively and is less flexible (as these workers mostly work part-time because they have a second job or private/family obligations).
- occasional work (*contrat de travail intermittent*) is not permitted as such. If objective reasons exist, individual fixed-term contracts could be concluded.
- on-call work as well as zero-hour-contracts are forbidden in Luxembourg.

The only way to flexibilise working time is to use the existing legal provisions :

- on flextime (*horaire mobile*)
- on work plans (*plan d'organisation du travail*), which allow some flexibility by shifting working time from off-peak to peak periods, the maximum period of reference being 4 months, or even 12 months if the Trade unions agree. The employee's work plan must be fixed on a monthly basis, and a change of the work plan (working time or duration) may entitle to compensation payments.

**Question 8. In your country, is it possible to work outside of the workplace, for example at home?**

**Yes**  **No**

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Yes, this possibility exists. Homework as such is not specifically regulated. Employer and employee could freely agree on it.

As mentioned in question 7, if the employee uses I.T. for work, he becomes a "teleworker" and is thus subject to a specific conventional framework. Furthermore, for the 50 % of workers living in France, Belgium or Germany, homework implies that they are subject to different tax and social security rules.

It can also be agreed to work on any other place. Co-working offices (shared workspace) are not yet very common in Luxembourg. There is however some discussion to create public co-working spaces at the national borders in order to solve the traffic problems (nearly 200.000 cross-border commuters coming into the country every day, for a total population of 600.000 residents).

**Question 9. If so:**

**What kind of control does the employer have over the employee's working hours? How is the working time being tracked?**

**Answer:**

Normally, the employee has to work during the working hours that were fixed in the employment contract. However, most contracts contain flexible clauses, so the employer can change working time unilaterally. It is not clear in case law if an employer can oblige an employee to do overtime or if the employee can refuse it.

The employer has full control over working time. If the employee is not at work during his working hours, he/she is not entitled to wage payments and he can be dismissed on serious grounds.

The law obliges to employer to register, and thus to track working hours (see question 6), but does not say how to do so. A common system is to use badges; until now, these systems had to be validated by the National Data Protection Authority. Since the European GDPR (General Data Protection Regulation) came into force, the situation is less clear, as the national implementation law has not yet passed.

**Question 10. Working during off time-**

**10a) Does your country have any provisions- whether regulated by statutes, collective agreements, or even internal guidelines or employment contracts- addressing the issue of work during the employee's free time?**

**Answer:**

According to European law and thus to our national law, there can be no such thing as “working during off time”.

If the employee works during free time, it has to be requalified as working time, which causes many legal problems (minimum daily and weekly rests, breaks, maximum working hours, etc.). Another issue which is not yet clear is to know if the employee can decide on his own to work or if the employer has to (implicitly agree). If the employee checks his emails on Sunday spontaneously, it is probably not working time. The situation is however different if the employer requires him to do so, or even if it is a general practice and the employee feels obliged to stay connected at all times.

There are no statutes, collective agreements or guideline regulating these issues. Some companies however start to think about mandatory “offline times”, according to the “disconnection clause” (*droit à la déconnexion*) which starts to spread in France. Such clauses might be negotiated in future collective agreements.

**10b) Is working outside scheduled working time an acceptable practice in your country? Do employees have the right to refuse to work during their time off? Do employees have the right or ability to completely disconnect from their job?**

**Answer:**

From a legal point of view, it is not an acceptable practice. Our law is subject to the European definition of working time, so working outside scheduled working time is not admissible as such. Furthermore, the recent case law of the European Court of Justice shows that the judges have a very broad definition of what “working time” is (for example the Matzak Case stating that a firefighter who is at home but who must be able to show up at work within 8 minutes, is not on rest but at work). If an employee is required to be able at all time to answer calls or emails, he/she could be considered to be “at the employer's disposal” (Art. 2 of Directive 2003/88/EC), and thus at work.

Thus, the employees have the right to completely disconnect from their job. Unless they are on stand-by, there is no obligation for an employee to be reachable.

In practice, of course, things might be different ...

**10c) If working outside of scheduled work hours is an acceptable practice- is there a mechanism to track the employee's actual work time under these circumstances? Is the employee entitled to any specific compensation for working during his free time?**

**Answer:**

As this is not an acceptable practice from a legal point of view, there is no such mechanism.



### NORWAY

**A general comment:** *The rules on working time are very detailed. The following will therefore only provide a very brief overview of the main regulations. As mentioned under no. 1, the working time directive has been implemented which implies that the Norwegian courts will take the regulations of the directive and case law by the ECJ into account when interpreting corresponding Norwegian rules.*

### INTRODUCTION

The subject of working time is a central one in the field of work relation, and has been addressed and regulated by several conventions, directives, statutes, collective agreements and guidelines. The importance of these provisions stems from the potential risks associated with excessive hours of work and the need to protect employees' health and safety by limiting working hours and providing adequate periods for rest and recuperation, including daily and weekly rest, as well as paid annual leave.

However, it is important to note that no matter how comprehensive these provisions might be, they are not always sufficient in order to deal with challenges arising from recent (dramatic) changes in the workplace. In today's information-based economy, work can be performed from everywhere and at any time- regardless of the employee's official working time and place. This allows the employer greater flexibility in designing the work scheme, which has to adapt and even react as quickly as possible to unforeseeable events, conjectures or economic constraints that are less and less predictable, in order to remain competitive. Globalization and interaction with international markets- who are often located in different time zones- are yet another reason for the need for round the clock availability on part of the employees. As a result, a variety of flexible work arrangements that vary from the conventional full-time, "9 to 5" model may come into play, such as flexi-time arrangements, part-time work, hours averaging, working time accounts, etc., as well as "geographical" flexibility to the employees in the workplace, in such ways as telework, or working remotely. Though this flexibility might be seen by some employees as associated with a freer management of their working hours, it may also be perceived by others as a source of hardship likely to degrade their living conditions, as it blurs the boundaries between work and home. As a result, it becomes more difficult to successfully reconcile the conflicting demands of their paid work and personal lives,

as development of information and communication technologies are enabling employees to be at the disposal of their employers well beyond their regular work hours. Therefore, it becomes increasingly harder for employees to fully disconnect from their work- even during their leisure time- and easier for employers to take advantage of this phenomena for their own benefit.

This questionnaire wishes to examine the different aspects of working time- its traditional concept and scope; the impact of globalization and digitalization of work might have had on the working time arrangements on each country's positive law- by addressing the changes in time and geographical flexibility; and the right to disconnect from work, outside the regular work hours.

**Question 1. Does your country have laws or other provisions regulating employees' working hours?**

**Answer:**

Chapter 10 of the Act relating to working environment, working hours and employment protection etc. 2005 (the Working Environment Act/WEA) lays down detailed rules on working time. (We will not comment on the particular rules that apply to work by children and young persons.)

The WEA implements into Norwegian law the Working time directive, 2003/88/EC (the Directive).

Special rules may be determined by regulations, for instance in regard to the oil sector.

The Labour Inspection Authority may – to a certain extent – permit deviations from the rules. (We will not comment on this.)

In addition, working time is to a large extent regulated by collective agreements that *in general* provides more favourable regulations, see 2a.<sup>41</sup>

**Question 2. If so:**

**2a) What are the general rules applicable to the duration of working hours?**

**Answer:**

Normal working hours:

The normal working hours shall not exceed 9 hours per 24 hours and 40 hours per 7 days, cf. section 10-4 (1) of the WEA. Reduced working hours apply to shift work etc.

Calculating average working time:

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<sup>41</sup> With effect from 1987, the Norwegian Confederation of trade unions (LO) and the Confederation of Norwegian Enterprise (NHO) agreed on reduced working hours. This agreement is part of most of the collective agreements within the NHO-LO-area, and has subsequently been adopted/copied in collective agreements by other employer's organisations and unions.

The working hours may – based on either individual agreement or agreement with the employees’ elected representatives – be calculated based on an average over a period of time. This implies that the daily and weekly hours may exceed the “normal working hours” provided that the working hours for a period not exceeding 52 weeks does not exceed the “normal working hours”. Such agreements are subject to limitations with regard to both daily and weekly working hours.

Special rules also apply to work of passive nature and standby duty outside the workplace.

Collective regulations (and practice)

As mentioned above, the major collective agreements have more favourable rules on working hours.

In practice, the most common/general working hours are **37,5 per week and 7,5 per day**. (This applies for instance to the public sector – and large part of the private sector as well.)

**2b) Are there any general or specific exemptions from these rules regulating work time?**

**Yes**  **No**

*If you answered “Yes”, please provide some examples or a brief list:*

**Answer:**

The provisions in the WEA relating to working time does not apply to employees in “senior” or “particularly independent posts” (with the exceptions of the general requirement that working hours shall be arranged in such way that employees are not exposed to adverse physical or mental strain etc. and the right to reduced working hours). In general, these exemptions are interpreted strictly. For instance, junior lawyers will not be considered to hold “particularly independent posts”.

In addition – and important in practice – is the right to agree on deviating arrangements. The employer and employees’ elected representatives (unions) are to a large extent given the right to agree on working hour arrangements that departs from the rules laid down in the Act. The extent of the parties’ power depends on the parties to the agreement and their level:

- 1) The employer and individual employee may to a certain extent agree on some deviations, for instance that the employee, on his own initiative, may perform work between 9.00 p.m. and 11.00 p.m.

2) The employer and the employees' elected representatives in undertakings bound by collective agreements are given quite extensive rights with regard to entering into agreements that deviate from the Act. (For instance with regard to the calculation of average normal working hours, extension of the limits for overtime etc.)

3) The larger trade unions<sup>42</sup> may enter into collective agreements that departs – with some (minor) exceptions – from the provisions in the act. On this basis, the unions have for instance accepted/agreed on working arrangements in institutions that allows for the employee to work very long shifts in return for longer periods off.

**2c) Are there certain sectors of employment who have different working hours?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Special rules may be laid down in regulations. An important example is work offshore: According to the regulations and collective agreements: They weekly working hours is in average 33,5<sup>43</sup> hours (per year) – arranged as 12 hours' shift offshore – 2 weeks work offshore and 4 weeks off.

**Question 3. In cases where the duration of work is regulated, is there a specific compensation paid for working over time? If so- are the overtime rates higher than the rates paid for regular working hours?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

According to the WEA, the overtime supplement shall be at least 40 per cent. Collective agreements will normally have more favourable compensation. It is quite common that the general supplement is 50 per cent and higher in the evening, on Sundays etc.

**Question 4. Are there any limitations with regard to the amount of overtime an employee may work?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

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<sup>42</sup> Unions that have at least 10 000 members, cf. the Labour Disputes Act (2012) section 39

<sup>43</sup> The regulation stipulates 36 hours per week, however, collective agreements is based on 33,5 hours.

**Answer:**

Overtime shall not exceed 10 hours per 7 days, 25 hours per 4 weeks or 200 hours per 52 weeks. In undertakings bound by collective agreements, the parties (employer and employees' elected representatives) may agree on a maximum of 20 hours per 7 days. (The total shall not exceed 50 hours per 4 weeks and 300 hours per 52 weeks.)

Total working hours shall not exceed 13 hours per 24 hours and 48 hours per 7 days.  
(cf. section 10-6 of the WEA)

**Question 5. Is the employer responsible for ensuring his/her employees are given minimum hours of rest between shifts; adequate breaks throughout the work day; paid annual leave?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Daily and weekly off-duty (WEA):

11 hours continuous off-duty time per 24 hours.

35 hours (continuous) off-duty per 7 days.

In undertakings bound by collective agreement, the parties (employer and employees' representatives) may agree on certain exceptions, provided that the employee is ensured corresponding compensatory rest period (or, where this is not possible, other appropriate protection).

Breaks (WEA):

At least one break if daily working hours exceed 5,5 hours – the breaks shall collectively amount to 30 minutes if the daily working hours exceed 8 hours.

Additional rules on breaks if the employee works more than two hours after normal working hours.

Paid annual leave:

21 working days (4 weeks + 1 day) according to the Holiday Act.

25 days – 5 weeks – according to collective agreements / practice. (Very common)

Employees above 60 years of age are entitled to one week additional holiday both according to the Act and collective agreements.

**Question 6. In your country- who is responsible for maintaining records of the employee's working hours? In cases in which such records are not kept- who carries the burden to prove said working time?**

**Answer:**

The employer is responsible for maintaining records, cf. section 10-7 of the WEA.

If such records are not kept, the employer will in practice carry the burden of proof. However, the Act has no specific regulation on the burden of proof in this respect.

**Question 7. Whether your country has regulations on the duration of working hours or not- have any forms of flexible working hours been considered, such as successive fixed-term contract, interim, teleworking, part-time work, on-call work contract, occasional work, etc., by your legislature, the employers' and employees' organizations (via collective agreements), or the employers themselves (via internal regulations, employment contract, etc.)?**

**Answer:**

The employee is entitled to flexible working hours if this may be arranged without major inconvenience to the undertaking, cf. section 10-2 (3) of the WEA.

The employee may also be entitled to reduced working hours, for instance due to care for small children, cf. section 10-2 (4). When the agreed period of reduced working hours has expired, the employee has the right to resume previous working hours.

The possibility to agree that the employee – on his own initiative – may perform night work (between 9.00 p.m. and 11.00 p.m.) is aimed at giving the employee a possibility to perform work at times outside “ordinary” working hours (section 10-11). Otherwise, night work – i.e. between 9.00 p.m. and 6.00 a.m. is not permitted unless necessitated by the nature of the work. The hours worked at night are included in the ordinary working hours. The employer and employee must agree on this in writing. The general rules on the employer’s prerogative of management apply in respect of the work to be performed. The employer may thus not accept this arrangement, and the employer may also decide that work shall be performed in the office and during ordinary working hours.

“On-call” work will in many cases be considered to be temporary employment. The general and strict rules on when the parties may agree on temporary employment thus apply, (section 14-9 of the WEA).

With effect from 1 January 2019, the first paragraph of the section 14-9 will explicitly state that the by requiring that the employee shall be appointed permanently, the Act requires that the appointment is running and not limited in time, that the rules on termination of employment apply and that the employee shall have security for work and an amount of work. This is only meant to be a codification of current practice and law.

Part-time:

There is currently a focus on the disadvantages with part-time work, which in particular affects women. There have consequently been amendments to the WEA to strengthen the rights of part-time employees and their right to full-time work – or at least an increased part-time position. (Part-time may also imply an indirect discrimination on the basis of gender.) Part-time workers have a preferential right to an extended post rather than that the employer shall create a new appointment, cf. section 14-3 of the WEA.

Part-time workers who during the previous 12 months have regularly worked in excess of the agreed working hours are entitled to a post equivalent to the actual working hours unless the employer can document that the additional work is no longer needed, cf. section 14-4a.

**Question 8. In your country, is it possible to work outside of the workplace, for example at home?**

Yes  No

*If you answered “Yes”, please provide some examples or a brief list:*

**Answer:**

Yes, the employer and employee may agree on this.

**Question 9. If so:**

**What kind of control does the employer have over the employee's working hours? How is the working time being tracked?**

**Answer:**

The right to work outside the working place is in practice most relevant for independent post. In regard to employees covered by the rules on working time, the parties may find systems to ensure that the working time is recorded (for instance by recording when the employee logs on/off his computer). The employer has a duty to ensure that the rules on working hours

are respected and complied with. If the employee exceeds ordinary working hours, the employee will be entitled to overtime pay.

However, in practice, and depending on the work, the employee may be expected to read emails, respond to phone calls etc. without this necessarily being recorded as working time, see question 10b) below.

It may not always be possible either to track the actual working time. There may of course be systems where working time may be tracked electronically, but as long as the work is performed outside of the work place, this is often to a certain extent based on trust.

**Question 10. Working during off time-**

**10a) Does your country have any provisions- whether regulated by statutes, collective agreements, or even internal guidelines or employment contracts- addressing the issue of work during the employee's free time?**

**Answer:**

Yes. According to the section 10-1 (2), off-duty time means time when the employee is not at the disposal of the employer. If the employee shall work at different times of the day, a work schedule shall be prepared (cf. section 10-3). The duration and disposition of daily and weekly working hours shall also be included in the written contract of employment (section 14-6).

Work in excess of “agreed” working hours shall not take place except in cases where there is an additional and time-limited need for it, cf. section 10-6. There are also rules on the employee’s right to be exempted from such work.

See 10b) below,

**10b) Is working outside scheduled working time an acceptable practice in your country? Do employees have the right to refuse to work during their time off? Do employees have the right or ability to completely disconnect from their job?**

**Answer:**

See above, 10a.

Depending on the work, the employee may be expected to be “online”, to answer phone-calls, to read emails etc. and be possible to reach/contact.



In some sectors and positions it is difficult – and only “accepted” in rare cases – to be completely disconnected from work. There is not much focus on this as a problem in Norway.

Legislation does not specifically regulate this issue, with the exception of the general rule that working hours shall be arranged in such a way that employees are not exposed to adverse physical or mental strain, cf. section 10-2 (1).

In practice, the problem is also that additional work and willingness to be “flexible” may be considered positive and showing that the employee is interested and eager. This attitude may be considered positive from a career perspective. To a certain extent the employee may want this as well, as this may entail more interesting tasks and work.

If the employee has a leading or particularly independent post, he or she will not be covered by the strict rules on working time. For these categories of employees, it is common – and normally expected – that they are accessible and normally not completely disconnected from work.

**10c) If working outside of scheduled work hours is an acceptable practice- is there a mechanism to track the employee's actual work time under these circumstances? Is the employee entitled to any specific compensation for working during his free time?**

**Answer:**

It will not always be possible to track actual working time. (This may also give rise to new questions on the right to privacy and whether it may be considered as control measures.)

With regard to compensation, see answers under question no. 10 a).

## SLOVENIA

### **Question 1. Does your country have laws or other provisions regulating employees' working hours**

**:Answer**

Yes. On a general level these provisions are contained in the Employment Relationships Act  
.- hereinafter referred to as the ERA

### **:Question 2. If so**

#### **?What are the general rules applicable to the duration of working hours a)2**

**:Answer**

.Full working hours shall not exceed 40 hours a week. Article 143 of ERA

In case of even distribution, full working hours may not be distributed to less than four days in a week. Article 147 of ERA

Night work shall mean work between 11 p.m. and 6 a.m. of the following day. If a distribution of working time provides for a night shift, the night work shall mean eight uninterrupted hours .between 10 p.m. and 7 a.m. of the following day. Article 150 of ERA

In a period of four months, the working time of a night worker may not exceed on average eight hours a day. The working time of a night worker, who performs a work, when according to the risk assessment there is a higher risk of injuries or damage to health, may not exceed .eight hours a day. Article 152 of ERA

A worker, who works full-time, shall have the right to a break of 30 minutes during daily work. A worker, who works part-time in accordance with Articles 64 or 66 of this Act, but at least for four hours a day, shall have the right to a break during daily working time in proportion to the time spent at work. In case of uneven distribution or temporary redistribution of working time, the break time shall be fixed in proportion to the length of daily working time. A break may be determined not earlier than after one hour of work and not later than one hour prior the end of the working time. A break during daily work shall be included in the working time. Article .154 of ERA

A worker shall have the right to a rest of at least 12 uninterrupted hours within a period of 24 hours. A worker who works in uneven distribution or temporarily redistributed working time shall have the right to a daily rest of at least 11 hours within a period of 24 hours. Article 155 .of ERA

In addition to the daily rest referred to in the previous Article, a worker shall have the right to a rest of at least 24 uninterrupted hours within a period of seven successive days. Should a worker have to work on the day of a weekly rest due to objective, technical and organisational reasons, he shall be ensured a weekly rest on some other day in a week. The minimum duration of a weekly rest provided in Paragraph 1 of this Article shall be regarded .as an average in the period of 14 successive days. Article 156 of ERA

**Are there any general or specific exemptions from these rules regulating work time** b)2

**Yes**

*:If you answered "Yes", please provide some examples or a brief list*

**:Answer**

The statute and/or a collective agreement may stipulate a working time shorter than 40 hours a week, however, full working hours shall not be shorter than 36 hours a week. The law or other regulation in accordance with the law or collective agreement may provide for full working hours of less than 36 hours per week for jobs where there is a greater risk of injury or damage to health. Should full working hours not be stipulated by the law or a collective agreement, a working time of 40 hours a week shall be considered as full working hours. Article 143 of ER

Overtime work may not exceed eight hours a week, 20 hours a month and 170 hours a year. A working day may not exceed ten hours. Daily, weekly and monthly time limitation may be regarded as an average limitation over the period stipulated by the law or a collective agreement and may not exceed six months. Upon the worker's prior consent, overtime work can exceed the annual limitation referred to in the previous paragraph, however not more than 230 hour a year in total. Every time the employer orders overtime work that exceeds 170 hours per year, he must first obtain a written consent from the worker. If the the worker declines to give his consent, he must not suffer any disadvantageous consequence related thereto. Article 144 of ERA

Due to the nature or organisation of the work or the needs of users, the working time may be distributed unevenly. In case of uneven distribution and temporary redistribution of full working hours, the working time may not exceed 56 hours a week. In the case of uneven distribution and temporary redistribution of working time full working hours as an average work obligation during the balancing-out time period that does not exceed six months, shall have to be taken into account. Article 148 of ERA

An employer shall not be obliged to take into account the provisions of this Act concerning the limitations of working time, night work, daily and weekly rest in cases of an employment contract with managerial staff, workers, who conduct work units and are authorised to make autonomous decisions, home workers, if the working time cannot be distributed in advance and/or if the worker can distribute his working time independently and if he is ensured health and safety at work. Article 157 of ERA

The law or branch collective agreements may stipulate that the time limitation pertaining to daily work obligation of a night worker laid down in Article 151 of ERA is to be regarded as an average limitation within the period that is longer than four but not longer than six months.

The law or branch collective agreements may stipulate that the average minimum daily and weekly rests as laid down by law shall in cases of shift work be assured within a longer time period, which should, however, not exceed six months. In the activities and/or for the positions or occupations in cases referred to in Paragraph 4 of this Article, the law or branch collective agreements may stipulate that the average minimum daily and weekly rests as laid

down by law shall be assured within a longer time period, which should, however, not .exceed six months

The right to daily or weekly rest may be provided according to the previous paragraph in the activities and/or with regard to the positions or occupations in the following cases - when the nature of work requires permanent presence, or when the nature of activity requires continuous provision of work or services, or when uneven or increased volume of work is .foreseen

A branch collective agreement may stipulate that in cases, when this is required by objective or technical reasons or work organisation reasons, full working hours shall be taken into account as an average work obligation within period, which should not exceed twelve months. Article 158 of ERA

**?Are there certain sectors of employment who have different working hours c) 2**

Yes

*:If you answered "Yes", please provide some examples or a brief list*

**:Answer**

Soldiers  
Police  
Health workers  
Firemen  
.etc

**Question 3. In cases where the duration of work is regulated, is there a specific compensation paid for working over time? If so- are the overtime rates higher than the ?rates paid for regular working hours**

Yes

*:If you answered "Yes", please provide some examples or a brief list*

**:Answer**

For example, according to the Collective Agreement for Public Sector a public servant is .entitled to his basic salary hourly fee increased for 30% for every overtime working hour

**Question 4. Are there any limitations with regard to the amount of overtime an ?employee may work**

Yes

*:If you answered "Yes", please provide some examples or a brief list*

**:Answer**

Overtime work may not exceed eight hours a week, 20 hours a month and 170 hours a year. A working day may not exceed ten hours. Daily, weekly and monthly time limitation may be regarded as an average limitation over the period stipulated by the law or a collective agreement and may not exceed six months. Upon the worker's prior consent, overtime work can exceed the annual limitation referred to in the previous paragraph, however not more than 230 hour a year in total. Every time the employer orders overtime work that exceeds

170 hours per year, he must first obtain a written consent from the worker. If the the worker declines to give his consent, he must not suffer any disadvantageous consequence related thereto. Article 144 of ERA

**Question 5. Is the employer responsible for ensuring his/her employees are given minimum hours of rest between shifts; adequate breaks throughout the work day; ?paid annual leave**

Yes

*If you answered "Yes", please provide some examples or a brief list*

:

**:Answer**

A worker, who works full-time, shall have the right to a break of 30 minutes during daily work. A worker, who works part-time in accordance with Articles 64 or 66 of this Act, but at least for four hours a day, shall have the right to a break during daily working time in proportion to the time spent at work. In case of uneven distribution or temporary redistribution of working time, the break time shall be fixed in proportion to the length of daily working time. A break may be determined not earlier than after one hour of work and not later than one hour prior the end of the working time. A break during daily work shall be included in the working time. Article .154 of ERA

A worker shall have the right to a rest of at least 12 uninterrupted hours within a period of 24 hours. A worker who works in uneven distribution or temporarily redistributed working time shall have the right to a daily rest of at least 11 hours within a period of 24 hours. Article 155 .of ERA

A worker shall have the right to a paid annual leave in an individual calendar year, which may not be shorter than four weeks, regardless of whether he works full time or part time. The minimum number of days of a worker's annual leave shall depend on the distribution of working days within week in respect of an individual worker. Article 159 of ERA

**Question 6. In your country- who is responsible for maintaining records of the employee's working hours? In cases in which such records are not kept- who carries ?the burden to prove said working time**

**:Answer**

The employer has an obligation to keep a record of working time under the Labour and Social Security Registers Act. As for the burden of proof - the general rule applies. The . general rule is that the burden of proof lies with the party making a certain claim

**Question 7.** Whether your country has regulations on the duration of working hours or not- have any forms of flexible working hours been considered, such as successive fixed-term contract, interim, teleworking, part-time work, on-call work contract, occasional work, etc., by your legislature, the employers' and employees' organizations (via collective agreements), or the employers themselves (via internal ?(.regulations, employment contract, etc

**:Answer**  
.YES

**Question 8.** In your country, is it possible to work outside of the workplace, for ?example at home

*If you answered*

Yes

*:"Yes", please provide some examples or a brief list*

**:Answer**

The employer and the employee may agree that the employee shall work from home or from .other place outside the workplace

**:Question 9.** If so

**What kind of control does the employer have over the employee's working hours?**

**?How is the working time being tracked**

**:Answer**

The employer has an obligation to keep a record of working time under the Labour and .Social Security Registers Act

The actual method of keeping track of workers' comings and goings depends on the employer's internal rules and practices. Some employers use electronic punch clocks, others .keep a paper record etc

**-Question 10.** Working during off time

**a) Does your country have any provisions- whether regulated by statutes, 10 collective agreements, or even internal guidelines or employment contracts- ?addressing the issue of work during the employee's free time**

**:Answer**

Yes, if we are talking about the possibility of working overtime. We also have a concept of being on call,which means that you are not actually working but are prepared to come to .work if needed. Certain professions (e.g. soldiers) are regulated by specific provisions

**b) Is working outside scheduled working time an acceptable practice in your 10 country? Do employees have the right to refuse to work during their time off? Do ?employees have the right or ability to completely disconnect from their job**

**:Answer**

.See the answer given for overtime work

**c) If working outside of scheduled work hours is an acceptable practice- is there a 10 mechanism to track the employee's actual work time under these circumstances? Is ?the employee entitled to any specific compensation for working during his free time**

**:Answer**

For compensation see the answer given for overtime work. The mechanism of tracking the .employer's work depends on the employer's internal rules and practices

## SPAIN

### **Question 1. Does your country have laws or other provisions regulating employees' working hours?**

**Answer:** yes , there are general rules at the Law level and specific ones at the collective agreement level , performing the first ones as a minimum level, no one can worsen what has been regulated even through a contract between both parties.

### **Question 2. If so:**

#### **2a) What are the general rules applicable to the duration of working hours?**

**Answer:**

**The general rules at the law level are in the Employee's Statute as follows:**

Weekly working time: 40 hours , with a regular distribution of eight hours daily although through collective agreement it can be exchanged into a different way along the year but for the employees under eighteen years of age who can not do more than eight hours a day

#### **2b) Are there any general or specific exemptions from these rules regulating work time?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** a reduction between an 8% and a 50% in case of employee looking after a child under twelve or a disabled person who has no remuneration, employees who have been pronounced victims of gender o terrorism violence, and between a 10% and a 70% on basis of economical, technical, organizational or productive reasons

#### **2c) Are there certain sectors of employment who have different working hours?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

The Royal Decree 1561/1995 sees another rules widening or reducing the statutory 40 hours for special activities :condominium 's full time employees whose working time is determined by the closing and opening time of building doors as it is decided by the Town Councils , wardens not at railway services, rural, sea fishing and transport employees ( road , sea and aero transport ), employees specially at initiating and closing devices work, employees on special isolation or remoteness position or places for work., working on environmental danger , agricultural work, inside mining , underground work for construction companies and public contractors , under extremely low temperatures : cameras frig and congealment processes , spaces between shifts in the case of railway employees and elongated shifts in hospitals and clinics



**Question 3.** In cases where the duration of work is regulated, is there a specific compensation paid for working over time? If so- are the overtime rates higher than the rates paid for regular working hours?

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** yes , there is compensation but its extent depends on the applicable rule. Thus, the statutory rule sees no higher rates than those paid for regular working hours. The Statute also sees the possibility, through collective agreement, of exchanging extra hours work for extra resting time within no more than four months . Collective agreement may see a compensation with higher rates than regular work, Vg: Private Offices Navarre C.A.: the prize can be increased between a 35% and a 45% of the ordinary hour working time

**Question 4.** Are there any limitations with regard to the amount of overtime an employee may work?

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** the limit is that of eighty hours per year proportionally reduced when the employee´s yearly working time is under 40 hours weekly. In the limits are not comprehended the hours dedicate to prevent or fixing damages or mishap although the must be paid accordingly.

**Question 5.** Is the employer responsible for ensuring his/her employees are given minimum hours of rest between shifts; adequate breaks throughout the work day; paid annual leave?

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** The Employee´s Statute establish a resting time of twelve hours minimum between the last and the following day at work. Even when there is the possibility for altering the daily number of hours ( regular 8, maximum 9), through collective agreement, the said limits for resting must be kept . When the daily working time is over six hours, there must be, at least, a breaking period of 15 minutes, 30 minutes for employees under eighteen years of age and it is enough for whatever age when the work time is over four hours . Annual leave can not be less than 30 days, according to Employee´s Statute , it can be augmented by collective agreement or contract . Within the frame of penalization for employers are included wrongful behaviour about , working time , extra working time , time rest , annual leave or any other right for shorter leave and they are punished as a severe contravention , whose amount penalty can rise to 6.250 €

**Question 6. In your country- who is responsible for maintaining records of the employee's working hours? In cases in which such records are not kept- who carries the burden to prove said working time?**

**Answer:** It is the employer's duty to keep the records day by day giving a copy to the employee. In the case of missing records, there is an initial burden of proof for the employee that can exchange into the reversion of the burden because of the breaching of the employer's duty and the greater facility on the employer's side to give the information

**Question 7. Whether your country has regulations on the duration of working hours or not- have any forms of flexible working hours been considered, such as successive fixed-term contract, interim, teleworking, part-time work, on-call work contract, occasional work, etc., by your legislature, the employers' and employees' organizations (via collective agreements), or the employers themselves (via internal regulations, employment contract, etc.)?**

**Answer:** There is not a very wide field covered by the Employee's Statute nor by collective agreement, thus it does not appear a regulation about teleworking. There is legislation about successive fixed-term contract (mostly agricultural), interim due to vacancies for different causes, and part-time work. Other possibilities as on-call work, occasional work need a justification for being temporary. But for periods under 4 weeks, written form is required.

**Question 8. In your country, is it possible to work outside of the workplace, for example at home?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:** The Employee's Statute, in its 13 article there are the rules for it. It needs the writing form and although these employees will perform their duties at home or in another place they must be nominated to a work centre of the employer, enjoying the same rights as the other employees. Traditionally it has been the example of "black economy", referred to shoemaking, clothing and manufacturing of toys and dolls. Nowadays the better control, through Labour Inspection have exchanged it in a new field for work but scarcely endowed with its own regulation. There is an example of collective agreement, that one for shoemakers that provides, such as electricity consumption, tools, etc.. And the lack of tasks that are not the fault of the employee will not be cause for salary reduction but only for the loss of the 10%. As a comical example, I have found as sentence (from a Galicia Court, of course) about the contract between a company and a clairvoyant – tarotist who worked since 7pm to 3am, and also another sentence, (Madrid Court) about labour relationship between a company and clairvoyant, tarot reader and futurology expert. About teleworking, there are examples of collective agreement dealing with the question as follows: II National daily press C.A., National CA perfumery shops and similar, Navarre CA Private Offices and Spanish Telefonica C.o.,

National daily Press C.A. basically it is a copy of the 13<sup>th</sup> article , adding that whatever the initial clause can be ( work at home or not ) it can be reversed at the wish of both parties .

Perfumery shops and similar national C.A: it includes the word “telework” and there some commands about health and security at work , measures to prevent the employee insolation regarding other employees of the company and that in case of need to call on the employee’s domicile for any inquiry about health and security , his consent is necessary after being previously notified .

Private Offices Navarra C.A. . . article 34“ Telework” : The employee , among other duties is due to take care of data and possibilities of access by no authorized people

**9. If so:**

**What kind of control does the employer have over the employee's working hours? How is the working time being tracked?**

**Answer:** Usually this is the sort of work where focus is on a goal based on quantity and time ( workload-time limited ) , Is the employee who is mainly interested on getting the more of his time . In another sort of activity , mostly technological ones , by their own nature the control can be exercised through those tech, provided the employee privacy or other fundamental rights are not damaged .

**Question 10. Working during off time-**

**10a) Does your country have any provisions- whether regulated by statutes, collective agreements, or even internal guidelines or employment contracts- addressing the issue of work during the employee's free time?**

**Answer:** No, there are not , but there is a Supreme Court sentence about the claim of an employee against the employer who demanded to know and be written on the contract the employee’s telephone number , a clause unaccepted . The claimant won the lawsuit .

**10b) Is working outside scheduled working time an acceptable practice in your country? Do employees have the right to refuse to work during their time off? Do employees have the right or ability to completely disconnect from their job?**

**Answer:**

**10c) If working outside of scheduled work hours is an acceptable practice- is there a mechanism to track the employee's actual work time under these circumstances? Is the employee entitled to any specific compensation for working during his free time?**

**Answer:**

## SWEDEN

**Question 1.** Does your country have laws or other provisions regulating employees' working hours?

**Answer:**

Yes, Working Time Act (1982:673).  
(and the directive 2003/88/EC on working time)

**Question 2.** If so:

**2a)** What are the general rules applicable to the duration of working hours?

**Answer:**

40 hour per week or as an average per week over a period of 4 weeks  
There are rules on how many hours are allowed as stand-by: maximum 48 hours for a period of 4 weeks or 50 hour per month.

**2b)** Are there any general or specific exemptions from these rules regulating work time?

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

Almost all branches on the labour market have rules on working time in their collective agreements.

**2c)** Are there certain sectors of employment who have different working hours?

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

See 2 b)

**Question 3.** In cases where the duration of work is regulated, is there a specific compensation paid for working over time? If so- are the overtime rates higher than the rates paid for regular working hours?

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

There is no law regulation pay for overtime, but all collective agreements have rules regulating compensation for overtime, in pay or in other ways.  
The pay for overtime is higher and differs according to when the overtime is done, in evenings, at night, at Sundays or public holidays. The collective agreements have different rules.

**Question 4. Are there any limitations with regard to the amount of overtime an employee may work?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

In the Working Time Act there are rules on the amount of overtime allowed: maximum 48 hour for a period of 4 weeks or 50 hour per month, but not more than 200 hours per year.

**Question 5. Is the employer responsible for ensuring his/her employees are given minimum hours of rest between shifts; adequate breaks throughout the work day; paid annual leave?**

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

According to the Working Time Act all employees shall have a minimum daily rest period of 11 hours per 24-hour period and the time between midnight and 05.00 shall be included.

The employee shall also have a minimum of 36 hour of weekly rest period (uninterrupted) per each seven-day-period.

The employer is responsible to give the employee breaks during the day. After at least 5 hours of work there shall be a break.

According to the Annual Leave Act the employee is entitled to 25 days of paid annual leave (5 weeks).

The collective agreements have different rules on this matter.

**Question 6. In your country- who is responsible for maintaining records of the employee's working hours? In cases in which such records are not kept- who carries the burden to prove said working time?**

**Answer:**

According to the Working Time Act the employer shall keep records of overtime and time stand-by. For the regular working time there can be different rules in different collective agreements

It depends on different circumstances who will bear the burden of proof. Normally, it is the one who claims something that has the burden of proof for his or her claim. For example an employee, who claims that he or she has worked a certain amount of time or overtime and claim for salary, bears normally the burden of proof for the amount of working time.

**Question 7.** Whether your country has regulations on the duration of working hours or not- have any forms of flexible working hours been considered, such as successive fixed-term contract, interim, teleworking, part-time work, on-call work contract, occasional work, etc., by your legislature, the employers' and employees' organizations (via collective agreements), or the employers themselves (via internal regulations, employment contract, etc.)?

**Answer:**

Temporary employment contracts can be concluded under certain conditions. There are limitations for how long time this can go on. On-call work contracts exists and are in some sectors regulated in collective agreements.

It is possible to work part-time. A part-time working employee is, according to law, entitled to full-time employment if it becomes available and the employee has qualifications for the job.

There is also a law which prohibits discrimination of part-time workers and workers with temporary employment contracts, in cases of pay (wages) and other conditions of employment .

**Question 8.** In your country, is it possible to work outside of the workplace, for example at home?

Yes  No

*If you answered "Yes", please provide some examples or a brief list:*

**Answer:**

There are no law on this matter. This is a question between the employer and the employee. Some collective agreements have regulations.

**Question 9.** If so:

**What kind of control does the employer have over the employee's working hours? How is the working time being tracked?**

**Answer:**

It differs in different company's and workplaces. Some employers have a system where each employee registers his or her arrival and departure in a machine or in a computer.

**Question 10.** Working during off time-

**10a) Does your country have any provisions- whether regulated by statutes, collective agreements, or even internal guidelines or employment contracts- addressing the issue of work during the employee's free time?**

**Answer:**

There are no special rules of law about working during the employee's spare time.

The work shall normally be done during working hours and not during free time.

(The employee can be asked, if there are special reasons, to cancel his or her vacation and return to work.)

But there are of course even in Sweden a debate about being available during free time (through mobile phones and computers). We don't know if there are regulations in collective agreements or in internal guidelines.

**10b) Is working outside scheduled working time an acceptable practice in your country? Do employees have the right to refuse to work during their time off? Do employees have the right or ability to completely disconnect from their job?**

**Answer:**

It has become quite common in some sectors to work outside the scheduled time. In some professions it has become common that the employee always shall be available via mobile phone or computer.

There's no legislation about this question but some collective agreements might have rules about it. Normally an employee can refuse work during their time off, but in practice it could be difficult to refuse.

**10c) If working outside of scheduled work hours is an acceptable practice- is there a mechanism to track the employee's actual work time under these circumstances? Is the employee entitled to any specific compensation for working during his free time?**

**Answer:**

No, there is not.

We don't know if there are special rules on compensation. This is a question to be regulated in collective agreements or in the individual employment contract.

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