

HR: NEW RULES ON RECORDING WORKING TIME

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The Federal Council has issued new regulations on recording of working time, which entered into force on 1 January 2016. The revised rules in the Regulation No. 1 to the Employment Act (Employment Act Regulation 1) are intended to relax the duties on recording working time for employees that have a large degree of freedom in how they structure their work and can generally determine their working times themselves.

Even with the revised Regulation, there is still a duty of documentation. What is new is that three different rules for documentation have been introduced: i) dispensation with the recording of working time, ii) simplified recording of working time and iii) systematic recording of working time.

1. Dispensation with Recording of Working Time

High level management personnel such as CEOs and management board members (so-called top management) are still exempted from recording their working times. They are not subject to the Employment Act and therefore not required to record working times.

What is new is that **other employee groups** can dispense with the recording of working time, but only if the dispensation is **provided for in a collective employment agreement** and (Art. 73a Employment Act Regulation 1) the employee:

- has a large degree of autonomy, and
- can generally determine his or her own working times, and
- receives a gross annual salary, including bonus, of more than CHF 120'000, and
- agrees to dispense with the recording of working times in writing (signature of a written declaration of waiver).

2. Simplified Recording of Working Time

Simplified recording of working time was introduced with the directions of SECO issued in December 2013. However, the scope of application has been redefined in the revised Regulation (Art. 73b Employment Act Regulation 1).

The simplified recording of working time must be provided for in a **collective agreement** between employer and employee representatives of an industry or company. If there is no employment representative, the simplified recording of working time can be introduced by agreement of a majority of employees in a business. Only in **firms with less than 50 employees** can simplified recording of working time be **agreed in writing** directly between the employer and the affected employee.

The simplified recording of working time is only available for employees that can **determine a substantial part of their working times themselves**. According to the explanatory report from SECO, employees that can freely determine a substantial part, meaning at least a quarter, of their working times fall under this provision (namely personnel in mid-management levels or those with functions that are not directly concerned with production/service provision for the business).

Simplified recording of working times means that only the **performed daily working time** has to be recorded. For night work and work on Sundays and public holidays, however, start and end times of these working periods must still be documented.

Regardless of the existence of an agreement, the employee may still detail his or her working times systematically. The employer must make available a suitable instrument for this purpose.

3. Systematic Recording of Working Time

All other employees are required to document their working times systematically and without gaps (Art. 73 Employment Act Regulation 1). They must record, among others, the periods and location of their work on a daily and weekly basis (including compensated time and overtime), breaks of half an hour or more and days of rest.

4. Recommendation

In view of the entry into force of the new provisions on 1 January 2016, we recommend reviewing working time recording procedures and, where possible, making the necessary adjustments. This would involve determining:

- which employees do not fall under the Employment Act and so are not subject to the duty to record working time at all (high level management personnel), and
- which employees have a certain freedom in determining their working times and so may be able to dispense with the recording of working time or to use a simplified process for recording working time.

Businesses with less than 50 employees can enter into individual agreements directly with the affected employees. For those with more than 50 employees, a collective agreement with the employee representatives has to be reached or, if there is no such representation, with a majority of the employees. The agreement must meet the conditions set by the Federal Council.

If your business is covered by a collective agreement, the possibility to dispense with the recording of working time should be checked. We are able to assist with this as required.

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