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# Working time in Germany and France

Legal framework and current trends

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# German-French CoffeeBreak



# Agenda

- 1 Principles of working time law (working time recording)
- 2 Contacting employees outside working hours?
- 3 Overtime work



# Principles of working time law in Germany



## I. Basics

- Working time: 8 hours (exception 10 hours), §3 German Working Hours Act
- Rest period: 11 hours, § 5 ArbZG

## II. Sanctions

- Regulatory offence (*Ordnungswidrigkeit*): fines up to EUR 15,000.00, §22 ArbZG
- Criminal offence (*Strafbarkeit*): Intentional violation + health violation, § 23 ArbZG
- Profit skimming (*Gewinnabschöpfung*)

## III. Compliance: Working time record

- Decision of Federal Labour Court of 13. September 2022 (File no. 1 ABR 22/21)
  - Obligation to record working time
  - No specific criteria for time recording system
  - Delegation of the recording obligation to employees
- Draft bill Federal Ministry of Labour and Social Affairs 18.4.2023:
  - Electronic recording
  - Recording on the day of work performance, information/copy to employees, data must be saved
  - Legislation process continues

# Principles of working time law in France



## I. Basics

Statutory legal working time	Lump-sum agreement in days	Senior executive
<ul style="list-style-type: none"><li>7 hours per day or 35 hours per week</li><li>Maximum of 10 hours by day</li><li>Break of at least 20 minutes is mandatory after 6 hours</li><li>Minimum daily rest period of 11 consecutive hours</li></ul>	<ul style="list-style-type: none"><li>Up to 218 days per year (i.e. 13 hours per day without paying any overtime)</li><li>Reduction days ("RTT") to compensate the longer work</li><li>Not subject to overtime</li></ul>	<ul style="list-style-type: none"><li>Top level executive</li><li>Not subject to overtime</li><li>Not subject to the working time and its monitoring</li></ul>

## II. Sanctions

- Criminal penalties: for the legal representative of the Company (a maximum fine of € 750,00 per concerned employee) and for the Company itself (a maximum fine of € 3 750,00 per concerned employee)
- Damages for the prejudice necessarily suffered

## III. Compliance: Working time record

- Very important to monitor the employee's working time but **no legal provisions on the form**
- Lump-sum agreement in days** : the monitoring of working time is one of the conditions of its **enforceability** (mandatory guarantees protecting employees' health)
- 1 or 2 interviews per year must be conducted (discussion about work life balance and the working conditions)
- If not enforceable, the employee's working time is considered **as equal to 35 hours per week** which could imply overtime pay for any work hour **beyond 35 hours per week**
- Failure in conducting these interviews can lead to **high financial consequences** for employers



# Contacting employees outside working hours: Germany



## I. Problem

- Employees are not allowed to work during eleven-hour rest period
- Do short activities for the employer disturb the rest period?
- Examples: Phone call/short e-mail in the evening
- Different views:
  - *If an employee makes a business phone call during their free time, this fact alone does not constitute work.*
  - *If an employee makes a phone call, no matter how short, he is working and interrupting his rest period.*
- Consequence: Eleven hours of rest would have to be granted again.

## II. Federal Labour Court

- Employee did not read notification of the following day's shift by text message the evening before.
- Employer considered non-attendance as absence and issued a warning
- Decision of the Federal Labor Court:
  - Employee must take note of the text message from the employer
  - Reading the text message is not working time (no interruption of rest period)
  - No restriction of leisure time

## III. Consequences

- Employer: Case-by-case decision
  - Short text messages likely permitted, risk of sanctions for longer messages
- Employee: No right to be unreachable
  - Risk of sanctions when short messages are not noticed
- Works agreements: Communication could be more flexible but protection of employees must be observed
  - Raise employees' awareness of work-life balance, e.g. via guidelines on the use of company communication tools.

# Contacting employees outside working hours: France



- **Legal right to be disconnected** from the digital devices after a workday (“*droit à la déconnexion*”)
- An employee should not answer to e-mails after his workday but if she/he does, it will imply the following consequences:
  - It will be considered **as working time** and will be paid as **overtime**
  - **Interruption of the rest period** which will have to be granted again for 11 hours
- However, in any case, the **refusal** to work in the free time is **not a ground to dismiss an employee**

# Overtime: Germany and France



## Germany:

- Compensation for overtime is not regulated by law
- Employer and Employees must agree on compensation for overtime (employment contract, works agreement, collective agreement)
- Without agreement, overtime is only to be compensated if there is a reasonable expectation
  - Probably no expectation if fixed salary is very high
- Compensation of first 20 overtime hours per month with the fixed salary is likely to be valid

## France:

- Hours worked **beyond 35 hours a week** are considered as overtime
- Overtime is paid at **increased rate**:
- For the first 8 hours per week (i.e., from the 36<sup>th</sup> to the 43<sup>rd</sup> hour): 25%
- For the following hours on the same week (i.e., as from the 44<sup>th</sup> hour): 50%
- Possibility to replace the payment by **compensatory rest**
- Any hour above the **legal annual limit for overtime of 220 hours** implies **mandatory additional time off** in addition of the overtime payment



# Discussion



**HR**  
COFFEE  
**BREAK**

## Our next session



17 July 2024:

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Mit Nico Jänicke

# Let's stay in touch!



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