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working time organization
brings lots of innovations*



OGB-L

The reform of working time organization brings lots of innovations

The present reform of the working time organization comes after months of negotiations without any result between the government, the employers and the trade unions. The employers wanted above all more flexibility in the companies without any compensation for the workers. Thanks to the pressure, the OGBL exerted for months, the employers' efforts for more flexibility could be parried. Attempts to reach a consensual solution remained unsuccessful because of the firm position of the employers, who were never willing to compromise. Thus, the government has been forced to assume its responsibilities and to submit a draft law to Parliament for consideration.

The new law has been in force since the beginning of the year and applies to all employers in Luxembourg.

Some OGBL demands have been incorporated into the text of the new law, which is, to the OGBL, an acceptable compromise.



What's new?

First of all, it is important to see that the new law doesn't modify the existing collective bargaining agreements. They will subsist, provided that a precise description of the organization of working time exists in the company.

Even if that is not the case, a reference period of more than a month may not be introduced. Discussions on implementation are subject to negotiation with the unions.

The new reference period for calculating the average number of hours can be expressed in weeks or months. The maximum average working time of 40 hours per week remains valid. Furthermore it will not be possible to work more than 48 hours a week and more than 10 hours a day.

The reference period of maximum 4 months

If an employer wishes to introduce a new reference period, it must inform and consult the staff delegation or if there is none, the concerned workers.

One month later, the new reference period will apply. Such a regulation of working time remains valid for a maximum of 24 months. But it can be extended without further formalities.

The Labour and Mines Inspection (ITM) must be officially informed.

Depending on the duration of the reference period, there are more days of leave

- Reference period up to one month: no additional leave.
- Reference period between more than one month and 2 months: 1½ extra day of leave per year.
- Reference period between more than 2 and 3 months: 3 extra days of leave per year.
- Reference period between 3 and 4 months: 3½ extra days of leave per year.

For part-time workers, these days of leave are calculated according to the length of part-time.



The work organization plan

No later than 5 days before the beginning of the reference period, all the concerned workers have to be informed about their work schedules by the employer.

No work organization plan may have a shorter duration than a month unless the reference period is shorter than a month.

The work organization plan has to indicate:

- 1) the beginning and the end of the reference period
- 2) the exact daily schedules of all the workers
- 3) holidays, leave, rest days, etc.
- 4) the uninterrupted rest period of 44 hours, which is due each week. If that is not the case, the days of leave due to the non-respect of the rest period have to be indicated.¹

Any other arrangement has to be submitted no later than 5 days before it becomes effective to the staff delegation or the concerned workers. If the employer and the staff delegation cannot find an agreement about the work organization plan, the dispute may be brought before the Labour and Mines Inspection. The latter then has one month to reconcile the parties.

If no agreement can be found, the dispute can be taken to the National Conciliation Board.

However, the dispute does not repeal the controversial work organization plan.



¹ 44 hours of rest period: if a weekly 44 hours rest period is not respected, there is a complementary leave entitlement. That means one day off per 8 weeks and a maximum of 6 days of leave per year.

The article in this respect of the law was more clearly formulated thanks to OGBL's pressure. It was stated obligatory, that the 44 hours are to be due per week.

What happens if the work organization plan is changed during the current period?

Thanks to the constructive proposals of the OGBL, important law modifications could be done on this point. Previously, unforeseen circumstances could lead to a change in the work organization plan; overtime was not due, thus no supplements either. As a result, in most companies the workers continued to work overtime, but these hours were rarely paid as such.

That was an intolerable situation. Now the following rules apply: if the notification of the change of the work organization plan is made at least 3 days before its start date, overtime is not due. If notification is made less than 3 days in advance, overtime is due, except in the case of a force majeure.

Three further new rules

A further achievement of the new law due to proposals of the OGBL, consists of the following 3 stipulations, which introduce new principles.

- 1) If the work organization plan was changed (notification less than 3 days before the event), without incurring overtime, i.e. a simple change of the schedule, the worker is entitled to an additional 20% for each hour after the second hour. This increase is subject (in terms of tax and social law) to the same treatment as overtime.
- 2) If the worker cannot, for justified reasons, work under the modified work organization plan (notification less than 3 days before the event), he may apply to be exempted from the new work organization plan. If the employer refuses, the staff delegation or the worker concerned may contact the Labour and Mines Inspection.
- 3) In order to prevent the 4-month reference period, which is now possible, from causing long periods with excessive working hours, a new regulation is introduced.

In Luxembourg, 20% more work is allowed. This will remain unchanged. The novelty is that if the reference period happens to be longer than one month and up to 3 months, the increase of the 40 hours of weekly work



is limited to an average of 12.5%. All hours worked above the 12.5% are now automatically considered as overtime. In the case of a reference period of more than 3 months and up to 4 months, overtime is due from 10%.

Every hour which goes beyond the normal working time and is left at the end of the reference period, obviously is an hour of extra time and has to be compensated as such.

It is as well important to note that the worker may in principle decide when overtime is compensated in time off. Here the same rules are valid as for vacation.

Finally, it should still be mentioned that the 6-month reference periods with ministerial authorisation are no longer possible.

Within the framework of collective bargaining agreements, reference periods up to 12 months can still be negotiated.

The framework conditions for work organization models negotiated in a collective agreement will continue to be determined by the negotiating parties and may, in certain points, differ from the law.



Flexible working hours

In future, flexible working hour models may only be introduced by common agreement between the employer and the staff delegation, through collective agreement negotiations, or if there is no agreement or delegation, between the employer and the concerned workers.

To avoid abuse, the time spent in the company must be accurately listed.

The number of authorized overtime hours must be determined in such agreements.

The duration of the agreement should be defined.

In addition to these general rules, there are further points to consider when introducing flexible scheduling models. Without union representation in the company, it is absolutely necessary to get in touch with the OGBL in order to receive precise information. Below you will find a list with the contact details of the OGBL officials.



Thus, the new PAN law brings a number of improvements, which have only been possible through the pressure exerted by the OGBL.

This brochure does not claim to be complete, so if there are any questions, do not hesitate to contact a member of an OGBL staff delegation or refer directly to the OGBL.

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