

Your World First



**Newsletter Employment**  
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# New Rules on Time Tracking Duties

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## 1. Initial Situation

Pursuant to the Swiss Labour Act (ArG) currently in force, as well as the Ordinance No. 1 to the Labour Act (ArGV 1), the employer has a duty to ensure that all employees maintain a detailed record of their working time. Only employees in very senior and executive positions, i.e. the few members of the top management, are exempt (they are, in principle, not subject to the ArG).

This legal regulation has for some time been criticized as outdated. Moreover, it does not sufficiently take into account today's working environment, in which – at least with respect to certain functions and positions, respectively – there is no clear separation between the professional and the private life.

The State Secretariat for Economic Affairs (SECO), by directive of 19 December 2013 has called on the cantonal labour inspectorates to adapt their practice of controlling the working time recording starting 1 January 2014. Said directive notes, in particular, that simplified time recording may be sufficient for employees of a specific category. On 1 January 2016, the SECO directive will be replaced by an amendment to the ArGV 1, which amendment was agreed on by the social partners.

## 2. Content of the New Regulations

### **a) Initial Situation**

On 1 January 2016, two new provisions in the ArGV 1, articles 73a and 73b, will enter into force. Whereas article 73a ArGV 1 concerns the waiving of the recording of working time, article 73b ArGV 1 deals with the simplified time recording.

### **b) Waiver of Working Time Recording**

Pursuant to article 73a ArGV 1, the waiving of the recording of working time shall be effected by means of a collective bargaining agreement. Three cumulative requirements must be met. First, the employee must enjoy a high level of independence

and for the most part organize their working time themselves (para. 1 lit. a). Second, the employee must earn a gross annual salary (incl. bonuses) of at least CHF 120,000 (para. 1 lit. b). Third, each employee must individually consent in writing (para. 1 lit. c). The employee may revoke their written consent each year. Complementary information concerning the collective bargaining agreement is included in para. 3; the collective bargaining agreement must, in particular, be signed by the majority of the representative employees' organization for the sector or the business.

### **c) Simplified Time Recording**

Pursuant to article 73b ArGV 1, simplified time recording may be implemented based on a respective agreement with an employees' representation on an operative level. Where no such agreement exists, one must be concluded with the majority of the employees. For businesses with less than 50 employees a simplification is provided, as the implementation of simplified time recording may be individually agreed on in writing with the employees concerned.

As with the waiver of working time recording, the simplified time recording may not be implemented for all employees but only for those who may, to a large extent, determine their own work schedule. In this case, only the total hours worked per day must be recorded (para. 1).

With respect to the agreement, para. 2 stipulates that the employee categories qualifying for simplified time recording must be specified. In addition, it must be stated how the provisions on working time and rest periods will be met. A joint commission shall ensure that the agreement is observed.

The aforementioned contents of the agreement do not apply if in a business with less than 50 employees individual agreements have been concluded. In this case, the individual agreements must indicate the applicable provisions on working time and rest periods, and in the annual end-of-year meeting, the workload situation must be discussed (and documented by the employer).

### 3. Conclusion

At first glance, the possibilities created by the revision of the ArGV 1 (waiver of working time recording and simplified time recording, respectively) appear attractive.

This positive picture, however, is considerably put into perspective in that a waiver of working time recording requires the conclusion of a collective bargaining agreement. Thus, the new regulation is of interest mainly to industries and employers, respectively that are subject to a collective bargaining agreement already today. To subject oneself to a (comprehensive) collective bargaining agreement solely for the purpose of this new regulation on the recording of working time is unlikely to constitute a genuine alternative for all other employers.

In general, simplified time recording requires in particular an agreement with the internal employees' representation. The situation was facilitated only with respect to small businesses with less than 50 employees, where it is possible to conclude individual agreements.

Finally it must be pointed out that with the entry into force of the new regulation the pressure on the authorities and the labour inspectorates, respectively, to monitor and effectively enforce compliance with the rules, increases.

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