

PRESS RELEASE

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Subject **CMS Business Breakfast on the subject of
“The Latest Amendment to Working Time
Legislation”**

CMS Business Breakfast: Spotlight on the Latest Amendment to Working Time Legislation

The new Working Time Act [Arbeitszeitgesetz, AZG] introduces a number of fundamental changes. These changes and the resulting need for adjustments to business practice were the focus of the CMS Business Breakfast at the end of last week, which was attended by around 120 people. CMS's two experts in Employment & Pensions, Christoph Wolf and Andreas Jöst, explained the key aspects of the amendment, its scope and its impact on existing operational working time models.

The AZG amendment came into force on 1/9/2018, introducing not only a new total working time of 12 hours per day and 60 hours per week plus a new definition of executive employee, but also changes to flexitime and overtime. However, there are a number of interpretation issues even with this amendment that need to be resolved first to allow companies to apply the new provisions in a legally compliant manner, as the two CMS Employment & Pensions experts, Christoph Wolf and Andreas Jöst, stated at the CMS Business Breakfast.

One such issue relates to the new definition of executive employee. Given that here the text has largely been copied from the EU Working Time Directive, the case-law of the ECJ in particular is authoritative in this respect and this indicates that what matters most is a very high degree of time autonomy.

Working time must still not exceed 48 hours per week on average

Even if the total working time limits on individual days have been raised to 12 hours and in individual weeks to 60 hours, it remains the case that, over a period of 17 weeks, no more than 48 hours on average per week may be worked in total (incl. overtime). This is already stipulated in EU law, though the collective agreement can extend the averaging period under certain conditions. Therefore, increasing importance will be attached to checks on this limit. “A corresponding control system is therefore an indispensable part of the organisation of working time within a company,” explained Employment & Pensions expert Christoph Wolf.

What's new for overtime: right of refusal introduced

The amendment extends the general overtime quota to 20 hours per week. If overtime will mean that a daily working time of ten hours or a weekly working time of 50 hours will be exceeded, employees can refuse the overtime without providing justification. Employees

must not be disadvantaged in any way for refusing. This right of refusal will also apply in the event of an assignment within the framework of on-call duty. So, the crucial question is when the right of refusal must be exercised. There is no clear regulation for this in the law. "Given the purpose of on-call duty, the right of refusal really ought to be exercised as soon as the employee is assigned to a specific on-call service," stated Employment & Pensions expert Christoph Wolf.

Right to choose how to be compensated for overtime: money or time off

A further issue is created by the employee's right to choose how to be compensated for overtime that causes a daily working time of ten hours or a weekly working time of 50 hours to be exceeded. According to the new Section 10(4) AZG, employees can choose whether to be compensated for this overtime in money or in time. This right to choose must be exercised as soon as possible and certainly no later than the end of the respective accounting period. This regulation poses major challenges for payroll in particular because overtime that is not settled in time has usually already been "transferred" to payroll by the end of the accounting period. The CMS experts recommend that employees be asked about their chosen form of compensation when the overtime is actually being assigned if such overtime will cause a daily working time of ten hours or a weekly working time of 50 hours to be exceeded.

In addition, a new definition of overtime has been introduced for flexitime. This is set out in a new Section 4b(5) AZG and stipulates that overtime also exists whenever the employer assigns working hours that exceed the normal working time (which, pursuant to Section 3(1) AZG, is 8 hours per day or 40 hours per week).

New flexible working time model – easy to apply?

A much-discussed topic of recent weeks was also the introduction of a new flexible working time model with 12 hours of normal working time. This presupposes that the agreement on flexitime specifies that compensatory time off can be taken in whole days and usage in conjunction with the weekly rest period is not excluded. But what if the collective agreement "truncates" the normal working time for flexitime at 10 hours? "In that case, everything will stay the way it is for the time being – until the collective agreement is amended; only a flexible working time model with a normal working time of up to 10 hours can be implemented," explained Employment & Pensions expert Andreas Jöst.

Conclusion

Even if the current AZG amendment largely does not apply any immediate regulatory pressure, companies should still check whether their working time rules are consistent with the new provisions. For instance, they should pay attention to the new definition of overtime for flexitime and verify compliance with the 48-hour limit.

Photos of the CMS Business Breakfast as well as the speakers, Christoph Wolf and Andreas Jöst, can be found here:

[Christoph Wolf](#)

[Andreas Jöst](#)

[Event 1](#)

[Event 2](#)

Further events at CMS in Vienna can be found on the website at [cms.law](#) under [Events](#).

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