

PRESS RELEASE

**CMS Reich-Rohrwig Hainz
Rechtsanwälte GmbH**
Gauermannngasse 2
1010 Vienna
Austria

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cms.law

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T +43 1 40443-4000

F +43 1 40443-94000

Subject Experiences with and responses to the new
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E presse@cms-rrh.com

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The amendment to the Working Time Act (AZG) came into force on 1 September 2018 and has thus been part of operational practice for almost a year. Since then there have not only been initial responses from the collective bargaining parties, but also numerous experiences from interim model implementations, which were assisted by CMS labour law experts. But European law has also brought some new developments. All this was the topic of the international law firm CMS's Business Breakfast last week.

The CMS Business Breakfast dealt with the effects of the new Working Time Act and the new ECJ case law on the calculation and recording of working hours. The two CMS labour law experts Christoph Wolf and Andreas Jöst answered questions from around 70 participants.

Collective bargaining parties' first responses to the AZG amendment

In the collective agreement for the metal industry, for example, from 1 July 2019 a surcharge of 100% has generally applied from the third hour of overtime per day – regardless of where those hours are worked. In addition, a further rest break must be planned when long hours are worked. The collective agreement for commercial employees also breaks new ground with the introduction of a "maximum 4-day week" entitlement. The collective agreement for commercial employees deviates here from the "principle of agreement" on which Section 19c of the AZG is based and gives the employee the unilateral right of structuring, which the employer can only reject for the important reasons set out in the collective agreement. According to the two CMS labour law experts, Christoph Wolf and Andreas Jöst, new "building blocks" have thus been set in the current collective agreement development which must be considered when designing legally secure working-time models.

Extended flexitime model

Initial experience shows that the extended flexitime model with normal working hours of up to 12 hours a day is rarely used. "This is partly for legal reasons. Because some collective agreements continue to cut normal working hours for flexitime to 10 hours," says Andreas Jöst.

New in the calculation of the "48-hour average"...

Due to the extension of working hours by the 2018 AZG amendment, the "48-hour average" has moved to the centre of working time-control. According to the provisions of the AZG, the average working time over a period of 17 weeks may not exceed 48 hours per week. Under

certain conditions, the collective agreement may extend the averaging period. The controversial issue was how to “set” this averaging period. Fixed (i.e. week 1 to week 17, etc.) or floating, so that the average calculation must always be correct (keyword: “one week away, one week in addition”).

The ECJ has now decided that, although both are permitted under European law, companies must guarantee that the “48-hour average” is observed within each 6-month period (note: this was the disputed averaging period), even if it is spread over two fixed averaging periods. “As a result, it will generally be necessary to assume a moving reference period,” says Christoph Wolf.

New in working-time records

The ECJ also applies a strict standard to working-time records. According to the ECJ, Member States must oblige employers to set up an objective, reliable and accessible system for measuring daily working time. A mere absence calendar, which only records absences such as holidays or other days off, does not fulfil these requirements under any circumstances.

It is therefore highly questionable whether the special recording provisions contained in the AZG – such as balance recording or eliminating the obligation to record breaks, for example – can be maintained against this background, if the employees themselves are allowed to decide when their breaks occur within a defined framework.

Coming soon: CMS working-time workshop

Monitoring numerous working-time projects has shown that an integrated development approach is becoming increasingly important. CMS therefore offers complete support to working-time implementation projects within the **CMS working-time workshop**, starting with selection of the right time model (flexitime does not always fit!), formulation of the corresponding legal basis (company agreements, individual agreements), negotiation with the works council, IT implementation (creation of planning booklets) and the legal monitoring of the implementation process.

Photos of Christoph Wolf and Andreas Jöst that may be used free of charge can be found [here](#).

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

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Contact:

Kristijana Lastro

Head of Marketing & Communications

T +43 1 40443 4000

E kristijana.lastro@cms-rrh.com

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