



## Duty to Record Working Hours: Ruling of the German Federal Labour Court

### Duty to Record working hours

We would like to inform you about the new obligation for employers to record their employee's working time due to the judgement of the German Federal Labour Court (Bundesarbeitsgericht- "BAG") of September 13th 2022. Following a ruling of the European Court of Justice ("ECJ") from May the 14th 2019, employers are now also under German law obliged to register all working time of employees, not only overtime hours and work on Sun- and holidays. This can be done, for example, using a suitable program or a time clock. It does not matter whether the employee is doing telework or in the office, the time must be documented, also for mobile work.

### From EU Directives to German National Legislation

According to the German Working Time Act, employers were previously only obliged to document Sunday and holiday work as well as overtime hours in detail and not the entire working time. The previously common trust-based working time model is no longer possible after this ruling.

The BAG based its ruling regarding the interpretation of the German Occupational Health and Safety Act on the "time clock ruling" of the ECJ. However, so far there are no specific requirements from the legislator including possible exceptions. The legislator is bound the ruling of the ECJ, since European law prevails over national law. Therefore, the requirement to record working time will be implemented into German statutory law sooner or later. The way in which working time shall be recorded is not yet specifically regulated, including permissible programs and to what extent these do not violate data protection. Indeed, such programs may only function as a time clock and not monitor the activities of the employee. Practical use for work outside of regular working hours is also unclear. For example, if an employee receives an emergency call, does the recording of working time begin immediately upon receipt of the call or must the employee first log on to his or her computer, clock in and only then take the call?

Important points to be considered:

- (i) The working time must be recorded accurately, it does not matter where the employee is or when he/she works.
- (ii) The program may only be used for time recording, it may not monitor activity (Sec. 87 para.1 no. 6 WCA)
- (iii) Recording may be done via time clocks or similar programs; the employer is obliged to introduce a system for his employees. Exact specifications by the legislator do not exist at present.
- (iv) Violation of the compulsory recording of working hours by the authorities can be punished with a fine of up to EUR 30,000.

Further changes in exceptional cases and to what extent this ruling will be amended by the legislature is still unclear. We will inform you as soon as there is a development in this area. If you have any questions,

please do not hesitate to contact us. We are happy to support you in this matter and all other labour law questions.

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