

# Update

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## New rules on the recording of working time

**In the future, employees who enjoy "wide discretion in managing their working schedule" and whose salary for social security purposes exceeds CHF 120'000 (incl. bonus) may no longer have to record their working time. This will require some sort of collective bargaining agreement which includes specific measures to protect the health of employees. In addition, employees who have "a certain discretion in managing their working schedule" may be subject to a simplified requirement to record their working time, provided the employees have entered into an agreement to this effect. An amendment to the relevant ordinance will be enacted as soon as possible – i.e. presumably in the third quarter of 2015 – after a shortened consultation period.**

### **Current rules governing the recording of working time**

According to the applicable labour law and ordinance, for purposes of recording working hours there are two categories of employees. The top level management, such as the CEO, board members and the like ("employees who hold a higher managerial position") are not subject to the timekeeping requirements. For all other employees, the employer has a comprehensive obligation to record working times, including starting time, breaks and the end of each working day. The responsibility to comply with the rules on timekeeping, including the keeping of the related documentation, rests with the employer.

These rules have become obsolete in today's world. Increasingly, employees are flexible as to the time and place when and where they work. A detailed timekeeping is associated with high costs and can give the employee the unpleasant feeling of being controlled by the employer. However, considering that Swiss labour law limits the number of working hours of an employee for health reasons, to abolish the timekeeping requirement altogether is not sensible since the authorities would not be able to ensure compliance with these rules.

Since 2009, various endeavours have been made to change these rules. The State Secretariat for Economic

Affairs SECO issued a directive in December 2013 according to which employees who do not fall into the category of top managers, but still have significant discretion in decision-making at work and who meet certain other requirements, are subject to a simplified timekeeping, i.e. they only need to record the number of hours worked each day. In the fall of 2014, the social partners have concluded an agreement applicable to the banking sector, according to which time recording can be suppressed for employees with salaries in excess of CHF 132'000 (excl. bonus) (provided certain other requirements are met).

Both the directive of the SECO as well as the agreement in the banking sector do not change the legal situation, but are rather in conflict with current law. A change in the law is therefore necessary.

Through the mediation of the Federal Council, the chairmen of the Swiss Federation of Trade Unions and the Swiss Employers' Association were able to reach an agreement which is highly likely to lead to the desired and overdue change in the law, since it is unlikely to be opposed by significant interest groups.

## Proposed new regulation

According to the proposal, Ordinance 1 of the labour law shall be supplemented with two articles as follows.

Firstly, it will be possible to dispense with the timekeeping requirements for employees who have a high degree of discretion to manage their working hours and whose salary for purposes of social security exceeds CHF 120'000 (incl. bonus). In addition to these conditions, an agreement between a union and the relevant company or industry sector is necessary – a sort of collective bargaining agreement. This collective bargaining agreement must contain rules for the protection of the employees' health.

Second, a simplified timekeeping may be implemented – requiring only a note specifying the total number of hours worked per day – for employees with a certain discretion regarding their working schedule. This simplified timekeeping is not dependent on a minimum wage. The press release of the Federal Department of Economic Affairs, Education and Research (*Eidgenössisches Departement für Wirtschaft, Bildung und Forschung, WBF*) also mentions the requirement of an agreement with the employees, although it is unclear whether an in-house contract is sufficient, or some kind of collective agreement is required.

The WBF is planning to amend the ordinance for the fall of 2015 after a shortened consultation period, in which all interested parties can once again submit their views on the proposed new rules.

Since the proposed text for the ordinance requires that each company or industry sector enters into an agreement with the unions, companies who already have a social partnership and who have already dealt with the recording of working time will profit in a first round. Such industry sectors include the banking, insurance, publishing, healthcare and consulting industries.

Experts also predict that the new rules will not only lead to more flexibility, but also to tighter controls. It is precisely where no sector agreements have been concluded that labour inspectors are likely to look more closely in the future.

The wording of the amendment proposed by the Federal Council at the level of an ordinance is still relatively loose. The definition of "working time autonomy" or discretion required for a loosening of the rules will need to be substantiated in practice. Many open questions also exist with regard to the collective bargaining agreements to be concluded. It will probably take a while until the desired legal certainty will be reached with regard to the timekeeping requirement. Until then, the existing rules will continue to be applicable.

**Please do not hesitate to contact us with questions.**

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