

In case you missed them: a few developments in employment law

Since 1 July 2023, two new categories of companies have been able to benefit from flexible working hours and rest periods as an exception to the general regime provided for in the Federal Labour Act.

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In addition, in Geneva, the Cantonal Equality and Fight against Discrimination Act, and the Cantonal Equality and Fight against Discrimination based on Sex and Gender Act, also came into force on 1 July 2023. These laws may have an impact on public procurement.

Working time and rest periods: more flexibility for certain categories of companies

Background

The Federal Law on Labour in Industry, Craft Trades and Commerce ("LTr") sets out precise and binding rules on working hours and rest periods.

However, depending on the company or category of employees, there may be derogations from the legal provisions on working hours and rest periods. These derogations are set out in Ordinance 2 to the Labour Act ("OLT 2").

General regime of the law

- Working hours and rest periods

According to the general provisions of the LTr, the maximum working week is 45 hours for workers who are employed in industrial companies, as well as for office staff, technical staff and other workers, including sales staff in large retail companies. For all other workers subject to the LTr, the maximum working week is 50 hours. In exceptional cases and within certain limits, the maximum working week may be exceeded.

The daily working period may not exceed 14 hours, including breaks and overtime.

In principle, each employee must have a daily rest period of at least 11 consecutive hours.

- Night work and Sunday work

Generally, work may only be carried out between 6am and 11pm. If work is to be carried out between 11pm and 6am (night work), special authorisation is required. This also applies to work performed on Sundays.

Exceptions under the OLT 2

The OLT 2 specifies the possible derogations from the legal provisions on working hours and rest periods, in relation to different categories of companies and different groups of employees.

- Categories of companies affected by the revision

The revision of the OLT 2 introduces new provisions applicable to companies operating in the information and communication technologies ("ICT") sector and to service companies mainly active in the fields of auditing, fiduciary activities and tax consultancy.

- Companies operating in the ICT sector

The new Art. 32b OLT 2 applies to companies operating in the ICT sector.

The new provision allows companies operating in the ICT sector to extend the period within which employees can work each day, including breaks and overtime, to 17 hours (instead of 14 hours). This derogation is only possible for ICT activities which are i) linked to projects as part of an international collaboration or ii) in the case of urgent and unforeseeable activities.

Under certain conditions, the daily rest period for employees can be reduced to 9 hours (instead of 11 hours under the general regime).

Under certain conditions, these companies may continue to employ their workers at night and on Sundays without authorisation, in accordance with Art. 32 OLT 2.

However, in-house IT services provided by companies in other sectors of activities do not benefit from this exemption.

- Audit, fiduciary activities and tax consultancy

Service companies active in the field of auditing, fiduciary activities and tax consultancy benefit from the provisions of the new Art. 34a OLT 2.

The new Art. 34a OLT 2 introduces the possibility of annualised working hours for certain employees. The employees who can benefit from this system are those who hold senior or specialist positions in the fields of auditing, fiduciary activities or tax consultancy. Among other conditions, they must have a high degree of autonomy in their work and in setting their own working hours.

One of the consequences of the introduction of an annualised working week, subject to written agreement between the employer and the employee, is that the general provisions relating to the maximum length of the working week do not apply. However, working time may not exceed 63 hours per week, and the annual average may not exceed 45 hours per week.

Under certain conditions, the daily rest period for the employees concerned can be reduced to 9 hours (instead of 11 hours under the general regime).

In addition, Sunday work without official authorisation is possible for a maximum of 5 hours, and for a maximum of 9 Sundays per year.

This special regime is due to the seasonal nature of these activities (e.g. account closing periods). However, it does not apply to other service companies (in particular legal services).

New Geneva cantonal Acts on Equality and the Fight against Discrimination

Background

The Canton of Geneva has adopted an Equality and Fight against Discrimination Act ("**LED**") and an Equality and Fight against Discrimination based on Sex and Gender Act ("**LED-Gender**").

The LED is a general expression of the constitutional right to equality. The LED-Gender aims more specifically to promote equality between women and men and to fight violence and discrimination based on sex and gender.

Scope of application

The provisions of the LED and of the LED-Gender are not, in principle, directly applicable to the private sector. They apply primarily to the public sector.

These laws, which are the first of their kind in Switzerland, oblige the State to take measures to raise public awareness, to provide training for professionals who are involved with the people concerned, to keep specific statistics on violence and discrimination suffered (in particular femicides and sexual harassment), to take systematic preventive measures against harassment in public places, to provide appropriate care for the people concerned and to ensure that communication does not reproduce gender stereotypes.

As far as the private sector is concerned, the LED and LED-Gender mainly provide for incentives and awareness-raising measures by the State. However, these laws can have a more tangible impact.

Consequence

In the area of public procurement, the awarding authority may take into account, among the award criteria, the compliance of the tendering companies with the principles set out by the LED and the LED-Gender, in particular equal pay for men and women.

Furthermore, the granting of compensation and State financial aid is in principle subject to compliance with the principles of equality and non-discrimination. The same applies to the delegation of public tasks.

In the Canton of Geneva, therefore, the adoption of the principles set out in the LED and the LED-Gender could be an argument in favour of companies, both in the awarding of public procurements and in the granting of State aid. Geneva's public procurement regulations (RMP) already require tenderers and contractors to respect the principle of equality between men and women (Article 21). However, unless this regulation is amended to explicitly include the obligation to comply with the LED and the LED-Gender (the scope of which is limited to the public sector), it seems to us that compliance with these laws should not become a *sine qua non* condition for companies responding to public procurements and/or applying for State aid. However, this could be an advantage and a change in the regulation in the medium term is not out of the question.

Please do not hesitate to contact us in case of any questions.

Legal Note: The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.

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