

Have your options with regard to working hours decreased or increased your risks under French labor law?

During the various assignments performed on behalf of companies, such as consultations or Labor due diligence investigations, we often noted either (i) irregularities exposing the company to significant risks, including at the criminal level, or (ii) a “standard management” of working hours, which is not necessarily the most appropriate method for the needs of the company, thereby constituting a source of anomalies.

During the various due diligence investigations conducted on behalf of companies, we often noted either (i) irregularities exposing the company to significant risks, including at the criminal level, and (ii) an approximate management of working hours; which is a potential source of anomalies.

What are the risks incurred today by companies by virtue of their methods of managing working hours?

The following are examples we have encountered of the most common irregularities and/or anomalies:

- Absence of amendments for *cadres* (managers or executives) working under a system of “package days” per year (rather than a system of hours per week/month/year),
- Discrepancies between what appears in the employment agreement and the pay slips,
- Absence of mandatory information on the pay slips,
- Absence of monitoring the hours worked, notably failure to recapitulate the days worked by *cadres*,
- Non-conformity to the law of Agreements on the Reduction of Working Hours, especially those entered into before 2001,
- Official working hours of *cadres* at 35 hours per week whereas they clearly work more,
- Illegal recuperation of hours or additional days,
- Non-compliance with the authorized quota of the maximum overtime hours allowed by law,
- Non-compliance with the mandatory obligations set forth by the applicable collective bargaining



agreements concerning “package days” or “package hours”, such as annual interview with the employee and increase of minimum wage.

Moreover, we would like to remind you that, when it comes to remuneration, the statute of limitations is 5 years. For example, a *cadre* who is today hired to work under a “standard management” of working hours, i.e. 35 hours per week, could claim 4 hours of overtime per week if he/she actually works 39 hours per week (which, in reality, is much lower than what a large number of *cadres* actually work). For a *cadre* working 39 hours per week for 5 years, this management method results in **a risk of at least 900 hours in overtime**. If the *cadre* is being paid 5,000 euros per month, this means that he/she could end up with the tidy little sum of more than 37,000 euros, excluding interest and possible damages.

In addition, legal entities could be fined between 3,750 euros and 7,500 euros for breaching the legal provisions governing working hours. Please note that said fine could be applied per each breach. Finally, Article L.324-10 of the French Labor Code stipulates that if the pay slip mentions a number of hours worked which is less than what is actually worked, this constitutes an illegal concealment of employment. As such, the company could be ordered to pay a lump sum indemnity of 6 months salary upon the termination of the employment agreement as well as heavy criminal fines (45,000 euros and 3 months imprisonment).

The regulations stemming from the Aubry Laws provide companies with the possibility of diminishing their risks if they choose the method(s) appropriate to the several categories of personnel, and if they implement an adequate monitoring system.

Although said Laws could be amended after the presidential elections in 2007, we strongly advise you to take stock of your current management method(s) to determine your level of risk. Once this is done, you will be able to determine the best strategy to protect your company.

Our Labor team is at your disposal for any assistance you may need concerning this issue.

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