

Working flexibly

UIC ČARNOGURSKÝ
LAW FIRM

The last, and it can be said the major, amendment to the Labor Code introduced changes in various legal regulations and provides employers with greater flexibility in scheduling of working time. This advantage has been reflected primarily in the wording of three legal regulations, namely the working time account (log sheet), flexitime account (log sheet) and changes to flexitime.

The Labor Code amended the working time account, which is found in article 87a. It is a way of uneven distribution of working time which the employer may introduce only following an agreement with a workers' union. This agreement must be in writing and cannot be replaced by a decision of the employer. The essence of the working time account is the employer's possibility to schedule working time so that employees may work more hours than is the statutory weekly working time if necessary due to greater need for work, and conversely, to work less hours in case of reduced need for work. Thus, employers can effectively respond to market needs, seasonal increases in the number of orders and the like, so that the employer's expenses do not increase unnecessarily. However, this working time solution cannot be made use of without restriction. The amendment limits the total number of hours carried out in this way. The average weekly working time, when making use of the working time account during a period of a maximum 12 months, must not exceed the statutory weekly working time. The average weekly working time, including overtime work pursuant to article 85 section 9, must not exceed 48 hours. Overtime work using the working time account is work exceeding the stipulated amount of weekly working time and out-of-schedule work shifts resulting from the working time account.

The new legislation thus also simplified the system of work accumulation from the administrative point of view. Originally kept in a log of overtime work. However, a new obligation regarding administrative work arises for employers, namely to keep records in the form of accounts – the working time log, the paid out wage log and the differences log. The employer must keep a record of time actually worked during individual days and weeks in the working time log. The employer further keeps salary actually paid out in the paid out salary log and the difference between the stipulated weekly working hours and actual hours worked by an employee as well as the difference between the actually paid salary and the salary which the employee would have been entitled to for hours worked, in the difference account.

The amendment to flexitime accounting shall help employers as well – the respective legal regulations are found in article 142a of the Labor Code. If employees cannot perform work due to operational reasons, the flexitime account shall allow employers, after consultation with a workers' union, to give time off to employees who are entitled to salary. This time off from work, given as described above, shall be considered as the performance of work. After barriers to work (on the side of the employer) are removed, the employee shall make up the respective time off from work. The original transitional legislation

should be in force until December 12, 2012, and should help employers overcome the period of global financial and economic crisis. The legislation currently enables employers – on a permanent basis – to respond to serious operational conditions arising, e.g. if the employer is not able to carry out his/her activities for a specific period of time. Uncertainty, which is against the interests of employers in connection with the use of flexitime accounting, is considered to have been a great deficiency in the previous legislation. The law neither exactly stipulated until when the employees had to make up the provided time off work, nor specified how employers could proceed if they wanted to terminate the labor relationship with employees who had not yet made up the provided time off from work resulting from the flexitime accounting. In this case employers suffered losses because the law did not oblige employees to refund money that they had received for work not carried out.

Unlike previous legislation, the amendment anchored in the regulation of article 142a section 7 specifies a time period within which the employee must make up provided time off from work for which the employee received salary, and this respective time period is a maximum of 12 months from the date on which the time off was granted. This increased security for employers was brought about by the provi-

sion specifying when and how the employee is obliged to refund the salary (equalling the employee's unfulfilled obligation) to his/her employer if the employer wants to terminate the labor relationship with the employee. The adopted amendments keep track of ensuring more flexible legislation on employment, increase the flexibility of relations between employers and employees. This new legislation shall ensure smooth running of employers' businesses without being obliged to dismiss employees who are already trained and qualified in a crisis situation, which costs employers money.

The amendment to flexitime legislation also enables the employers to respond flexibly to imminent changes. In this case, as in the previous two cases, its introduction is subject to its negotiation with labor unions. It represents an even or uneven distribution of working time. If the employer determines that the employee must be present at the workplace, that period can never be classified as optional working time, while the maximum length of change in the case of use of flexitime can be up to a maximum 12 hours. With regard to the fact that sending an employee on a business trip in fact cancels the rules of flexible working time (the employee thus does not chose the beginning and end of his working time while on a business trip), the employer shall in the case of a business trip stipulate the fixed start and end of the work shift. From an administrative point of view, the new legislation will relieve employers and will make transparent the hours worked while using flexitime.



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