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Poland: Working time flexibility

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Poland

Phase:

Management

Type:

Working time flexibility

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Native name:	Ustawa z dnia 26.06.1974 r. - Kodeks pracy; Ustawa z dnia 11.10.2013 r. o szczególnych rozwiązaniach związanych z ochroną miejsc pracy
English name:	Act of 26.06.1974 -Labour Code; Act of 11.10.2013 on special solutions related to the protection of jobs

Article

Article 129, 135, 136, 137, 138, 140(1), 143, 144, 145, 146150, 237(11a), 237(13a) -Act of 26.06.1974 - Labour Code; Article 3, 4, 5 - Act of 11.11.2013 on special solutions related to the protection of jobs

Description

The Polish labour law specifies that working time may not exceed 8 hours in a 24-hour period and an average of 40 hours in an average five-day working week in an applicable reference period not exceeding 4 months.

The working time may be reduced below these standards for employees employed in conditions that are particularly strenuous or harmful to their health by providing for breaks from work counted as working time, or by lowering these standards; for monotonous work or work at a fixed pace there may be also breaks from work counted as working time. The list of jobs involving strenuous or monotonous work is to be set out by the employer after consultation with the employees or their representatives in the manner and in accordance with the principles defined in article 237(11a) and article 237(13a) of the Labour Code on consultation with employees' representative and after the consultation with a doctor responsible for preventative healthcare of the employees as described in article 145 of the Labour Code.

There are also provisions which allow shortening working time under special circumstances, included in the act on special solutions related to job protection. This law applies to employers who have experienced a decrease in economic activity, understood as sales of goods or services, calculated in terms of quantity or value, in total of not less than 15%, calculated as the ratio of total turnover during 6 consecutive months over a period of 12 months prior to the date of application for benefits. If the situation of the employer fulfils the conditions mentioned above, an agreement may be concluded with the trade unions (or with the employees' representative if there is no union in the workplace) on working time reduction by a maximum of 50%. The remuneration of the affected employees (up to the minimum wage) and the allowance for the reduction of the working time (up to the amount of the unemployment benefit) are financed by the Guaranteed Employee Benefits Fund (*Fundusz Gwarantowanych Świadczeń Pracowniczych*).

In August 2013, changes to the Labour Code were introduced, allowing for greater flexibility in working time arrangements.

The first change concerns the possibility to extend the reference period. Within any system of working time arrangements, the reference period (working time settlement period) can be extended up to 12 months, if it is justifiable by objective, technical or organisational reasons. This option generally applies to the entire workforce of the company. The other change introduced flextime arrangement, which means that the work schedule may provide different hours of starting work or specify the time period within which the employee has to start work (for example from 6 to 8 a.m.) This option is more personalised and can be tailored to the needs of a particular employee.

Both arrangements can only be introduced through the agreements with employees' representatives. If trade unions exist in a company, such agreement has to be concluded with them. In a non-unionised company, a similar agreement must be concluded with the workers' representatives. In the latter situation the negotiation position of employees is weaker because such representatives are not subject to any protection under Polish law (they are not identical to representatives – members of works council, which have only information and consultation rights). The labour inspectorate must be informed no later than 5 working days from the day the agreement has been concluded.

There are also working time arrangements other than the basic one which contain some element of flexibility. The systems of working time organisation for extension of working time duration beyond 8 hours in a 24-hour period (art.135–138 and 143-144 Labour Code) are the following:

- **Work in equivalent working time system**, which gives the possibility to extend the duration of work to 12 hours in

a 24-hour period during a reference period not exceeding one month, or three months in particularly justified situations, and four months in the case of work which depends on a season or weather conditions (Art. 135 Labour Code).

- **Work in equivalent working time system**, which consists in the supervision of equipment or where workers are required to remain on standby in certain periods. This offers limited possibility to extend working time to 16 hours in a 24-hour period during a reference period not exceeding 1 month, while retaining the right to rest during the time equivalent to, at least, the number of hours spent at work, regardless of the weekly rest period (Art. 136 Labour Code). With regard to workers employed in equivalent working time system at guarding property or persons as well as fire brigade employees and employees in company rescue services working time may be extended to 24 hours in a reference period not exceeding 1 month, which may be extended to 3 months in special situations and to 4 months for types of work which depend on a season or weather conditions. In this system, a worker retains the right to rest during a period equivalent to, at least, the number of hours spent at work, regardless of weekly rest (art. 137 Labour Code).
- **Work involving continuity of operation** (work tasks which cannot be stopped due to the production technology or the necessity to continuously satisfy needs of the population). This offers the possibility of extending the working time up to 12 hours during one day in some weeks within the average 43-hour weekly working time standard in the adopted reference period not exceeding 4 weeks (art. 138 Labour Code).
- **System of a shortened working week**, which may be applied to employee on the basis of their written request. In such a system the option is there for the employee to perform work for fewer than 5 days a week, with simultaneous extension of a daily working time up to 12 hours, in a reference period not exceeding 1 month (art. 143 Labour Code).
- **System of weekend work**. This applies on the basis of a written request of the employee for whom the working time system stipulates performance of work only on Fridays, Saturdays, Sundays and public holidays. In such a system it is possible to extend working time, yet not exceeding 12 hours at a time in a reference period which is not longer than one month (art. 144 Labour Code).
- **Interrupted working time system** (art. 139 Labour Code). This working time system can be applied if it is justified by the type of work or its organisation. The working time schedule should be decided in advance. It may stipulate a maximum of one break from work in a 24-hour period. The break shall not be counted as working time. However, an employee shall be entitled to remuneration amounting to half of the remuneration due for the time of stoppage. The break cannot be longer than 5 hours.

Comments

The introduction of the possibility to reduce working time on the basis of the act of 11.10.2013 on special solutions related to the protection of jobs was met with sharp criticism of trade unions and is not being used in practice. This is due to the low level of basic wages, whose further reduction within the shortened working time schemes would in most cases be unacceptable for trade unions.

According to the latest data from the Ministry of Family, Labour and Social Policy (as of 27 April 2017), 2,366 companies have introduced agreements on flexible time arrangements between 23 August 2015 and 24 April 2017. Those were mainly medium-sized companies (753), followed by small (620), micro (573) and large companies (420). Most of the agreements were introduced in companies operating in manufacturing (885), wholesale and retail (366), and construction (223). There are no data available as to what kind of flexibility these agreements concern (extending the reference period or flextime arrangements). The number of such agreements is steadily increasing. There were 901 agreements until May 2014; latest data from 15 October 2015 show an increase with a total of 1,766 agreements.

The extension of the reference period results in the employees receiving less overtime pay. The relation between the extension of the reference period in some working time arrangement schemes (work in equivalent working time systems) and occupational health and safety is debated in academic literature (see for example Rączka, 2014). Although the extension of the reference period beyond the applicable working time schedule should be made 'in accordance with general principles for the protection of the safety and health of workers', it is allowed in working time arrangement systems which are already in themselves burdensome for the employee (Articles 136 and 137 of the Labour Code) or which entail difficult working environment conditions (Article 145 of the Labour Code).

Cost covered by

Employer
National government

Involved actors other than national government

Trade union
Works council
Other

Involvement others

Labour inspectorate

Thresholds

No, applicable in all circumstances

Sources

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- ▣ Labour Code (in Polish)
- ▣ ERM database on restructuring support instruments: Extension of working time settlement period
- ▣ Ministerstwo Rodziny, Pracy i Polityki Społecznej, Coraz więcej firm korzysta z elastycznych form czasu pracy
- ▣ Rączka, K. (2014), 'Komentarz do art 129', in Kodeks Pracy -Komentarz, Małgorzata Gersdorf, M. Rączkowski, K. Rączka, Warszawa, LexisNexis

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