

New Legislation on the Organisation of Working Time

The law of 23 December 2016 on the organisation of working time made changes to the reference period and the average weekly working time (Articles 211-6 to 211-10 of the Labour Code). The new law enters into force 1st January 2017.

Changes concerning the reference period

The main aim of this law is to extend the legal reference period from one to four months. It is an option offered to the employer who may opt for a period of his choice not exceeding 4 months, depending on his own needs. Before taking this decision, the employer must observe the information and consultation procedure stipulated in Article 414-3 of the Labour Code, which provides explicitly that the employee representatives are tasked with “*giving their opinion on issues concerning working time.*” The decision thus taken must be notified to the *Inspection du travail et des mines* (ITM) [Inspectorate of Labour and Mines] in the month in which it enters into effect.

That said, the possibility of extending the reference period to 12 months by collective labour agreement is maintained.

If a work organisation plan is established, the reference period will be extended by granting additional days off.

Reference period	Additional days off
Between more than 1 month and 2 months maximum	1.5 day
Between more than 2 months and 3 months maximum	3 days
Between more than 3 months and 4 months maximum	3.5 days

These additional days off will apply only in companies which introduce a reference period of over 1 month, and only for reference periods accompanied by a work organisation plan.

For companies which decide to keep the reference period at 1 month as well as if a flexible time scheme replaces the work organisation plan, there will be no requirement of additional days off.

For each work organisation plan, the law also limits the overrun of the normal monthly working time to 12.5% or 10%.

Reference period	Overrun limit
Between more than 1 month and 3 months maximum	12.50%
Between more than 3 months and 4 months maximum	10%

Compared to the weekly average of 40 hours over a month, this comes to 45 hours (12.5%) and 44 hours (10%). Every hour worked beyond these weekly averages is automatically paid at the overtime rate (without any possibility of recovery within the reference period).

It should be noted that given the provisions concerning the reference period in the collective agreement, neither the additional days off nor the limits of 12.5% (or 10%) will apply.

Work organisation plan

The law maintains the work organisation plan, the legal period for which remains one month, except in cases where the reference period is less than one month. The reference period could be covered by several work organisation plans.

Nevertheless, as regards changes of the work organisation plan, the law does away with the possibility of companies invoking unforeseeable circumstances or cases of force majeure to change the working time during the application of the work organisation plan. From now on, the work organisation plan will be changed only by means of relevant notice of at least three days.

In case of litigation on the conformity of the work organisation plan, the latter shall be first submitted to the ITM, and if an agreement cannot be found between the parties, to the National Conciliation Office.

Flexible time scheme

The law does not entail major changes for the provisions concerning flexible time, which may replace the work organisation plan. Such a system can henceforth be introduced only with the consent of the employee representatives, and if there are none, with the consent of all employees (irrespective of their number in the company). The employer shall also be required to put in place a system to indicate the exact number of hours worked.