

PRESS RELEASE

Working time records on trial

Current ECJ ruling on working time recording

16 May 2019. The European Court of Justice (ECJ) issued a sensational ruling in a legal dispute between a Spanish trade union and a subsidiary of Deutsche Bank on May 14, 2019. According to Spanish labour law, it is apparently sufficient in most cases to record only the overtime worked per month. However, the European Court of Justice ruled that such a law does not meet the requirements of the EU directives on working time and worker safety and the EU Charter of Fundamental Rights. Instead, employers must be obliged to introduce an objective, reliable and accessible system that allows the duration of working time to be measured on a daily basis for each employee. Otherwise, overtime could not be correctly calculated or verified.

For Austria, this judgement probably has no direct consequences in many areas, since the Austrian Working Time Act (Arbeitszeitgesetz - AZG) - unlike apparently in the case of Spain - already requires in most cases the recording of the beginning and end of working time as well as rest breaks. However, there are exceptions for certain employees in Austria as well, such as mere balance records of daily working time in accordance with § 26 (3) AZG or, in the case of employees with a fixed working time schedule recorded in writing, the recording of only deviations from this schedule (§ 26 (5a) AZG). There are also exceptions to the recording obligation for rest breaks. The future will show whether such regulations can withstand this ruling. It is also possible that the question will now arise more frequently as to which times are specifically regarded as working hours or overtime (business trips, travel times). As was announced in the media, the Ministry of Labour will have the ruling examined in detail.

In practice, however, it has been shown time and again that problems lie less in the existence of regulations than in compliance with them. Administrative penalties may be imposed for breaches of recording obligations. Even more serious, however, are the truly considerable administrative penalties for under-wage under the Wage and Social Dumping Prevention Act (LSD-BG), e.g. if overtime is not paid out. It is therefore recommended to fulfill the requirements of this ruling already now and to keep exact working time recordings, in order not to experience unpleasant surprises later.

About bpv Huegel

As one of Austria's leading law firms, bpv Huegel advises national and international clients in all sectors. It is regarded as the first address for highly complex mandates, the handling of which requires specialised tax and legal knowledge, many years of experience and economic understanding. With its Brussels office, bpv Huegel has a competence centre for general EU law, European merger and antitrust law as well as regulatory and public procurement law located directly at the European institutions. bpv Huegel is a member of the "bpv LEGAL" alliance with offices in Bratislava, Bucharest, Budapest and Prague and thus offers tailor-made solutions throughout CEE. In addition, the firm has long-standing cooperation agreements with leading international law firms worldwide. The full-service law firm was founded in 1979 and is represented in Austria by offices in Vienna, Moedling and Baden, where it employs around 100 staff, including around 50 lawyers.

Contact

bpv Huegel Rechtsanwaelte GmbH
Martina Buechele
Head of PR and Communications
Office: +43 1 260 50-909
E: martina.buechele@bpv-huegel.com
<http://www.bpv-huegel.com>