Client Alert

New rules on recording of work time in Slovenia

28 June 2023

On 22 March 2023, the Slovenian National Assembly adopted the long-awaited amendment to the Labour and Social Security Registers Act (*Zakon o evidencah na področju dela in socialne varnosti – ZEPDSV,* "**Amendment**"). The Amendment does not introduce mandatory electronic time and attendance records for all employers, as was originally proposed in the previous amendments to the act, however, it does introduce some other important novelties to the recording of the working time.

Regulation of work time and its implementation in practice often has concrete and direct effects on employees' remuneration. When employees' remuneration is being determined, case law must also be considered. However, the court's views regarding the remuneration for overtime work of leading employees and regarding other allowances in cases where the employer is not bound by any collective agreement at the industry level, have recently been subject to significant change.

1 Labour and Social Security Registers Act

The Amendment to the Labour and Social Security Registers Act was published in the Official Gazette of the Republic of Slovenia on 20 May 2023 and its provisions will apply six months after its entry into force, i.e. on 20 November 2023.

1.1 Obligation of keeping electronic records of work time

The obligation of keeping electronic work time records is provided under two circumstances, namely:

(i) if the employer has been fined for violating the Employment Relations Act or the Labour and Social Security Registers Act, the employer must establish the records of employees' work time within three months of the finality of the decision imposing the fine; or

(ii) if the employees' representatives propose to the employer in writing the establishment of electronic work time records, the employer has 30 days to either (a) establish such records, or (b) respond to the proposal of the employees' represntatives in argumentative writing and notify the Slovenian Labour Inspectorate of its decision in writing.

1.2 Work time data that must be included in records

The main purpose of the Amendment is to ensure more transparent keeping of work time records and consequently to enable the labour inspectorate to carry out more effective inspection proceedings.

The current regime requires that work g time records contain information on the number of hours worked per day, and with the enactment of the Amendment, the recording of start and end of the daily work g time will be mandatory,

along with the recording of breaks, the recording of time worked under special working conditions, time periods of irregular distribution of working time and time periods of temporary redistribution. This effectively prevents employers from retroactively correcting the work time records.

The Amendment requires that work time records be kept not only for the employees, but also for persons who perform work on other legal basis (e.g. based on a civil law contract), but perform the work personally and are involved in the employer's work process or who predominantly use the employer's resources for their work.

1.3 Employees' right to access work time records

In order to ensure the authenticity of the data, the Amendment requires the employer to provide the employee with access to the data in the employee's work g time records.

The employer must keep the employee informed in writing, or by electronic means, of the information contained in the work time records for the previous month until the last payday of the month. The employee may request for the employer to inform him/her in writing once a week of the information contained in the work time records. The obligation to inform the employee is fulfilled if the employee is provided with direct electronic access to the timesheets from the employee's work time records.

1.4 Other novelties

The Amendment changed the deadline for submitting data to the Health Insurance Institute of Slovenia (*Zavod za zdravstveno zavarovanje Slovenije,* "**Health Insurance Institute of Slovenia**"). The data from the employee's records must be submitted to the Health Insurance Institute of Slovenia as soon as the employee starts working under the employment agreement, and not within 8 days after the start as was the case before the Amendment.

Furthermore, the Amendment establishes new violations, increases the amount of the fines and imposes fines for the responsible persons of the legal entities. The fine for violations related to employer's record keeping (e.g. failure to keep, maintain or update records, providing false information in records, using information from records for purposes other than those provided by law, failure to inform an employee of his/her information from records) ranges from EUR 1,500 - 20,000 for legal persons and EUR 150 - 2,000 for their responsible persons. For violations related to the electronic method of keeping records of work time (e.g. failure to keep records in accordance with the law, failure to act on the proposal of employees' representatives), the Amendment sets fines ranging from EUR 3,000 - 20,000 for legal persons and EUR 300 – 2,000 for their responsible persons.

2 Overview of the new case law on overtime pay

2.1 Payment of leading employees for overtime work

The Supreme Court of the Republic of Slovenia (*Vrhovno sodišče Republike Slovenije,* "**Supreme Court of the Republic of Slovenia**"*)* has harmonised the previously inconsistent practice of the Higher Labour and Social Court (*Višje delovno in socialno sodišče,* "**Higher Labour and Social Court**") regarding the inclusion of remuneration for over-time work in the (basic) salary of leading employees *("vodilni delavci").*

The Supreme Court of the Republic of Slovenia, in its judgment no. VIII Ips 22/2022, dated 29 November 2022, took the view that it is not permissible to include the remuneration paid to leading employees for working overtime in their basic salaries. While the provision of Article 157 of the Slovenian Employment Relationships Act (*Zakon o delovnih razmerjih – ZDR-1,* "**Employment Relationships Act**") allows for different regulation of working hours,

breaks and rest periods for leading employees, it does not allow any interference with the otherwise applicable remuneration arrangements, including the right to be paid for working overtime or for work performed pursuant to a less favourable arrangement of working hours.

According to the above opinion of the Supreme Court of the Republic of Slovenia, leading employees are always entitled to additional payment for working overtime. However, it is important to note that, in accordance with Article 157 of the Employment Relationships Act, the employer is allowed to agree with the leading employee on what the definition of full-time work is (i.e. also a weekly work commitment exceeding the statutory 40 hours per week). It is essential that the definition of full-time work also includes the definition of overtime work. The basic prerequisite for entitlement to overtime pay is that the (leading) employee works beyond the agreed weekly work commitment.

The above position of the Supreme Court of the Republic of Slovenia does not necessarily mean that leading employees are on an equal footing with other employees regarding the regulation of work time and with overtime-related remuneration.

However, as it was specifically pointed out by the Supreme Court of the Republic of Slovenia, in accordance with the Employment Relationships Act, such agreements are limited only to certain categories of leading employees – those whose work time cannot be scheduled in advance and those who schedule their work time independently. In view of the Supreme Court's position in judgment no. VIII Ips 22/2022, dated 29 November 2022, in the event of a dispute regarding the legality of a different work time arrangement, the courts will examine whether, in light of the specific nature of the work and the actual circumstances of the work, the leading employee fulfils either of these conditions.

2.2 Amount of the overtime allowance and shiftwork allowance

The Higher Labour and Social Court, in its judgment no. Pdp 453/2022, dated 5 January 2023, argued that even if the parties to an employment agreement are not subject to any collective agreement, the employees are entitled to an overtime allowance and to the allowances for special working conditions arising from the distribution of work time, where the amount of the allowance is determined by the terms of the entitlement found in collective agreements.

With the abovementioned decision, the Higher Labour and Social Court has specified and slightly broadened the previous views of the Supreme Court of the Republic of Slovenia and the legal theory on statutory allowances in cases where the employer is not bound by any regulation in determining the amount of the allowance.

Based on all previously mentioned legal sources, it can be concluded that employers are obligated to pay allowances based directly on the Employment Relationships Act, in the amounts comparable to those set forth in collective agreements of comparable industries.

For employers who are not bound by any collective agreements, it may therefore be advisable to explicitly set out in their internal regulations or employment agreements the amount of any allowances payable to employees based on the law, and comparable collective agreements, in order to avoid potential disputes regarding the payment of such allowances and any default interest.

3 How can Wolf Theiss assist you?

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(i) drafting of new employment agreements or reviewing existing employment agreements with ordinary and leading employees, as well as agreements with managerial employees and procurators,

(ii) drafting new or revising existing policies or internal acts of the employer,

(iii) legal advice from an experienced team of employment lawyers.

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