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NEW RULES FOR SUMMARIZED CALCULATION OF WORKING TIME IN BULGARIA

On 1 January 2018 important amendments to the Ordinance on working time, breaks and holidays (the '**Ordinance**') concerning the summarized calculation of the working time ('**SCWT**') entered into force.

SCWT allows flexible structuring of the working time of employees and provides options for work on shifts with working hours in a given day longer than the limits of the regular working day (i.e. 8 hours). This is possible since the established maximum working time is assessed based on longer periods than a calendar day - i.e. several weeks or months where at the end of the calculation period the employee should have worked on average 8h per day while the work has been distributed differently.

The amendments regarding the SCWT concern the following main areas:

- ***Setting the working schedules for summarized calculation of working time and amendments***: Prior to the amendments the Ordinance only regulated the obligation of the employer to adopt working schedules for the respective period where SCWT is introduced. From January 2018, employers are also obliged to *inform* employees *in advance* for the adopted schedules. The new requirement does not set a specific way or deadline for the notification, thereby leaving some discretion and flexibility as to the timing and form of notification. In practice, this means that employers may inform employees the day, prior to the implementation date by any means.

  In addition, the Ordinance specifically provides the grounds on which, once adopted, a schedule could be amended. The new rules require such changes to be linked to a change in the number of employees participating in the working schedule (i.e. to address any absences) or other circumstances which triggered the implementation of the SCWT.

- ***A maximum norm for duration of the working hours per employee***: The amendments codify the rules for prior calculation of the maximum norm of working hours per employee under SCWT, developed by the case law and the practice of the labour authorities. Namely, the Ordinance now explicitly states that the maximum norm of working hours is to be calculated based on the business days in the respective period multiplied by the day-time working hours established for the respective undertaking or unit thereof. In case in the respective period there are public holidays, the maximum norm of working hours per employee shall be reduced with the days representing public holiday. In practice, this would mean "reducing" the maximum norm of working hours for the uninterrupted production processes or processes which do not follow Bulgarian official holidays, and potentially, the need of more employees to be involved in the working process during the respective period to cover the continuance of the working process.

The Ordinance further introduces one major difference with respect to the calculation of the maximum norm of working hours where night work is to be performed. Under the previous rules, *at the end of the SCWT period*, night hours worked by each employee should have been converted into day hours using a coefficient for conversion (7 hours of night work = 8 hours of day work), thereby balancing the shorter duration and impact of night work over employees with the daytime work and forming the basis for additional compensation for night work. With the amendments as of January 2018, the conversion of night hours into daytime hours should be made *before the start of* the SCWT period and should be reflected in the schedule for the respective SCWT period. As a result, this would reduce the maximum norm of working hours available to the employer for the employees working night time, since their maximum norm would now be calculated not only by using their hours for actual work as agreed under the individual employment contracts but also by adding hours from conversion of night work into day work (which are only result of arithmetic and no actual work to be performed). For example, if under the previous rules an employee under SCWT had a maximum norm of 160 work hours for a particular month, and at the end of the month due to conversion of night working hours – additional 20 work hours, now under the new rules these 20 hours should be accounted in the maximum norm thereby reducing the actual availability of the employee to 140 hours for the period. Exceptions from the requirement of advance conversion of night time working hours are provided for employees which have been hired to work entirely night time or who work under reduced working time.

- ***Clarification of the definition of 'working time' for the purposes of the SCWT***: Any leave of an employee, irrespective of the ground - i.e. annual paid leave or sick leave, will no longer be treated as 'working time' for the purposes of SCWT and will trigger a recalculation of the norm of working hours for the period for the respective employee.

  In case an employee goes on sick leave in a given SCWT period, the norm of working hours should be reduced by the number of days of sick leave. Prior to the amendments, any days off (days in paid or sick leave) were perceived as working time and often led to overtime, that had to be paid as such by the employer.

- ***Overtime and idle time***: With the new requirements for calculation of a norm of working hours in a SCWT period, in cases where at the end of the period the total number of the actually worked hours of an employee exceeds the norm of working hours for the period, the employer should compensate any time over the maximum hours as overtime and shall report that overtime to the Labour Inspection. However, as noted above, the employer should compensate and report to the Labour Inspection only hours actually worked above the norm of working hours, without taking into account any conversion of night hours into day hours.

  If a SCWT period comes to an end, it is established that the employer shall still pay the full agreed remuneration to employees if they have worked less hours than the respective norm of working hours, The law creates a presumption that in the respective period an idle time took place which is not due to fault of the employee and should be at the expense of the employer.

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