

Legal News Switzerland

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More flexible working hours in the start-up world

Federal Council, Amendment to Ordinance 2 to the Swiss Federal Labour Act, effective from 1 December 2026

Anyone who has ever been involved in a funding round or a product launch at a newly established company knows that such phases are not always compatible with the working hours and rest periods laid down in the Swiss Federal Labour Act (LA). The Dobler parliamentary initiative (16.442) therefore called in 2016 for start-up employees involved to be able to agree on a trust-based working time arrangement and to dispense with time recording. Ten years on, a significantly more cautious solution has been put forward, negotiated with the social partners. The law remains unchanged; indeed, the obligation to record working hours is even explicitly enshrined. Individual provisions on working hours and rest periods are being relaxed at the regulatory level, but only (though this is something, at least) for a narrowly defined group of companies, individuals and projects.

The new rule

Under Article 10 para. 3 LA, day and evening work, including breaks and overtime, must be completed within a 14-hour period. For employees subject to time recording, Article 32c para. 1 let. a of Ordinance 2 to the LA (LA Ordinance 2) extends this timeframe to 17 hours. This applies only to the period during which work may be carried out, not to the amount of work. For example, anyone who works in the morning, takes a long break at lunchtime and takes part in a call with the team in the US in the evening will no longer be restricted by the 14-hour limit. The maximum weekly working time of 45 or 50 hours, the rules on breaks and overtime, and the statutory period for day and evening work without authorisation (from 6 am to 11 pm) remain unchanged. These rules are comparable to those set out in the existing Article 32b LA Ordinance 2 for information and communication technology (ICT) companies.

The daily rest period may be reduced to 9 hours, even several times a week, provided that it averages 11 hours over a four-week period (Article 32c para. 1 let. b LA Ordinance 2). This constitutes a separate regime. The general option to reduce the rest period to 8 hours once a week does not therefore apply in addition to this. If circumstances do not permit otherwise, the rest period may be interrupted. In such cases, the on-call rules set out in Article 19 para. 3 of Ordinance 1 to the LA (LA Ordinance 1) apply by analogy. These rules provide for the subsequent granting of the rest period and minimum blocks of rest.

Furthermore, employees may now be employed on a maximum of six Sundays and on a maximum of ten nights per year without official authorisation, provided this is absolutely necessary for the qualifying project (Article 32c para. 1 let. c LA Ordinance 2). This merely removes the requirement for authorisation; the protection remains in place. The 50 per cent wage supplement for temporary Sunday work, the 25 per cent supplement for temporary night work and the compensatory rest period remain mandatory. Similarly, the consent of the person concerned is still required for Sunday and night work (Article 17 para. 6 and Article 19 para. 5 LA).

Who is eligible?

Only public limited companies are covered (Article 32c para. 3 LA Ordinance 2); a limited liability company (GmbH) is therefore not included. The company must be in its start-up phase, demonstrate high growth potential and be developing or improving technology-oriented products or services that do not yet exist in the target market or that meet new needs. Typically, it goes through several rounds of financing; support from Innosuisse, for example, is not detrimental in this regard. No more than five years may have elapsed since its entry in the Commercial Register; if there is no positive operating cash flow, the limit is ten years. According to the official guidelines, this status is lost upon an initial public offering, a sale to an established company or a dividend distribution. Spin-offs, franchise businesses and subsidiaries of established companies are excluded.

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Employees must meet all the following requirements (Article 32c para. 2 LA Ordinance 2): they must be of legal age and possess skills that are essential to the company or the project. They must work largely autonomously and determine at least roughly half of their working hours themselves. They must hold an appropriate stake in the company via a documented shareholding plan, although a token shareholding is unlikely to suffice. And they must be working on a fixed-term, time-bound project, such as an international collaboration or a phase that is crucial to the company's survival.

Classification of the new provision

The exception focuses on the individual concerned and their specific project. This means that, within the same start-up, the CTO may be covered by the special rule during a launch, whilst the standard regime applies again to her and her team once the project has ended. Anyone who qualifies as a senior executive within the meaning of Article 3 let. d LA is not subject to this rule in any case.

It is striking how little remains of the initiative's original aim. It sought to abolish time recording; now the Ordinance expressly requires it (Article 32c para. 1 let. d LA Ordinance 2) and excludes the waiver provided for in Article 73a LA Ordinance 1. At least simplified recording under Article 73b LA Ordinance 1 remains an option. Furthermore, the new provision in LA Ordinance 2 clarifies two existing obligations: the employer must make the shareholding plan, share register, agreements and a list of shareholders available to the authorities (Article 32c para. 4 LA Ordinance 2) and implement preventive measures against psychosocial risks (Article 32c para. 5 LA Ordinance 2). This underlying principle is understandable, as those who hold a stake in the company and are under time pressure are unlikely to always set limits for themselves. The contractual entitlements under the Swiss Federal Code of Obligations (CO), namely to remuneration for overtime (Article 321c CO; unless waived in writing or compensated by time off of equal duration), remain unaffected by the amendment.

Key takeaways for employers

The rule certainly offers some advantages, particularly for teams working across time zones. However, it is narrowly defined and contains *vague terms*, meaning it only holds water where the records provide evidence. Before a company applies it, it should document for each individual why their skills are indispensable, how much autonomy they actually have over their time, and which time-limited project justifies the exception. Equally important are consent for night and Sunday work, an up-to-date overview of the four-week averages for rest periods, and a documented prevention plan. The date of incorporation, cash flow and any dividends should be kept under review, as the exemption no longer applies once the company loses its status as a start-up. This makes it clear that, in practice, the required documentation will involve additional effort. It remains to be seen how strictly the labour inspectorates will interpret the vague terms. Incidentally, how the interpretation and verification of the above-mentioned cumulative requirements

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should be carried out as uniformly as possible was also a topic of discussion during the consultation process – here too, the planned amendment to the guidelines issued by the State Secretariat for Economic Affairs (SECO) will (hopefully) help to clarify matters. Until then, a cautious interpretation is the safer option.

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