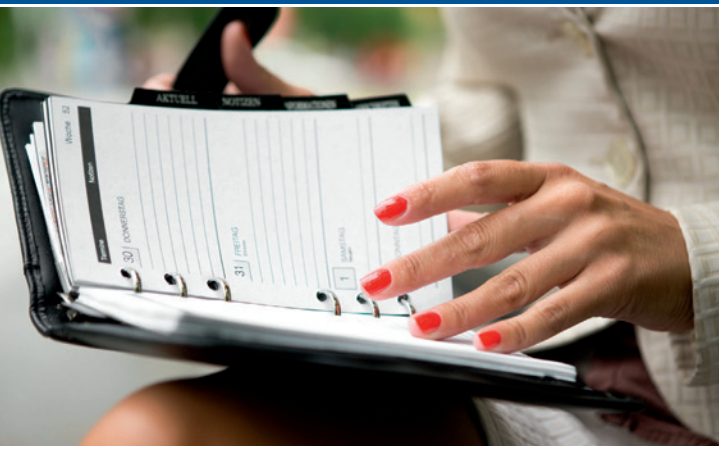
Industriegewerkschaft
Bergbau, Chemie, Energie

IG BCE

WORKING HOURS FOR NON-TARIFF EMPLOYEES



Information from the IG BCE.
Working hours for non-tariff employees.

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WORKING HOURS FOR NON-TARIFF EMPLOYEES

The IG BCE informs.
Work time for non-tariff persons employed.

Do I have a non-tariff employment contract?

To clarify the question of permissible working hours, it first has to be considered whether the status of non-tariff employee is legally correct. In most sectors in which collective agreements apply, these agreements define the status of non-tariff employee. At the top end of the hierarchy, the status of non-tariff employee ends with the transition to executive staff. Further details are stated in the flyer "Status and Definition of Non-Tariff Employees".

Working hours in the non-tariff sector

As the collective agreement does not apply to non-tariff employees, working hours for non-tariff employees are governed by:

a) the individual employment contract,
b) the German law on working hours, "Arbeitszeitgesetz"

Maximum working hours are prescribed by the above law. Section 2 defines working hours as the time from the beginning to the end of work (excluding breaks). Section 3 specifies that employee working hours must not exceed 8 hours per working day.

NB: Whereas the collective agreement for the chemicals industry specifies that the weekly working hours are normally spread across 5 weekdays (Monday to Friday), the *Arbeitszeitgesetz* refers to **working days** so that Saturday also counts as a working day. This can easily be interpreted as **weekly working hours** of 6 x 8 hours = **48 hours.**

As Section 3 specifies that the working hours per working day can also be extended to 10 hours, it appears probable that a 60-hour working week is therefore also in conformity with the law. Although that is not the case, the responsible parties frequently deliberately overlook (or forget) that extending the working day to 10 hours is only permissible if 8 hours per working day are not exceeded on average within a period of 6 calendar months or 24 weeks. This means that employees have to reduce accrued overtime (by taking time off, days off etc.) as soon as possible.

Most employers are aware of this regulation and, as no one wishes to be caught breaking the law or faced with claims for compensation, managers are often highly innovative when it comes to extracting maximum performance from the workforce without manifestly showing themselves to be breaking the law.

Some employers have proved very creative in order to demand the additional work they expect from their employees without directly infringing the provisions of the collective agreement or statutory regulations. The following two procedures are the most common:

1. **Specification of (binding) performance indicators**

   Binding performance indicators are prescribed/agreed either for individual employees or collectively.

   Sales reps, for example, may be obliged to visit a certain number of doctors, pharmacies, DIY centres etc. per working day. It does not matter how long it takes them to do so, so that in many cases time is not even mentioned in the agreement.

   The performance indicator is then raised (at the discretion of the employer) at regular intervals (usually annually) and, of course, carefully monitored.

   This makes it relatively easy to draw up a kind of "movement and performance profile" for each individual employee, which in turn rapidly enables the employer to achieve his goal of asking "difficult" employees to attend a face-to-face meeting, where they are informed that their work is sub-standard and that they are expected to improve the number of customer calls (and sales figures) in future, otherwise the company will have no choice but to dismiss them . . .

   The question of how many working hours are needed to achieve these targets is never asked so that an employee can soon find himself working 60, 70 or more hours a week.

2. **Target agreements**

   Specific targets are agreed with the employee for the coming calendar year and recorded in a written agreement. These targets are often based on dubious "figures for the industry" or alleged figures from "comparable companies". These figures have been estimated "somehow or other" or in many cases have simply been made up.

Consequence: The employee is regularly (e.g. every month) confronted with the sales figures he has actually achieved and soon faces the problem that he has failed to reach the agreed target figures and may be liable to legal sanctions.

It goes without saying that target agreements can also be fair and actually create a "win-win situation" for both employee and employer. The employee has a pecuniary incentive to achieve the set targets, which may be ambitious, but are nevertheless realistic and manageable; the employer benefits from higher sales, revenues and profits as well as satisfied employees. Such target agreements are usually the result of in-house agreements between management and employee representatives which include protective mechanisms.

For fear of losing their job, many employees are naturally "happy" to work a few more hours in such situations.

The employer is unlikely to object if this fails to take into account the fact that Section 5 (1) *Arbeitszeitgesetz* specifies that after completing their daily working hours, employees have to have a continuous **rest period** of at least 11 hours.

"Excessive overtime" becomes particularly problematic when the employee's health begins to suffer, or especially if an accident occurs. When the question of the employer's liability and obligation to protect his employees' welfare has to be clarified, it is frequently the employee's line manager who claims to have known nothing about the high volume of overtime and who is absolutely sure that he never ordered any overtime.

The risk of a prison sentence of up to one year, which is possible under Section 23 Arbeitszeitgesetz in cases of persistent and repeated infringement of the law on working hours, also prevents many managers from assuming liability if the employee suffers damage. As a result, the employee is held responsible for the damage, is usually considered to be at fault and has to bear the financial consequences. Employees should therefore always ensure that any hours worked over and above 8 hours a day are acknowledged by the employer (irrespective of the question of pay).

It is also worth noting that a penal sentence pursuant to Section 23 or a fine pursuant to Section 22 *Arbeitszeitgesetz* can be imposed even if no damage has occurred.

This makes it clear that the trade unions' attempts to exercise the powers conferred by their many members to negotiate sensible regulations to promote an orderly environment for trade and industry are doomed to failure in the non-tariff employee sector. At the same time, however, the numbers of non-tariff employees are rising sharply. The once desirable status of non-tariff employee has increasingly deteriorated into an instrument for imposing additional working hours – even if in most cases the employment contract would not actually be exempt from the collective agreement (cf. above). Collective agreements therefore also protect the working conditions for non-tariff employees. Many non-tariff employees could already legitimately demand allocation to the highest tariff group, inclusive of the resulting regular working hours and all other benefits of the collective agreement. This would rapidly improve working conditions in the non-tariff sector.

We can help – but we need you to help us achieve sensible working time models and pay regulations in the non-tariff sector.

We are strong together.

Industriegewerkschaft
Bergbau, Chemie, Energie

JOINING UP IS WORTH IT!

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www.mitgliedwerden.igbce.de

BWH P1200401

Imprint

Published by:
IG BCE (Mining, Chemical and Energy Industrial Union)
Vorstandsbereich 3 · Edeltraud Glänzer
Königsworther Platz 6
30167 Hannover

Editor
Oliver Hecker
Target Groups Department
E-mail: abt.zielgruppen@igbce.de
www.igbce.de

Overall production
BWH GmbH – Die Publishing Company

Photo: iStockphoto

February 2012/1st edition

INFO POINT better informed.

02/2012 Order No. i9e