

A photograph of a modern glass skyscraper at night. The building's windows are illuminated from within, and the glass reflects the surrounding environment. In the foreground, there are blurred light trails from a train, suggesting motion. The overall color palette is dominated by blues and greys, with some warmer tones from the building's interior lights and the train's lights.

EUROPEAN EMPLOYMENT LAW UPDATE

2019 EDITION

INTRODUCTION

Our annual Employment Law Update aims to help organisations with a pan-European presence keep up-to-date with changes to legislation and best practice.

In the 2019 edition of our European Employment Law Update, we examine the most important legislative changes over the past 12 months and those that are likely to affect businesses in the coming year.

This guide compiles updates from 32 leading law firms across the continent, and on the final page we have listed the contact details of all the contributors who have kindly provided updates relevant to their particular jurisdictions.

Once again this year we see different jurisdictions across Europe grappling with quite different issues, from implementing changes in relation to discrete laws to updating their underlying labour law frameworks.

A number of countries are dealing with the ramifications of European Union decisions on annual leave accrual, and working hours. Regulation of non-standard working

relationships continues, from Swiss and Serbian rules on staff leasing and Norwegian regulations on permanent employment to Portuguese rules on term employment. With ageing workforces, another common theme is change to the retirement age in a number of jurisdictions. We also see some progress on diversity initiatives, such as the introduction of gender pay gap reporting in Ireland, and its potential expansion in the UK.

We do hope that you find our update useful and please feel free to contact any of our contributors if you have any questions or require further information.

Katie Russell, Shepherd and Wedderburn LLP, Editor

This brochure contains a summary of general principles of law. It is not a substitute for specific legal advice, which should be sought in relation to any application of the subject matter of this brochure.

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AUSTRIA

The most important recent legislative change in Austria has been the amendment to the Austrian Act on Working Hours. This has led to a number of changes, which we consider in detail below.

Increased working hour limits

The much-debated increase of the limit on daily working time from 10 to 12 hours and weekly working time from 50 to 60 hours is the most important feature of the recent amendment to the Act. The increase requires no separate agreement with either employees or their representatives, such as works councils.

The normal statutory working time of eight hours per day and 40 hours per week, however, remains unaffected.

Because of the increased maximum limit on working hours, the average maximum working time is expected to become increasingly important in the future. Under both the Act and the underlying provision in the EU Working Time Directive, an employee's weekly working time must not exceed 48 hours averaged over 17 weeks. This reference period may be extended to 26 or even 52 weeks if agreed in the collective bargaining agreement applicable to each business sector.

Guaranteed option right

In response to the various critical opinions expressed in the course of the Act becoming law, a special provision was added to the effect that employees may reject the extension to daily working time without needing to justify their refusal. In addition, employees may freely choose to receive either cash compensation or time

off in lieu for these overtime hours and may not be disadvantaged or dismissed as a result of opting out of the 11th and 12th working hours.

Flexible working time

Agreements on flexible working time may even allow for the daily normal working time to be increased to up to 12 hours, if time credits can be used (not exclusively):

- i. for a full day off; or
- ii. in conjunction with the weekly rest period.

Exemptions from weekend rest periods and bank holidays

Austrian legislation provides for at least 36 uninterrupted hours of weekend rest and employees are generally not required to work on bank holidays (while still receiving their regular salary). Under recent legislative changes, exemptions from either weekend or public holiday rest periods may be agreed by means of a works council agreement. Such exemptions are, however, limited to four non-consecutive weekends or public holidays per year and per employee.

If no works council is established, then companies may conclude a written agreement with each individual employee to this effect. Employees are again allowed to reject such weekend or holiday work without the need to justify their decision.

New exemptions from the scope of the Austrian Act on Working Hours and the Act on Rest Periods

Since 1 September 2018, not only executive employees, but also other employees with significant autonomous decision-making powers as well as close relatives of the employer, have been exempt from the scope of the Austrian Act on Working Hours and the Austrian Act on Rest Periods. To qualify for the exemption, they must meet one of the following conditions:

- their working time is neither recorded nor predetermined; or
- the employee is free to choose their working time and place of work.

Further amendments of working time legislation, especially increased penalties for non-compliance, are currently being considered.



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D O R D A