

Recording remote working hours (3/36/19)

Remote work is becoming increasingly popular as it allows workers to better plan their time and combine a career with a family life. Although working from home might seem to mean that employees are free to arrange and plan their work as long as they do what is required and work the hours prescribed by their employment contract, it is important to remember that the working time rules of the Latvian Labour Code still apply.

Rules of the Labour Code (LC)

The employer's obligation to record hours worked by employees is not amended or cancelled depending on whether they work at the office, under the employer's supervision or remotely.

LC section 130(1) provides that working time is the period that runs from the start to the end of work, during which the employee carries out work and is at the employer's disposal, except for breaks. The start and end of working time are prescribed by the employer's internal policies or shift schedules, or by the employment contract. LC section 137(1) puts the employer under an obligation to accurately record total hours worked by each employee, including overtime, night work and hours worked on rest days and public holidays.

Considering the characteristics of remote work in terms of employees having certain freedom to choose where and when to work, we should remember LC section 148, as its rules may turn out to be most appropriate for remote work situations. Section 148(1) provides that working hours are not recorded where they are not measured or not determined in advance, or where they can be determined by the employee. However, where an employee is allowed to determine their own working hours, the employer might find it a challenge to monitor them.

We feel that an employee's freedom to arrange their own working hours may pose risks to the employer in terms of working overtime, at night and on public holidays.

Overtime

LC section 131 provides that the normal working day must not exceed eight hours and the normal working week must not exceed 40 hours. So overtime is any work an employee does in addition to the normal hours under LC section 136(2).

If remote workers distribute their working hours as they wish, then prescribing an 8-hour working day creates the highest risk of overtime. So for remote work it might be more appropriate to prescribe a 40-hour working week with five or six working days.

If the employer provides that the employee determines the start and end of their working hours by exercising their right under LC section 148(1), then with a 40-hour working week the hours worked each day will even out at 40 hours worked by the end of the week.

Remote work may make it hard for the employer to assess the employee's workload. It may happen that the employer does not discover overtime until the end of the month, when a time sheet is submitted and

the monthly salary calculated. In that case the employer may incur extra costs in having to pay the employee for overtime.

Under LC section 68(1), an employee must be paid at least double time for any overtime or work done on public holidays, i.e. 100% in addition to their agreed hourly, daily or piece rate.

What if the employer becomes aware at the end of the month that a remote worker has worked overtime?

The basic principle dictates that the employer is not unilaterally authorised to require that the employee should work overtime. Likewise, the employee is not authorised to work overtime on their own initiative without seeking the employer's prior approval. The employee's obligation to work overtime arises only if the parties have agreed on overtime in writing, except for cases specified by LC section 136(3). An overtime agreement cannot become part of an employment contract and must be signed as a separate agreement to that contract.¹ It is important to remember that overtime must not exceed an average of eight hours over a 7-day period computed for a financial period of up to four months. And when it comes to amending the employment contract under LC section 148(1), the employer should be careful not to give the employee too much freedom to manage their working hours.

This means that the Labour Code protects employers also in dealing with remote workers. There would be no grounds for paying overtime if an employee works more than 40 hours at their discretion. This situation should be evaluated according to the terms of their employment contract, and it cannot be ruled out that the employee has worked overtime unlawfully and the employer cannot be held liable for that. It is also possible that the employee has failed to comply with the employer's internal policies.

(to be completed next week)

¹ The Labour Code with Commentaries, 2010, page 255