

## labour and employment lawflash

19 May 2014

### Flexible Working Time Arrangements in France

*“Forfait-jour” arrangements offer flexibility with some limitations.*

Working time regulations can be quite a confusing matter in France. Indeed, even though the legal duration of work is equal to 35 hours per week, there are many exceptions to this rule.

For example, senior executives—due to the nature of their duties, the important responsibilities that they carry out, the independence and autonomy they have to organize their time and work, and their level of remuneration—are not subject to the regulations concerning working time. For this reason, only a limited number of individuals can benefit from this status within a company.

Another potentially confusing situation arises with employees whose working time is calculated according to a fixed number of days per year (*“forfait-jour”*). This kind of working time arrangement is complex and has given rise to much litigation recently. This LawFlash will discuss the main advantages, constraints, and risks of this arrangement, which has been favored by employers because of its apparent simplicity.

#### Definition

The *forfait-jour* is a mechanism that allows the working time of an employee to be calculated by the number of days worked per year instead of the number of hours worked.

Therefore, the following concepts are not applicable:

- The legal duration of work (35 hours per week)
- The maximum daily and weekly duration of work (respectively, 10 hours and 48 hours during one week within the limit of 44 hours for any 12-week period)
- Overtime

However, employees under a *forfait-jour* arrangement benefit from the following:

- Daily rest (11 hours minimum)
- Weekly rest (24 hours)
- Bank holidays and other holidays

#### Eligible Employees

Not all employees can benefit from a *forfait-jour* arrangement. Only those who have a certain degree of independence to organize their working time, whose functions do not allow them to follow the working time schedule applicable to their team or service, or whose responsibilities may not be carried out under a predetermined working time schedule can benefit from a *forfait-jour* arrangement. This applies as long as the employees belong to one of the professional categories defined by the applicable collective bargaining agreement.

The courts have a strict approach when determining if an employee has the required autonomy. If an employee is not deemed to have a real autonomy, the employer cannot oblige the employee to work in accordance with the *forfait-jour* arrangement, and the employee could therefore be paid overtime.

In any case, the express agreement of the employee is required to apply a *forfait-jour* arrangement.

## Implementation

There are two conditions that need to be fulfilled for a *forfait-jour* arrangement. First, a collective bargaining agreement, either at the level of the professional branch of activity or at the level of the company, must be concluded. Such agreement must determine the professional categories of employees who may be proposed a *forfait-jour* arrangement, the maximum number of days that could be worked, and the main characteristics of the *forfait-jour* conventions.

Furthermore, according to the French Supreme Court, the collective bargaining agreement must guarantee the respect of a maximum duration of work and of the daily and weekly rests. The employer should verify if the workload is “reasonable” and must regularly follow up on the organization of work. In this respect, a collective bargaining agreement has recently recognized the right for an employee to “disconnect” after 6:00 p.m., which does not mean that he or she is obliged to do so.

At least one annual meeting between an employee and his or her manager should take place, during which the employee’s workload, the organization of work, remuneration, and work/personal life balance should be discussed.

If the collective bargaining agreement does not respect the above-mentioned conditions, the individual conventions of *forfait-jour* are null and void and the employee can make a claim for overtime payment.

The second condition is the conclusion of an individual convention of *forfait-jour*. Such convention can be signed only in sectors of activity covered by a collective bargaining agreement. It is therefore necessary to check whether or not the applicable collective bargaining agreement contains provisions in this respect.

The convention that forms part of the employment contract or that is an appendix to it must fix the number of days worked, the remuneration, and the modalities of control of the workload.

## Number of Days Worked

The number of days worked is fixed by the collective bargaining agreement, but it cannot be higher than 218 days per year. By agreement with his or her employer, an employee may work more than 218 days with a financial counterpart equal to at least 10% of the remuneration. The agreement of the employee must be freely given and explicit. It applies for one year and can be renewed.

The maximum number of days worked cannot be higher than 282 days per year (365 days, less 52 weekly rests, less 30 holidays, less one day for 1 May, which is the only bank holiday mandatorily not worked by law). Because of the Supreme Court’s position mentioned above, it is nevertheless advisable to limit the maximum number of days that could be worked to about 235 per year.

Any absences for illness or maternity, for example, are deducted from the number of days worked but not from the number of days of rest.

## Conclusion

The *forfait-jour* arrangement can, in principle, allow an employee to work up to 78 hours per week (six days multiplied by 13 hours) and up to 282 days per year. However, the courts have become stricter with employers, and the obligations of health and safety at work, as well as the need to respect a balance between family life and

work life, have been major issues in recent case law. In fact, on 12 March, the Supreme Court held as null and void a convention of *forfait-jour* that mentioned that the employee would work between 215 and 218 days per year for lack of precision. Furthermore, the employer forgot to invite the employee to an annual meeting to discuss his workload and family life/professional life balance.

In sum, *forfait-jour* arrangements are a flexible way to organize work, but employers must be mindful of their limits.

## Contacts

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