



# It is now time to register working hours – The bill on registration of working time and the possibility to opt out of the 48 hours rule is now introduced



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The Danish Parliament has now introduced a bill concerning the long-awaited rules on the registration of working hours and the possibility of an "opt-out" from the 48-hour rule for certain employees.

## Registration of working hours

The new bill introduces a requirement for employees to register their working hours. The purpose of these rules is to ensure compliance with regulations regarding rest periods and maximum weekly working hours. Currently, there is no general requirement in legislation for the daily recording of employees' working hours. However, based on the ruling of the EU Court of Justice in case C-55/18, CCOO, the Danish Parliament has deemed it necessary to introduce such a requirement.

The proposed law entails that employers must implement a system for recording working hours. There are no specific requirements on how this system should be designed, but it must be "objective, reliable, and accessible" so that individual employees can measure their daily working hours. Information regarding employees' working hours must be kept for 5 years after the end of the period used to calculate each employee's average weekly working hours.

### **Exempt from the rules on maximum working time and register of working time**

Some employees may be exempt from the rules on maximum working time and the requirement to register working time. An employee can be exempt if the employee 1) due to the nature of the work cannot measure or determine the working time in advance, or 2) can determine his/her own working time if the employee can make independent decisions or has managerial authority.

Whether an employee can be exempt from the rules will be a specific assessment of the circumstances. If an employee is to be exempt, the exemption must be stated in the employee's employment contract.

### **Opt out of the 48 hours rule in collective agreements**

The proposed law introduces the possibility of an "opt-out" clause/deviation from the 48-hour rule in collective agreements. An "opt-out" agreement can be made if there is an agreement between the most representative parties in the labor market that allows for "opt-out" agreements within a specific collective agreement area. Subsequently, the employer and the employee individually negotiate the "opt-out" agreements.

The agreement requires the employee's consent to work more than 48 hours per week on average. However, the average weekly working hours must not exceed 60, calculated over four months. While adhering to general principles for the protection of employees' safety and health, it can be stipulated in the respective collective agreement or contract, for objective and technical reasons and for the organization of work, that the reference period can be extended up to 12 months.

The option to utilize the "opt-out" is limited to employees covered by collective agreement provisions regarding on-call duty who perform critical societal functions, such as hospital employees, utilities, etc.

An employee who has entered into an "opt-out" agreement can retract their consent at any time with reasonable notice without it being held against the employee.

### **Commencement**

The law is expected to come into force on July 1, 2024.

### **DLA Piper's recommendations**

The proposed law is expected to take effect on July 1, 2024. It will likely take a couple of months to install software, implement the time registration system, and get employees on board. Therefore, DLA Piper recommends that employers commence the implementation process as early as possible before July 1, 2024, to ensure compliance. In this regard, employers should consider, for example:

- How time registration should be conducted, such as through an IT system or app
- Engaging in dialogue with employees and perhaps their representatives on how this will function in practice
- Determining if some employees/managers should be exempted from the requirement of recording working hours
- Checking whether the phrasing of employment contracts and policies aligns with the legal requirements
- Ensuring compliance with GDPR in this context as well

DLA Piper is available and willing to assist with the process to ensure employers' compliance and facilitate employee involvement.

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