

## Information sheet on the regulation for the recording of working time

### 1 Initial situation

Since 1 January 2016 the provisions amended by the Federal Council concerning the recording of working time have been in force (Article 73a and 73b ArGV 1 [Ordinance 1 to the Labour Act, SR 822.111]).

An overview of the provisions on the recording of working time and the structure of the present information sheet.

<p>(1.1) There is <b>no obligation by law to record working time for (among others):</b></p> <ol style="list-style-type: none"> <li>1. Higher managerial work (1.1.1)</li> <li>2. Academic work (1.1.2)</li> <li>3. Commercial travellers (1.1.3)</li> </ol>	<p>(2.1) <b>Normal case: Obligation for all employees to systematically record working time</b></p>				
	<table border="1"> <tr> <td style="vertical-align: top;"> <p>(2.2) Waiving the recording of working time based on the GAV is possible</p> </td> <td style="vertical-align: top;"> <p>(2.3) Simplified recording is possible</p> <ul style="list-style-type: none"> <li>- by individual agreement (&lt;50) or by agreement between company and representative of the employees</li> </ul> </td> </tr> <tr> <td style="text-align: center;">Article 73a ArGV 1</td> <td style="text-align: center;">Article 73b ArGV 1</td> </tr> </table>	<p>(2.2) Waiving the recording of working time based on the GAV is possible</p>	<p>(2.3) Simplified recording is possible</p> <ul style="list-style-type: none"> <li>- by individual agreement (&lt;50) or by agreement between company and representative of the employees</li> </ul>	Article 73a ArGV 1	Article 73b ArGV 1
<p>(2.2) Waiving the recording of working time based on the GAV is possible</p>	<p>(2.3) Simplified recording is possible</p> <ul style="list-style-type: none"> <li>- by individual agreement (&lt;50) or by agreement between company and representative of the employees</li> </ul>				
Article 73a ArGV 1	Article 73b ArGV 1				
Article 3 ArG	Article 46 ArG, Article 73 ArGV 1				

#### 1.1 No obligation to record working time

Certain professions and forms of employment as well as enterprises are excluded from these legal obligations, i.e. commercial travellers or employees who have a higher managerial position or an academic or independent artistic position. For ICT companies probably neither the exception of the higher managerial position nor that of the academic position will usually be effective as stated in the Ordinance 1 to the Labour Act and the restrictive practice of the Federal Supreme Court in this respect. However, the exception concerning commercial travellers can apply in some cases under certain conditions.

##### 1.1.1 Higher managerial position

A higher managerial position requires not only a management function per se but also extensive authority to make decisions or a significant influence on decisions of great importance and thus a lasting influence on the structure, course of business and development of the enterprise or part of the enterprise. This usually only includes top managers. The Federal Supreme Court interprets this term very restrictively.

##### 1.1.2 Academic/scientific work

For an academic position great freedom is necessary with regard to setting objectives for work, the implementation and arrangement. It is explicitly prescribed that the provisions of

the law and its ordinances on working and resting hours are applicable to technical and administrative personnel in research.

### **1.1.3 Commercial travellers**

However, for the ICT sector the exceptions concerning commercial travellers are of special relevance. To what extent this provision applies for a representative or salesperson must be clarified individually and depends on, among other things, the contract designation ("Commercial traveller contract"), the contract content, as well as on the share of variable remuneration and the applied calculation criteria. According to the practice of the authorities, for example, a sales commission component of 1/3 of the salary is not enough to qualify as a commercial traveller, but 50% is.

## **2 Provisions for recording working times**

### **2.1 Normal case: Obligation to systematically record working time (Article 73 section 1 ArGV 1)**

The employer shall ensure that lists or other documents in which the required details are visible for the implementation of the law and its ordinances, are kept available for the enforcement and supervisory bodies (Article 46 labour act). In the Ordinance 1 to the Labour Act (Article 73 section 1) it is further explained that the documents and lists of the employer must show, among other things, the daily and weekly working time including compensation working time and overtime as well as their status, and also breaks of half an hour or more. It goes without saying that absences due to illness or military service must always be recorded separately.

### **2.2 Waiving the recording of working time (Article 73a ArGV)**

#### **2.2.1 Collective employment contract**

Entirely waiving the recording of working time is only allowed when this possibility is provided for in a collective employment contract (GAV). The content of a collective employment contract may also be restricted to just handling questions concerning the recording of working time. However, it is not allowed to create so-called ad-hoc trade unions with the sole aim of concluding such contracts on recording working time with certain employers. It should be noted that the GAV must be signed by the majority of the eligible (i.e. representative) employee organisations of the sector or company and, in addition to that, must explicitly state the special measures concerning health protection.

#### **2.2.2 Further requirements**

- The employee must be able to decide at least half of his/her working time himself. It is expressly stated that just having flexible working hours is not enough.
- The employee concerned must have a gross annual income of more than CHF 120,000 (including bonuses) (reduced pro rata for part-time employment).
- Individual written waiver agreement: The employees concerned must additionally conclude an individual waiver agreement with the employer in writing. The employees concerned or the employer may revoke this agreement annually at the end of the year.

As there are only very few collective employment contracts for Swico members, this option of a waiver only applies in exceptional cases.

### **2.3 Simplified recording of working time (Article 73b ArGV 1)**

The simplified recording of working time can basically be agreed on for employees that can decide at least a quarter of their working time themselves.

#### **2.3.1 Collective agreement**

##### Requirements:

- Agreement between employer and employee representative of a sector/company or the majority of the employees of an enterprise
- Defining the employee categories concerned and positions in the company for which the simplified recording can take place

##### The following must be recorded:

- total daily working hours performed
- in the case of working on Sunday or night shifts the starting and finishing time must additionally be documented.

#### **2.3.2 Individual agreement with the individual employees**

##### Requirements:

- Company with less than 50 employees
- Note on content of working and resting hours
- End of year talk with the employee concerning the work load, and documentation of the talk

##### The following must be recorded:

- total daily working hours performed
- in the case of working on Sunday or night shifts the starting and finishing time must additionally be documented.

**Caution:** Even when there is a collective or individual agreement on the simplified recording of working time, the employee can freely decide whether to record the working hours in detail. The employer has the obligation to provide the instruments required for the detailed recording.

Swico provides its members with individual and collective model agreements for the introduction of simplified working time recording on its employer platform.



## **4 Recommendations**

### **4.1 Dialogue within the enterprise and with government authorities**

The topic recording of working time should be discussed openly in the enterprise and the awareness among employees should be raised. In this way awareness is to be created in the company about the legal conformity of the actual practice in recording working time, and the associated disadvantages and risks. In the case where legal conformity in recording of working time is currently lacking, the company should aim at an open dialogue with the competent work inspectorate and thus find a manageable solution. Generally, authorities are willing to allow sufficient adjustment periods for the implementation if the company behaves cooperatively and proactively.

### **4.2 Establishing legal conformity**

Companies which have dispensed with the recording of working time until now must change their practice for the employees concerned and be able to provide the legally prescribed evidence of recording the working time. This does not have to take place using a conventional time stamp clock but can be done, for example, by means of an IT login and Excel tables.

### **4.3 Waiving the recording of working time for companies subject to GAV**

As soon as an applicable GAV that provides for an enterprise to waive the recording of working time is available, Swico recommends that this be introduced under the conditions specified to simplify the operation.

### **4.4 Introducing simplified recording of working time in the enterprise**

How effective the introduction of simplified recording of working time will be for an individual company must be assessed individually considering the pros and cons. However, Swico recommends that enterprises with less than 50 employees have individual agreements with each employee rather than a collective agreement.

## **5 Political commitment of Swico**

The new provisions concerning the recording of working time allow the enterprises some relief. But this still entails a great administrative burden and still does not fulfil the requirements of modern “knowledge workers” and other employees with flexible working forms. Swico will therefore continue to be politically active together with other associations for a more comprehensive legal solution for the modern working environment.

Zurich, 21 June 2018

In case of any questions about the information sheet, Swico members may contact:



**Marcel Vogel**, lic. iur.,  
Specialist for Regulatory Affairs  
marcel.vogel@swico.ch



**Christa Hofmann**, lic. iur.,  
Head of Legal & Public Affairs  
christa.hofmann@swico.ch

Issuer:  
Swico  
Josefstrasse 218  
CH-8005 Zurich

Tel. +41 44 446 90 90  
www.swico.ch  
info@swico.ch