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Vezměte, prosíme, na vědomí, že text článku odpovídá platné právní úpravě ke dni publikace.

Uneven distribution of working hours

Based on the employer's needs working hours may be distributed unevenly. By such uneven distribution the employer may cover, for example, the circumstance that on Friday afternoons, Saturday mornings and Saturday evenings he needs more people in its shore in a shopping centre than on Monday morning. In the same way it may take into consideration the fact of conducting monthly stocktaking at the end of a month.



With **uneven distribution of working hours** the employer does not schedule the determined weekly working hours, or shorter working hours, evenly for the individual weeks, on the understanding that even with such distribution **the average weekly working hours without overtime work must not exceed the determined weekly working hours, or shorter working hours**, for a period of not more than 26 consecutive weeks (the so-called **adjusting period**). Only a collective agreement may define this period to be at the most 52 consecutive weeks.

Nevertheless, even with unevenly distributed working hours the other rules relating to the maximum length of a shift, continuous rest period between individual shifts must be observed, furthermore the employer must decide for what period the average weekly working hours will be calculated.

With uneven distribution of working hours the length of a shift must not exceed **12 hours**, with these being so-called net working hours without breaks at work. The length of a work shift is restricted only by the maximum limit, the minimum length of a shift is not restricted. It is therefore possible to determine the length of the working hours to be, for example, also 8 hours, or it is possible to combine various lengths of individual shifts with the only restriction that the length of a shift must not exceed 12 hours without the determined breaks for meals and rest. It is also necessary to observe **the requirement for a 30-minute break if a shift lasts longer than 6 hours**.

Uneven distribution of working hours then means in practice that **working hours are distributed unevenly for individual weeks**. A week is understood to be **seven consecutive days**. In some weeks the working hours are shorter and in some longer that the determined weekly working hours, however within the relevant adjusting period **the average weekly working hours equal to the length of the determined weekly working hours**.

The employer is obliged to prepare a written schedule of weekly working hours and inform the employees of the same no later than 2 weeks prior to the start of the time period (in the

case of a working time account 1 week prior to the start of the time period) for which the working hours are unevenly distributed unless it agrees with the employee on a different period of notification. If during the period of time for which the weekly schedule was prepared there is **a change in the weekly working hours schedule, the employer is obliged to inform the employees of the change in the weekly working hours schedule 1 week before the start of the change, unless it agrees with the employee on a different period of notification** (e.g. it is possible to agree with the employee on reduction of such period to max. 1 calendar day prior to the start of the time period for which the working hours are newly scheduled).

At the same time in some cases the employer is often confronted with the fact that **the previously prepared schedule of shifts does not correspond with the real situation**, then the employer is entitled to **unilaterally change the schedule of shifts if the employer reserved such possibility in advance**. However, in such case it must inform the employees of the changed schedule no later than 2 weeks prior to the start of the time period for which the working hours are unevenly distributed. This period may be shortened by agreement, but at maximum to one calendar day prior to the start of the time period for which the working hours are newly scheduled (i.e. for example when an employee falls ill). However, even such changed schedule of working hours can be subsequently changed by the employer (when the employee recovers) if it again schedules the working hours for at least 4 consecutive weeks (in order to ensure some certainty of stable distribution of shifts for the employees).

The length of the working hours is determined by time units – hours in relation to a calendar period – a week. Breaks at work for meals and rest are not included in the working hours (Section 88 (4) of Act No. 262/2006 Coll., the Labour Code, as amended (hereinafter the "**LC**")), therefore these are so-called net working hours. **The highest permissible scope of weekly working hours** is stipulated by the provision of Section 79 (1) of LC at **40 hours**. Section 79 (2) of LC further defines the highest permissible scope of the length of weekly working hours for certain categories of employees which is based on special conditions of performance of work at certain workplaces and work regimes. The working hours of employees:

- working underground on mining of coal, metalliferous minerals and non-metalliferous minerals, on mine construction and at mining workplaces of geological research are not more than **37.5** hours per week,
- with three-shift and continuous work regime are not more than **37.5** hours per week,
- with **two-shift work regime** are not more than **38.75** hours per week.

Continuous rest period between two shifts must be scheduled by the employer in such a way so that its length is at least 12 hours during 24 consecutive hours where this can be reduced to 8 hours pursuant to the provision of Section 90 (2) of the Labour Code but on condition that the following rest period is extended for the employee by the time by which the rest period has been reduced.

At the same time it is necessary to point out that pursuant to the provision of Section 92 of the Labour Code the employer is obliged to distribute the working hours in such a way so that the employee has continuous rest period of at least 35 hours in a week. Continuous rest period for a juvenile employee must not be less than 48 hours. And as regards *continuous rest period in a week in the case of uneven distribution of working hours*, pursuant to the Labour Code the employer may distribute the working hours of employees over 18 years of age only in such a way so that the time of continuous rest period in a week is at least 24 hours on the understanding that the employees are provided with continuous rest period in a week in such a way so that the length of this rest period is in total at least 70 hours per 2 weeks.

We further state that uneven distribution of working hours may also be agreed for **employees**

working on the basis of so-called part-time employment. For it is a case of uneven distribution of working hours if the working hours are unevenly distributed over individual weeks, i.e. in one week the working hours are longer and in another shorter. (In one week the employee works, for example, 20 hours and in another week 10 hours).

At the same time we would like to add that employees with working hours unevenly distributed for individual weeks or for the period of the whole calendar year **are entitled to as many working days of holiday as are proportionate to their working hours schedule within the all-year average** (Section 213 (4) of LC). In order to calculate holiday entitlement the average number of working days of an employee per one week needs to be ascertained and it is multiplied by the number of weeks of holiday to which the employee is entitled. An employee with unevenly distributed working hours therefore draws holiday only on the days for which his work shift was scheduled with one day of holiday being equal to one planned shift according to the schedule of shifts regardless of its length. For employees with shorter working hours such working hours are also used as the basis.

Introduction of the uneven working hours system into work system

It is up to the employer to decide on introduction of uneven distribution of working hours, for example in the form of an internal regulation, even if the nature of work or conditions of operation permits that working hours are distributed evenly. The only **restriction** remains to be **the principle of equal treatment and prohibition of abuse of right** (bullying).

Working hours may be distributed unevenly **also for individual organizational departments or for certain types of work**.

The **advantage of uneven distribution of working hours** is particularly, from the point of view of the employer, that the wages are paid to the employees based on how the employer schedules the working hours. The employees will basically receive wages based on the number of hours that they work. The employer may thus save compensatory wages for impediments at work because in a different regime it would be obliged to pay compensatory wages in the amount of 100% of average earnings due to another impediment on the part of the employer in a situation when it cannot assign work to the employee in the scope of the determined weekly working hours. Nevertheless, even in this regime the employer is obliged to provide work to the employee in the scope of the determined weekly working hours and agreed wages. Reduction of wages could only be made by way of reducing the working hours **or by introducing a working time account**.



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