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GMS Flash Alert

Employment Law

2025-003 | 6 January 2025

European Union – CJEU Questions Exemptions from Rules Around Registration of Working Time

On 19 December 2024, the Court of Justice of the European Union (CJEU) confirmed that employers must establish a system which enables the measurement of the duration of time worked (working time registration). [1]

Since the CJEU already had clarified the necessity for employers to establish objective registration of working time in a ruling from 2019,[2] it elaborated on the obligation of European member states, including local courts and administrations, to comply with the pertinent European legislation and settled European case law.

Allowing certain employers to be exempt from the implementation of working time registration must be carefully assessed, as it can be contrary to EU law.

WHY THIS MATTERS

Registration of working time is seen as an essential tool helping to ensure that workers are working within the limitation of maximum working hours and that they have minimum daily and weekly rest periods.[3] The registration of working time must be objective and be a reliable reflection of working hours.

The CJEU ruling opines that even if an EU member state allows exemptions for certain employers from the rules mandating implementation of registration of working time, such exemptions can be illegal.

Employers that do not have reliable systems for registration of working time in place should be mindful of this ruling and establish that workers have access to a reliable system in the country where they work.

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Highlights of the Ruling

Description

An individual was recruited as a domestic worker in Spain. Following her dismissal, she brought an action before the social court in Spain seeking a declaration that her dismissal was unfair and requesting that her employers pay her for the overtime she worked and the days of leave she had not taken.

She claimed to have worked 46 hours per week and later 79 hours per week for a gross monthly salary of EUR 2,363.04. However, she could not prove that she worked the hours she claimed, as Spanish law allows exemption from time recording to employers of domestic workers.

Legal Context

All EU member states have implemented the EU Directive for Working Time 2003/88/EC in their national legislation.[4]

Spanish law[5] states, among other things, that employers must make provision for daily recording of working time, including the exact start and end of a working day for each worker. The records of working time must be kept by the employer for four years. The law exempts certain employers, including those employing household domestic staff, from the obligation to record actual working time of their workers.

Ruling Raises Issues: Daily Recording of Working Time and Potential Discrimination

The CJEU stressed that the domestic worker in question was a full-time employee and as such should not be excluded from the obligation for daily recording of working time.

The Court concluded that even though EU member states have a margin of discretion when they implement EU directives into their national legislation, the EU member states have an obligation to achieve the result envisaged by that directive and to take measures fostering the fulfillment of that obligation. This is the duty of all national institutions, including local courts and administrative institutions. Spain, by excluding employers of domestic household workers from recording the working time of their workers, did not achieve this result in the EU Working Time Directive.

Further, the CJEU noted that 95 percent of domestic household workers in Spain are women. Consequently, the difference in treatment as regards recording working time as compared with men raises questions about (indirect) discrimination. Such discrimination is permissible only if it pursues a legitimate aim that is compatible with the fundamental rights in the EU and is justified by overriding reasons in terms of the public interest. In such instance, an EU member state as the author of the allegedly discriminatory rule must show that the rule is justified by objective factors unrelated to any discrimination on the grounds of sex/gender.

Here, the Court concluded that the Spanish government did not submit any observation in that regard. It is therefore up to the local Spanish court to assess if the issue at hand constitutes indirect discrimination on the grounds of sex/gender.

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KPMG INSIGHTS

This ruling shows matters regarding implementing working time registration are not as straightforward as it would seem. In this particular case, the law providing an exemption to the employer had the result of preventing the worker from proving the terms and conditions of her employment. And the Court supported the worker's right to question whether she had been treated fairly by her employer – proving terms and conditions of employment with, for example, working time records should be seen as being in the interest of both workers and employers.

Employers may wish to consult with their usual employment law counsel about the 'state of play' regarding statutes in force and existing case law in their jurisdictions to determine whether they should be making provision for reliable and objective recording of working time.

FOOTNOTES:

1 Court of Justice for European Union: Case C-531/23 Loredas, 19 December 2024.

2 Court of Justice for European Union: Case C-55/18 CCOO (Deutsche Bank), 14 May 2019. Also see *GMS Flash Alert* 2019-111, 3 July 2019.

3 The EU's Working Time Directive ("WTD") stipulates the maximum working hours allowable (and minimum rest periods) for sectors of the economy. Implementation of WTD is at the hands of the local legislators and enforcement of the WTD is at the hands of the local labour inspectors.

4 European Union: Directive 2003/88/EC concerning certain aspects of the organisation of working time, 4 November 2003.

5 *Estatuto de los Trabajeros, Real Decreto-ley 8/2019*, 12 March 2019 and *Real Decreto 1620/2011*, 14 November 2011.

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or the following professional with the KPMG International member firm in the United States:

Daida Hadzic
Director
Washington National Tax – Global Mobility Services
Tel. +1-917-683-9608
dhadzic1@kpmg.com

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