

Working time: Focus on the fixed number of working days per year (“forfait jours”)

The so-called annual *forfait jours* working time arrangement^[1] allows the employer to derogate from the legal working time of 35 hours per week and the payment of overtime hours.

The formalities and requirements for setting up this type of working time arrangement as well as the obligations associated therewith are summarized in the infographic below.

Working time

The fixed number of working days per year ("Forfait jours")

By Fabien Pomart and Matthieu Blaschczyk

The *forfait jours* enables the employer to no longer make a distinction between what does and what does not fall within the scope of an employee's actual working time during a day.



This working time arrangement no longer distinguishes between actual working time, breaks and travel time.

Any day that includes some working time must therefore be counted as a worked day.

The employee can no longer claim payment for overtime worked beyond the threshold of 35 hours per week.







Implementation

- 1 Check that the applicable collective bargaining agreement, industry-wide collective agreement or company-level agreement authorizes the implementation of a *forfait jours* arrangement. The agreement must determine in particular:
 - o The categories of eligible employees
 - o The number of days included in the *forfait jours* arrangement, within the limit of 218 days per year
 - o The terms and conditions for monitoring the employee's workload
- 2 Conclude with the employee an individual *forfait jours* arrangement in the employment contract or by way of an amendment to such contract. The relevant provision must set forth:
 - o The number of working days per year
 - o The terms and conditions for monitoring the employee's workload



Mandatory requirements

The individual *forfait jours* arrangement can be concluded through an agreement when the following requirements are met:

-  The employee falls within the category of eligible employees (executive status)
-  The employee performs duties that prevent him/her from following the collective work schedule applicable within the company
-  The employee has a real autonomy in the organization of his/her work
-  The employee's remuneration meets the minimum remuneration threshold, if any, stipulated by the collective bargaining agreement for the implementation of the *forfait jours* arrangement






Monitoring the workload



The employer has the obligation to regularly monitor and assess the employee's workload in order to ensure a good balance between the employee's professional life and personal life, and to make sure that the employee's right to disconnect is complied with.

Fulfillment of this obligation requires:

-  The sending by the employee of a monthly self-statement setting forth the days worked and the rest days taken
-  At least one annual meeting with the supervisor to monitor the workload
-  The implementation of a warning system for the employee, in the form of a meeting with the supervisor in case of difficulties in the performance of the *forfait jours* arrangement

The employee still benefits from the minimum daily and weekly rest periods.

The employee is entitled to additional rest days in return for the implementation of a *forfait jours* arrangement but he/she may waive all or part of these rest days, in which case he/she must receive an increased remuneration of at least 10% for each such waived rest day.

Non-compliance with the conditions governing the implementation or performance of the *forfait jours* arrangement will result in the nullity of such arrangement and entail the obligation for the employer to pay the overtime hours worked by the employee in excess of 35 hours per week.

[1] i.e., a contractual arrangement according to which working time is counted on the basis of a fixed number of working days per year

Soulier Avocats is an independent full-service law firm that offers key players in the economic, industrial and financial world comprehensive legal services.

We advise and defend our French and foreign clients on any and all legal and tax issues that may arise in connection with their day-to-day operations, specific transactions and strategic decisions.

Our clients, whatever their size, nationality and business sector, benefit from customized services that are tailored to their specific needs.

For more information, please visit us at www.soulier-avocats.com.

This material has been prepared for informational purposes only and is not intended to be, and should not be construed as, legal advice. The addressee is solely liable for any use of the information contained herein.