

# The Act on Implementation of Parts of the Working Time Directive<sup>1)</sup>

Act no. 248 of 8 May 2002 on implementation of parts of the working time directive is hereby promulgated, as amended by Act no. 258 of 8 April 2003.

1. This law applies to employees who are not guaranteed the rights under a collective agreement that are at least equivalent to Article 2, subsections 1, 3 and 4, the Articles 4, 6, 8, 9, 16 and 17 of Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time, as amended by Directive 2000/34/EC of 22 June 2000.
  - (2) For employees who are not covered by a collective agreement that guarantees the rights named in subsection 1, sections 2-7 shall not apply if in the individual employment relationship it is agreed in writing that the employee is guaranteed these rights under a specified collective agreement in force at the company where the employee is employed. Section 8, subsections 1 and 2, apply only to those cases named in section 8, subsection 3.
  - (3) The Act does not apply to mobile employees, cf. section 2 (2), who are covered by Council Regulation 3820/85 on the harmonization of certain social legislation relating to road transport. Other mobile employees are not covered by sections 3 and 5-7.
  - (4) The Act does not apply if, in other special legislation or provision based thereon, there are fixed rules on working hours that are at least equivalent to the level of protection under the Directive.
2. For the purposes of this Act an employee shall be understood as a person who receives remuneration for performing personal work in service conditions.
  - (2) For the purposes of this Act a mobile worker shall be understood as an employee who is a member of travel or flight personnel employed by a company that carries passengers or goods by road or air.
  - (3) Unless otherwise provided for under a collective agreement, the term working hours shall be understood for the purposes of this Act as the period during which the worker is at work and at the employer's disposal when carrying out his/her activity or duties.
  - (4) Under this Act a night time period shall be understood as a period of at least 7 hours which includes the period between the hours 00:00 and 05:00. Unless otherwise agreed, the night time period is from 22:00 to 05:00.
  - (5) For the purposes of this Act a night worker shall be understood as an employee who normally works at least three hours of his/her daily working hours during the night time period, or an employee who performs night work for at least 300 hours within a period of 12 months.
3. An employee with daily working hours of more than 6 hours is entitled to a break of such length that takes into account the purpose of the break. Breaks are scheduled according to the normal rules of the workplace for scheduling working hours.

4. The average working hours over a seven-day period, calculated over a period of 4 months must not exceed 48 hours including overtime. Periods of paid annual leave and periods of sick leave shall not be included or shall be neutral in the calculation of the average.
5. The normal working hours for night workers must not exceed an average 8 hours per 24-hour period, calculated over a period of 4 months.
  - (2) The minimum period of 24 hours of weekly rest stipulated in the Danish Working Environment Act, chapter 9, is not included in the calculation of the average in the reference period.
  - (3) Where a night worker is employed in particularly risky work or work involving heavy physical or mental strain, work must not continue for more than 8 hours during a 24-hour period in which the night work is performed.
6. Employees must be offered a free health check before they begin working at night and thereafter at regular intervals of less than 3 years.
7. Night workers suffering from health problems recognized as being due to the fact that they perform night work are to be transferred whenever possible to day work to which they are suited.
8. An employee whose rights under this Act are violated may be awarded compensation.
  - (2) If an employee is dismissed for having made a claim under this Act, the employer must pay compensation.
  - (3) For employees covered by a collective agreement as named in section 1 (1), see also section 1 (2), cases of violation of rights under such a collective agreement, including the compensation named in subsections 1 and 2, that are not decided by the labour courts may be settled by the civil courts.
9. The Minister of Employment is authorized, after negotiations with the social partners, to lay down detailed rules concerning the use of the derogation options contained in the Directive.
10. The Act comes into force after publication in the Official Law Gazette.
11. The Act does not apply to the Faroe Islands and Greenland.

Act no. 258 of 8 April 2003, which amends section 1 and section 2 of the Act, contains the following commencement provision:

3. The Act shall come into force on 31 July 2003. <sup>2)</sup>

*The Ministry of Employment, August 24, 2004*

Claus Hjort Frederiksen

/E. Edelberg

### **Official notes**

<sup>1)</sup> The Act implements Council Directive 2000/34/EC of 22 June 2000 amending Council Directive 93/104/EC on certain aspects of the organization of working time to cover sectors and activities excluded from that Directive (Official Journal 2000 no. L 195, 01/08/2000 p. 41-45).

<sup>2)</sup> Act no. 258 of 8 April 2003 was announced in the Official Law Gazette April 9, 2003.