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Labour law aspects of the introduction of a four-day-week

The four-day-week is becoming more and more popular. Employees believe in a better work-life balance, organize their family commitments, or devote their spare time to voluntary work. Employers, on the other hand, are competing for the best qualified talents and wish to increase their attractiveness on the labour market by offering up-to-date working conditions.

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What is it exactly, a four-day-week?

It feels like almost everyone is talking about the four-day-week: Over the last year, there have been increasing reports of companies introducing the four-day-week. In this respect, there are two concepts for such four-day-week: either the same number of working hours per week as before (generally between 40 and 42 hours per week) is spread over four days which results in longer working days. Or the working hours are reduced (e.g. to 32 hours per week) and distributed over four days, which means that the length of the working days remains the same.

Both concepts have in common that there is no loss of compensation in the four-day-week compared to a full-time workload of five days: this means that even in the four-day-week employees earn the same as in a five-day-week. The four-day-week should therefore not be confused with an 80% stint performed over four days, where the remuneration is reduced to 80% based on part-time work.

How common is the four-day-week?

In Iceland, most of the working population now works four days a week, following the concept of reducing the number of hours worked per week without loss of compensation. At the beginning of last year, there was also a legislative initiative in Belgium to legally implement the four-day-week: Belgian workers are thus entitled to work the contractually agreed number of working hours on four, instead of five working days. Finally, the United Kingdom has conducted a large-scale test phase on the four-day-week, following the so-called 100-80-100 model: 100% pay for 80% working time, making sure a continuing 100% productivity.

This trend towards a four-day-week cannot be stopped in the Swiss labour market either. However, there is no concrete legal basis.

Today, most Swiss employers offer their employees the possibility of working an 80% stint, spreading the overall working hours over four working days per week. Compared to full-time work or the four-day-week as described above, however, this entails a loss of pay and the availability of workforce is reduced, too. This raises the question both for employers who depend on the workforce of their employees and for employees, which other legally permissible options exist to structure a four-day-week tailored to their respective interests.

The legal framework: Swiss Employment Act (*Arbeitsgesetz*)

It might be an idea to distribute the contractually agreed working time for a 100% workload – comparable to the Belgian model – over four days. With an agreed 42-hours week, the working day would no longer be 8.4 hours, but 10.5 hours in average. In this way, the employer would (at least formally) continue to have the same workforce at their disposal, while the employees would gain a full day off. Especially if one has to take a long commute, such a distribution of working hours saves a considerable amount of time.

However, such arrangements are subject to the following limits of the Employment Act which applies to most employees working in Switzerland:

- In principle, the **daily working** time of employees – according to the State Secretariat for Economic Affairs (SECO) – **must not exceed 12.5 hours in a time frame between 6 am to 11 pm.** It is obvious that this maximum limit is quickly reached with an increased workload and a «normal daily working time» of 10.5 hours in average; especially when the working time is flexibly distributed over the four days.
- Furthermore, the daily recorded working time, including breaks and

overtime/extra hours, must be **within a time frame of 14 hours. Therefore, anyone who starts to work at 6 am may not work after 8 pm, even if several hours of break have been taken in between.** Especially when working in home office, compliance with this requirement is difficult for the employer to control.

- Stricter requirements further apply to **night work, i.e. work performed between 11 pm and 6 am.** Night work is only permitted if an official exemption permit has been obtained or if the employer belongs to companies for which night work is permitted on an exceptional basis (e.g. hospitals, restaurants or bakeries). If night work is permitted, **the maximum working time is nine hours per day to be performed within a time frame of ten hours (including breaks).**

It is sufficient that only a part of the working time is performed during the night for said restrictions to apply. Therefore, if an early bird regularly starts work at 5 am, or if work on an international project extends until late at night due to different time zones, a reduced maximum daily working time of nine hours applies. Only with the consent of the employees concerned may the maximum daily working time be increased to ten hours per day.

Almost inevitable: Reduction of the contractually agreed working time

Under the present legal situation there is currently only limited flexibility to introduce a four-day-week without a reduction in working time. Instead, in view of the narrow legal framework conditions, the introduction of a four-day-week usually involves a reduction in weekly working hours.

However, the continued payment of compensation based on 100% employment when only 80% of working time is performed without further adjustments to the compensation structure can be risky for employers. A frequent argument against the appropriateness of a proportional reduction in remuneration is that the introduction of a four-day-week would be accompanied by increases in productivity. Whether someone works four or five days a week would have no effect on productivity (in absolute figures). This may be true for individual sectors. However, this argumentation is invalid in cases where clients remunerate the services received on the basis of the number of time units worked (e.g. services, crafts). And even where this is not the case, it is far from certain that the claimed productivity effects are equally evident for all workers.

In cases where an increase in productivity is suspected, it is therefore a conceivable and practicable option to **introduce an additional component of variable pay linked to the individual productivity.** Depending on the type of work, the relevant parameters would have to be defined from case to case which can be challenging, but on the other hand it provides the right incentives for both parties.

Further aspects to be considered

If work is owed on only four days a week, it is important not to forget to make corresponding **amendments as regards holidays and public holidays** in the employment contract. If the adjustment is made during the current calendar year, the days of annual leave which have already accrued based on a five-day-week must not be reduced. In order to avoid misunderstandings, it is therefore advisable to establish clear rules between the parties regarding holidays.

Overtime should also be clearly stipulated in the contract: From the employer's point of view, if the weekly working hours are reduced with the salary remaining unchanged, it would be **advisable to agree in writing that any overtime is compensated by the contractually agreed salary.**

Where appropriate, the reduction of working time may be agreed for a **trial period.** In this case, the **reduction of working hours** (and all other corresponding adjustments to the employment agreement) would have to be **limited in time.** Especially if employees are allowed to perform their contractually owed working time on only four days without a reduction in the agreed working time, it should be ensured that the **employer reserves the right to unilaterally adjust the distribution of working time if necessary** (and thus distribute it over five days again).

Conclusion

Offering employees the option of a four-day-week certainly contributes to employee loyalty and attractiveness as an employer. At the same time, it must be ensured that the concrete arrangement guarantees a balance of interests, while complying with the applicable legal provisions. Within these limits, the legally permissible options may be optimally exploited by skillful contract drafting.

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