Employment Update

10th February 2020 Labour Chamber of the National Court Ruling on effective working time (travel, overtime and coffee, cigarette breaks, etc.)

13th February 2020

Regarding the 10th February 2020 judgment of the National Court Labour Chamber

First contested measure: that all office and sales staff should be guided by the consideration that if a trip is made and they do not return to the work centre on the same day, a total of 7 hours and 45 minutes is counted as effective work on that particular day, and not the time spent on the trip plus the work actually done on the client, the total duration of which may be greater or possibly less.

In this regard, the company had and has need for workers to spend the night away from home when they are in another location and have spent their daily 7 hour 45 minute workday there as part if the business. In this case, the company counts 7 hours and 45 minutes as a daily working day, and the worker must return to his or her home or workplace the following day, considering that his or her working day begins at 8 a.m. the following day.

On this point, the judgment states that that system was the one that previously existed, validates it, and concludes that, all things being equal, the new policy of daily registration of the working day respects and does not modify that previous working condition that already exists with regard to the working day.

Second contested measure: that the overtime done by workers must be subject to the requirement of prior authorisation by certain company heads, and not to the actual and material performance of work beyond the normal or excessive working hours.

On this point, the ruling validates the company's position by concluding that, in the absence of an express agreement to work overtime in the company (whether collective or incorporated into individual employment contracts), such work can only be done by agreement between the company and the worker.

Third contested measure: consists in that any time the workers leave, no matter how minimal (cigarette, coffee or others), it must be registered in the clocking-in system, not counted as effective daily work time.

The claimant union argued that before the implementation of the clocking-in system such breaks were considered as effective working time by the company, since the exits and entrances of the work centre for that purpose were recorded in the entry and exit lathes. For its part, the defendant company claimed that those shifts did not represent a record of the working day but only a control of access to the work centre for reasons of security and prevention of risks in the building, on the understanding that the workers, in spite of those breaks, were responsible for and had been carrying out the whole of the working day.

On this issue, the ruling supports the company's position, stating that workers did not have the right, prior to the implementation of the working day register, to have these breaks counted as effective working time. In this respect, the ruling concludes in favour of the company's theory, *among other things, because there was no effective control and monitoring of the working day carried out by each worker*.

For all these reasons, and despite the published headlines, the criterion of individualisation or of the specific case must be applied in each case. And all of this is without prejudice to the fact that the ruling will foreseeably be appealed before the Supreme Court.

You can see the Sentencia for more information.

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