COMPANY DUTIES TO RECORD WORKING TIME

We continue to discuss the scope and limits of the mandatory working time record imposed on companies.

In order to analyze the judgments that rule on this obligation, we must first look at the regulation provided for in art.34.9 of the Employees' Statute, on the working time record:

"The company shall guarantee the daily record of the working day, which must include the specific start and end times of the working day of each employee, without prejudice to the flexible working hours established in this article.

By collective bargaining or company agreement or, failing this, by decision of the employer after consultation with the legal representatives of the employees in the company (works council), this working day record will be organized and documented.

The company will keep the records referred to in this rule for **four years** and they will remain at the disposal of the employees, their legal representatives and the Employment and Social Security Inspection".

In this regard, we will analyze the three most recent and significant cases on the subject of **mandatory time recording**, on which the Supreme Court has ruled, and which will help us to delimit the scope of this obligation.

RULINGS ON MANDATORY TIME RECORDING

1. Zurich Case Judgment

STS of April 5, 2022. The validity of an agreement is declared, according to which, the employees themselves must record their working day daily **with the sole and simple access to the company's computer**, in such a way that, with its opening and closing, the computer tool automatically records the beginning and end of the working day, in which a **corrective factor of 2 hours a day for part-time work and 30 minutes for continuous work** is also established "which is intended to cover, by way of illustration and not limited or exclusive, breaks, lunch and/or breakfast pauses, unpaid leaves, any kind of break or rest, etc. ".

2. CECA Case Judgment

STS of January 18, 2023. The high court considers that the agreement establishing that all employees must enter in the application made available to them, on a daily and mandatory way, each working day, the start time, the end time, and the number of hours worked during the day, discounting for this purpose the rest

periods, as well as any interruption that cannot be considered effective working time, is valid. In the opinion of the Supreme Court, it cannot be understood that this "**self-declaration**" conditions, per se, the employees to truthfully reflect the total number of hours worked, hiding the possible excess of working hours. All this without prejudice to the **duty of the company to provide the employees with the necessary instructions** so that they know how to differentiate between effective working time and breaks.

3. GALP Case Judgment

STS of February 22, 2023. It is declared that there is no substantial modification of working conditions due to the fact of implementing a clocking system in which **coffee breaks, smoking, etc. are required to be recorded, specifying that they are not considered working time**, since it was not demonstrated that they were more beneficial conditions to consider that there has been a substantial modification of the working time.

ANALYSIS OF THE RULINGS ON TIME REGISTRATION

The key point that can be concluded from the above rulings and which must be taken into account when implementing or adapting the time recording system is that it must be an **objective, reliable and accessible system**.

The Supreme Court understands that it is difficult to imagine -in relation to the CECA Case- a system which does not require the employee to perform some action at the beginning and end of the working day or at the time of taking a break or meals, whether by activating a mechanical or computerized device, using clocking-in cards, fingerprint, etc.

It is valid, therefore, to require employees to record their working time through a computer application provided by the company, and they must record the start and end of the working day and the breaks that are taken.

However, what **is absolutely essential is that the company has a policy or protocol for recording the working time, since it is the obligation of the company "to ensure the existence of instructions that allow the employee to know clearly the consideration that each of the tasks or activities performed during the working day merit, for their correct classification as effective working time or rest time**, so that it can be properly incorporated into the computer application -or the system used-, within one category or another".

On the other hand, the Supreme Court considers that it is in **accordance with the law that the registration system requires the authorization of the company to validate overtime, understanding that this does not infringe any precept**, especially when there is no reference to the fact that overtime cannot be registered without such authorization. He warns that this requires that there is no agreement in the collective bargaining agreement or in the employment contract regarding overtime.

Therefore, **the lack of protocols or policies** for the recording of working time, as well as non-compliance with regulations and case law on the recording of working time, may give rise, among others, to the **following legal consequences**:

- Possible treatment of breaks for resting, eating, smoking, etc. as working time.

- Compensation for overtime due to excess working hours, both financially and in double social security contributions.

- Administrative sanctions for serious non-compliance -up to 7,500 euros-.

- Lawsuits for termination of the employment relationship, with the consequent compensation equivalent to that of unfair dismissal, in addition to possible claims for overtime, or even compensation for damages for violation of the right to digital disconnection, for non-compliance with psychosocial risk prevention, etc.

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