

A Measure to Make Work More Flexible: Reducing the Working Week to 4 Days

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Abstract

The need to achieve a work-life balance and the option for employers to motivate and increase the productivity of employees are the justification for necessary legislative amendments in the future. EU Directive 2019/1158 on work-life balance defines in art. 3 para. 1 (f) the concept of "flexible working arrangements" which refers to "the possibility for workers to adapt their working hours – including through the use of telework, flexible working arrangements or reduced working time schemes". EU Directive 2019/1152 on the transparency and predictability of working conditions in the European Union specifies – in art. 1 (1) – that it aims to improve working conditions by promoting more transparent and predictable forms of work, while ensuring the adaptability of the labour market.

Keywords: individual employment contract; reduction of the working week; flexible working; European Union acts; comparative law.

JEL Classification: K31

1. Introductory aspects

The need to achieve a work-life balance and the option for employers to motivate and increase the productivity of employees are the justification for necessary legislative amendments in the future².

EU Directive 2019/1158³ on work-life balance defines in art. 3 para. 1(f) the concept of "flexible working arrangements" which refers to "the possibility for workers to adapt their working hours – including through the use of telework, flexible working arrangements or reduced working time schemes".

In order to achieve this, art. 9 of EU Directive 2019/1158 provides in para. 1: „Member States shall take the necessary measures to ensure that workers with children up to a certain age and at least eight years old and careers have the right to request flexible working arrangements for care purposes. The duration of such flexible working arrangements may be subject to reasonable limitations. Employers shall consider requests for flexible working arrangements and respond to such requests within a reasonable period of time, taking into account both their own needs and the needs of the worker. Employers shall give reasons for any refusal of such a request or any postponement of such arrangements (para. 2 of the same Act). Where flexible working arrangements as referred to in para. 1 are of limited duration, the worker shall have the right to return to the original work schedule at the end of the agreed period. The worker shall also have the right to request a return to the original work schedule before the end of the agreed period where this is justified by changed circumstances. The employer examines requests for early return to the original work schedule and responds to such requests taking into account both his own needs and the needs of the worker (para. 3 of the same Directive). Member States may make the right to request flexible working arrangements conditional on a requirement concerning the period of work or a requirement concerning the length of service of a maximum of six months. In the case of successive fixed-term contracts, within the meaning of Directive 1999/70/EC, with the same employer, the sum of these contracts shall be taken into account for the calculation of the period requirement (para. 4 of the same act)".

In order to create the necessary context to ensure transparency and predictability of working

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² Ion Traian Ștefănescu, *Tratat teoretic și practic de drept al muncii*, 4th edition, revised and added, Publishing House Universul Juridic, Bucharest, 2017, p. 142; Ion Traian Ștefănescu (coord.), Monica Gheorghe, Irina Sorică, Aurelian Gabriel. Uluitu, Brândușa Vartolomei, Ana Vidat, Veronica Voinescu, *Dicționar de drept al muncii*, Publishing House Universul Juridic, Bucharest, 2014, p. 223; Raluca Dimitriu, *Contractul individual de muncă – Prezent și perspective*, Publishing House Tribuna Economica, Bucharest, 2005, p. 75. For a comparative view see Helen Delaney and Catherine Casey, "The promise of a four-day week? A critical appraisal of a management-led initiative", *Employee Relations*, Vol. 44 No. 1, 2022, pp. 176-190. <https://doi.org/10.1108/ER-02-2021-0056>.

³ Published in the Official Journal of the European Union No. L188/85 of 12 July 2019.

conditions in the European Union, EU Directive 2019/1152⁴ specifies – in art. 1 para. 1 – that it aims to improve working conditions by promoting more transparent and predictable forms of work – the labour market being adapted to these realities.

2. Reduction of the working week – a measure applicable to some employers

A. Despite the long-established practice that, as the number of hours worked increases, so does productivity, some studies⁵ have concluded that employees are more motivated, concentrate better and organise their time more efficiently if they work fewer days in the specific job (in the way they work)⁶.

Microsoft Japan conducted an experiment in 2019 that showed an increase in productivity and employee satisfaction.

In concreto, "reported in August, Microsoft Japan experimented with a new project called the Work-Life Choice Challenge Summer 2019, giving its entire workforce (of 2,300 employees) five Fridays off in a row, with no decrease in pay"⁷.

At the end of the experiment, the company⁸ concluded that the reduced working time weeks resulted in more efficient working time, created extra motivation among its own employees and increased productivity by a staggering 40%⁹.

As part of the program, the company also planned to subsidize family vacations for employees up to ¥100,000 or \$920¹⁰.

In addition to increased productivity, employees took 25% fewer days off during the trial, and electricity consumption dropped 23% in the office due to the extra day off per week¹¹. Employees printed 59% fewer pages of paper during the test¹². The vast majority of employees – 92% – said they liked the shorter week¹³.

The majority of employers who participated in the four-day week pilot programme in the UK reported that productivity had not decreased and, in many cases, had improved considerably¹⁴.

Employers in the UK pilot range from small businesses to large corporations and cover most sectors: education, workplace consultancy, leadership, personal development and IT software training; district business improvement consultancy; professional development and legal training; automotive supply services; online retail; sustainable home care; telecommunications; animation studios; construction recruitment services; catering; hospitality; digital marketing; full case management services for people recovering from traumatic injuries¹⁵.

Indicative research collected by 4 Day Week Global revealed positive experiences, along with valuable lessons for some employers striving to change decades of entrenched work cultures and systems¹⁶. More than 3,300 employees received a weekly paid day off during the process¹⁷.

The conclusions drawn from a short internal survey of participating employers – conducted halfway through the pilot period – were based on the diversity of approaches evident among

⁴ Published in the Official Journal of the European Union No. L186/105 of 11 July 2019.

⁵ Which will be the subject of the presentation below.

⁶ https://eures.ec.europa.eu/could-four-day-working-week-be-future-your-employees-2022-11-14_ro (accessed on 13.06.2023).

⁷ <https://www.theguardian.com/technology/2019/nov/04/microsoft-japan-four-day-work-week-productivity> (accessed on 13.06.2023).

⁸ "Work a little, rest a lot and learn a lot," Microsoft Japan President and CEO Takuya Hirano said in a statement on the Microsoft Japan website. "I want employees to think about and experiment with how they can achieve the same results with 20% less work time"; see in this regard <https://www.theguardian.com/technology/2019/nov/04/microsoft-japan-four-day-work-week-productivity> (accessed on 13.06.2023).

⁹ Ibidem.

¹⁰ Ibidem.

¹¹ Ibidem.

¹² Ibidem.

¹³ Ibidem.

¹⁴ https://eures.ec.europa.eu/could-four-day-working-week-be-future-your-employees-2022-11-14_ro (accessed on 13.06.2023).

¹⁵ <https://www.4dayweek.com/news-posts/uk-four-day-week-pilot-mid-results> (accessed on 13.06.2023). See also Hasan Yildizhan, Sahand Hosouli, Sıdıka Ece Yılmaz, João Gomes, Chandan Pandey, Tarik Alkharusi, „Alternative work arrangements: Individual, organizational and environmental outcomes”, *Heliyon*, Volume 9, Issue 11, 2023, <https://doi.org/10.1016/j.heliyon.2023.e21899>.

¹⁶ <https://www.4dayweek.com/news-posts/uk-four-day-week-pilot-mid-results> (accessed on 13.06.2023).

¹⁷ Ibidem.

respondents. A series of multiple-choice questions were asked on a scale of 1 to 5. Of the employers' approaches that responded (41 in total) the following are highlighted: 88% of respondents said that the four-day week was working "well" at this stage of the test; 46% of respondents said that the productivity of their business had "remained at the same level", while 34% said it had "improved slightly" and 15% said it had "improved significantly"¹⁸; with reference to how easy the transition to a four-day week had been the responses were as follows: 29% of respondents selected "5", 49% selected "4" and 20% selected "3"¹⁹; 86% of respondents said they would be "extremely likely" or "likely" to consider maintaining the four-day week policy after the pilot period²⁰.

Spain has joined this movement, approving a three-year pilot scheme. Hundreds of companies are expected to sign up to the government programme to test the effectiveness of the four-day working week on a large scale²¹. Members of Spain's political parties have supported this experiment since before the Covid-19 pandemic and even more so since – at which point the need for a major flexibilisation of the way work relations are conducted has been judiciously highlighted²².

B. The current work patterns are based on increasing demands from employers – creating a highly competitive and demanding work environment²³. The two rest days may not be enough to regain energy, which can lead to exhaustion and mental problems among employees²⁴.

Instilling an extra day off gives employees the opportunity to rest and recover fully – there are fewer absences for medical reasons which can cause additional psychological stress as employees feel they are falling behind on work²⁵.

Employees in a pilot study in Iceland reported less stress, fewer cases of burnout and better mental and physical health²⁶.

C. The shorter working week and longer weekends will give employees more time off and improve their work-life balance²⁷. This can reduce pressure and stress on employees at work – making them more motivated and committed to their jobs²⁸.

Time spent in this way can also help to strengthen loyalty to the employer²⁹.

D. Reducing the working week to four days can help employees save on fuel and reduce transport costs; it can also help improve their carbon footprint³⁰.

The 2012 Henley Business School study³¹ estimated that in a four-day working week, employees would drive around 900 million fewer kilometers per week³². At a time when many of us are facing a serious cost-of-living crisis, these issues underline the creation of a positive, real, serious, cause-based solution that creates more value³³.

3. Conclusions. Flexibilisation of work in the domestic legislative context

In the intern legislative context, a proposal to amend the Labour Code – with the aim of amending the current provisions in order to establish the possibility for the contracting parties to agree on a working time of 10 hours per day, for 4 days, with 3 days off – was put forward for

¹⁸ Ibidem.

¹⁹ Ibidem.

²⁰ Ibidem.

²¹ https://www.ey.com/ro_ro/law/noi-tendinte-de-flexibilizare-a-muncii (accessed on 13.06.202).

²² Ibidem.

²³ https://eures.ec.europa.eu/could-four-day-working-week-be-future-your-employees-2022-11-14_ro (accessed on 13.06.2023).

²⁴ Ibidem. See Michal Beno et al., "On-Site Workforce Shortening the Week in Favour of Flexibility". *Journal of Eastern European and Central Asian Research* (JEECAR), vol. 9, no. 6, Dec. 2022, pp. 1034-45, doi:10.15549/jeecar.v9i6.1044.

²⁵ https://eures.ec.europa.eu/could-four-day-working-week-be-future-your-employees-2022-11-14_ro (accessed on 13.06.2023).

²⁶ https://autonomy.work/wp-content/uploads/2021/06/ICELAND_4DW.pdf, p. 7 (accessed on 13.06.2023).

²⁷ https://eures.ec.europa.eu/could-four-day-working-week-be-future-your-employees-2022-11-14_ro (accessed on 13.06.2023).

²⁸ Ibidem.

²⁹ Ibidem.

³⁰ https://eures.ec.europa.eu/could-four-day-working-week-be-future-your-employees-2022-11-14_ro (accessed on 13.06.2023).

³¹ <https://www.henley.ac.uk/news/2019/four-day-week-pays-off-for-uk-business> (accessed on 13.06.2023).

³² https://eures.ec.europa.eu/could-four-day-working-week-be-future-your-employees-2022-11-14_ro (accessed on 13.06.2023).

³³ Ibidem.

debate³⁴.

Accordingly, in the view of the draft referred to above, the concept of a short working week is simply a matter of combining the 40-hour working week into 4 working days and granting 3 days off³⁵.

In support of this argument, we point out that the applicable legislation in this area provides for unequal or compressed working hours³⁶ – within the 40-hour working week. Unequal working hours allow for flexibility in the number of hours worked each day of the week, while compressed working hours allow for a shortening of the normal working week, for example from 5 to 4 days, in both cases within the 40-hour working week³⁷. In order to be implemented, these programmes must be expressly provided for in the individual employment contract (art. 116 (2) of the Labour Code).

The employer may also establish individualised work programmes for all employees, including those on carer's leave, with their consent or at their request, which may be of limited duration (article 118 (1) of the Labour Code). Individualised work schedules imply a flexible way of organising working time (art. 118 (2) of the Labour Code).

The daily working time is divided into two periods: a fixed period during which staff are at work at the same time and a variable, mobile period during which the employee chooses his or her arrival and departure times, while respecting the daily working time (art. 118 (3) of the Labour Code)³⁸.

Any of the methods of flexible working outlined above can be combined with teleworking at home – in accordance with the wishes of the contracting parties³⁹.

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³⁵ https://www.ey.com/ro_ro/law/noi-tendinte-de-flexibilizare-a-muncii (accessed on 13.06.2023).

³⁶ According to art. 52 para. 3 of the Labour Code: "In the case of temporary reduction of activity, for economic, technological, structural or similar reasons, for periods exceeding 30 working days, the employer shall have the possibility to reduce the working hours from 5 days to 4 days per week, with a corresponding reduction of the salary, until the situation that caused the reduction of the working hours has been remedied, after prior consultation with the representative trade union of the establishment or the employees' representatives, as appropriate." Art. 116 para. 1 in conjunction with par. 2 of the same legal text states: "The concrete way of establishing unequal working hours within the 40-hour working week as well as within the compressed working week shall be negotiated in the collective agreement at employer level or, in the absence thereof, shall be laid down in the internal rules. Unequal working hours may only operate if expressly specified in the individual employment contract." See for specific particularities Cristina Elena Popa Tache, Report Chapter, „Specific Threats to Human Rights Protection from the Digital Reality. International Responses and Recommendations to Core Threats from the Digitalized World”, Tina Pajuste ed., Tallinn University, 2022, pp. 13-17; Cristina Elena Popa Tache, „About the Human Rights and Consumer Protection in the Digital Age of Digital Services Act 2022 or What Aspects Interested Investors Should Pay Attention To”, *International Investment Law Journal*, Volume 3, Issue 2, July 2023, 121-132.

³⁷ https://www.ey.com/ro_ro/law/noi-tendinte-de-flexibilizare-a-muncii (accessed on 13.06.2023).

³⁸ See in this regard Brândușa Vartolomei, *Dreptul muncii, Curs universitar*, Publishing House Universul Juridic, Bucharest, 2016, p. 78; Raluca Dimitriu, *Dreptul muncii. Anxietăți ale prezentului*, Publishing House Rentrop&Straton, Bucharest, 2016, p. 95; Sack, S.M., 2000. *The Employee rights handbook. The essential guide for people on the job*, revised and updated. New York, Publishing House Warner Books, p. 86; Popescu, A., 2008, *Dreptul internațional și european al muncii*. 2nd edition, Bucharest: Publishing House C.H. Beck, p. 145; Costel Gâlcă, 2005, *Reorganizarea întreprinderilor*, Bucharest Publishing House Rosetti, p. 64.

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