The Danish Supreme Court assesses the level of compensation for violation of the Working Time Act

In connection with a new judgment, the Supreme Court of Denmark has assessed the level of compensation for the employer's violation of the maximum weekly working hours set in the Working Time Act's. The criteria set forth are expected to be used in future cases.

According to the Working Time Act, employees' average working hours must not exceed 48 hours per week, including overtime hours calculated over a period of four months.

This means that an employee who has worked beyond the 48-hour limit is entitled to compensation.

Exceeded the 48-hour limit for four years
In the specific case before the Supreme Court, an employee was employed as a tractor driver at a company. The employee's average weekly working hours was fixed at 42.5 hours.

For a long time, the employee had worked for more than 48 hours per week:

- In 2010 on average 50.91 hours per week
- In 2011 on average 51.44 hours per week
- In 2012 on average 53.27 hours per week
- In 2013 on average 53.40 hours per week

During the proceedings, the parties agreed that the employee had chosen to work the additional working hours and that he had received full pay, including overtime and holiday pay.

However, the Working Time Act's rules on compensation apply irrespectively of whether the extra work hours are carried out at the employee's own discretion. Therefore, the Supreme Court ruled that the employee was entitled to a compensation.

The Supreme Court sets criteria for compensation levels
When delivering judgement in the case, the Supreme Court established some general criteria for determining the level of compensation for a violation of the 48-hour limit.

As a starting point, the level of compensation is set at DKK 25,000. Depending on whether mitigating or aggravating circumstances apply in the specific case, this amount may be adjusted to a higher or lower amount.

Mitigating circumstances that may lead to calculating the compensation to less than DKK 25,000 or, in exceptional cases, no compensation at all may, according to the Supreme Court, apply where the exceedance of the 48-hour limit is trivial or in cases of a single, random or excusable violation, where the employer immediately acts to avoid repetitions.

There may be *aggravating circumstances*, which may lead to granting a compensation of more than DKK 25,000 and up to DKK 50,000 when the exceedance of the 48-hour limit is significant and has taken place over several or longer periods of time or when the employee has been ordered to work for more than 48 hours per week, and thus it did not work at his own discretion. In special cases where there are several aggravating circumstances, the compensation may be set at more than DKK 50,000.

In the case of the tractor driver, the Supreme Court, when assessing the compensation, emphasized that the employee repeatedly over a period of several years to a large extent had worked beyond the 48-hour limit. The Supreme Court, therefore, set the compensation to DKK 50,000.

The judgment shows that ...
As a starting point, compensation according to the Danish Working Time Act must be set to DKK 25,000 unless there are mitigating or aggravating circumstances whereby the compensation can be adjusted up or down.

The set criteria for assessing compensation levels are expected to be used in future cases regarding compensation for violations of the Working Time Act.

It is therefore important to avoid having employees work more than 48 hours per week for a longer period, as the employee in most cases will be entitled to a compensation – even if the employee himself has agreed to the work and received full pay for all hours, including overtime and holiday pay.