

NJORD Estonia: Summarised working time and public holidays – what to consider when calculating working time?

It is common for employees who work from Monday to Friday, i.e., 8 hours a day and 40 hours a week, not to work on public holidays. Thus, they get more free time on account of public holidays. For example, in June of this year, in addition to the eight weekend days, such employees were given two more days off at the expense of the holidays. This reduces their working hours.



However, according to the current case law, such a reduction in working time does not apply to the employees with summarised working time, i.e., employees whose working time is unequally divided within the recording period (e.g., employees on a schedule).

In its judgement 3-2-1-69-17 issued in 2017, the Supreme Court of Estonia has emphasized that it does not follow from the Employment Contracts Act or any other legislation that in the case of the calculation of summarised working time, the working time agreed with the employee should be reduced by the working time falling on a public holiday. The work of an employee on a public holiday, whose working time is summarised, does not constitute overtime. Work performed on a public holiday must be paid for two times the remuneration for the work, regardless of whether the employee works with summarized or non-summarised working time (§ 45 (2) of the Employment Contracts Act). In addition, as in the case of other employees, it may be agreed with the employee having summarised working time that the time worked on a public holiday will be compensated with additional time off instead of doubling the remuneration (§ 45 (3) of the Employment Contracts Act). However, regardless of working on public holidays, only the working time that exceeds the agreed working time at the end of the recording period is counted as overtime.

The position of the Supreme Court means that an employee with summarised working time, with whom an average of 40 working hours per week has been agreed, works the same number of hours even in the months in which there are public holidays. Thus, the (standard) working time of an employee with summarised working time in a month that includes public holidays may be higher than that of an employee who works 8 hours daily from Monday to Friday and who does not work on public holidays.

An example: In April 2023, there will be one intra-week public holiday – Good Friday. Without a public holiday, there would be 20 working days in April.

An employee with non-summarised working time does not work on Good Friday. When working full-time, the number of the working days is 19, and the number of working hours is 152.

According to the decision of the Supreme Court, the working time of an **employee with summarised working time** is not reduced. When working full-time, the number of working days is 20, and the number of working hours is 160.

The Supreme Court did not address the mandatory reduction of working time by three hours before the four public holidays:

- New Year's Day;
- Anniversary of the Republic of Estonia;
- Victory Day;
- Christmas Eve.

§ 53 of the Employment Contracts Act, according to which the working day preceding the aforementioned holidays is shortened by 3 hours, extends to all employees, both non-summarised and summarised. If it is not possible to reduce the working time, then these three hours are considered overtime. Thus, according to current practice, the three hours to be reduced before a public holiday also reduce the working time of an employee with summarised working time.

An example: There are three public holidays in December 2022, i.e., 24, 25 and 26 December, one of which (26 December) falls on a business day. Without public holidays, there would be 22 working days. The working day is shortened by three hours on two days – 23 and 31 December, whereas 31 December falls on the weekend.

The working time of an employee with **non-summarised working time** working from Monday to Friday is reduced by one public holiday. When working full-time, his number of working days is 21. As one day immediately preceding a public holiday is Friday, the number of hours worked by an employee in December is 165 ($21 \times 8 - 3$).

The number of working days of **a full-time employee with summarized working time** is 22. The number of hours worked depends on whether or not he has been assigned shifts by 23 and/or 31 December. If an employee is at work on both 23 and 31 December, the number of hours worked is 170 ($22 \times 8 - 2 \times 3$). If an employee is not working on either December 23 or 31, the number of hours worked is 176.

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