

Legal Alert: Project that reduces the working week to 40 hours in Chile



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On April 11, 2023, the Chilean Congress approved the bill which reduces the working week to 40 hours, among other changes that affect the working hours in Chile.

The promulgation of the bill by the President of the Republic and its publication in the Official Gazette is still pending.

The main changes introduced by the bill are:

1. Maximum weekly working hours: The maximum working hours per week will be gradually reduced as follows:

Gradual Reduction of Working Hours	
Period (since the publication of the Act in the Official Gazette)	Maximum Weekly Ordinary Working Hours
From the 1 st year	44 hours
From the 3 rd year	42 hours

From the 5th year

40 hours

2. Averaged working hours: The distribution of working hours can be agreed upon with the employee on a weekly average of 40 hours, which must be complied on a weekly basis or on average over a four-week cycle.

If the parties agree to a distribution of working hours on a weekly average of 40 hours over a cycle up to four weeks, the working hours may not exceed 45 hours in any of them; nor extend to this limit for two consecutive weeks.

The parties must agree on the distribution of the working hours, and the employer must communicate, with at least one week's notice, the distribution that will be applied in the following cycle.

If the employee is affiliated with a worker's union, the agreement between the employee and the employer must also have the explicit authorization of the union.

Likewise, by agreement with the union, the parties may agree to increase the weekly limit up to 52 hours, complying with the aforementioned requirements.

3. Overtime: The daily limit of two overtime hours is maintained. Also, it is established that when a company union and the employer agree to work with the averaged working hours system in cycles up to 4 weeks, the sum of ordinary and overtime hours cannot exceed 52 hours.

In addition, overtime hours can be compensated with additional vacation days, with a limit of five additional working days per year. The benefit must be used by the employee, within six months following the period in which the overtime hours were worked, giving a 48 hours' notice in advance.

4. Employees exempted from working hours' limitation: It is established that managers, administrators, and executives with administrative faculties are excluded from the limitation on working hours. Employees who provide services without immediate supervision and those who do not perform their duties on the premises of the company may also be excluded. In the event of a dispute between the parties regarding the applicability of this exclusion, the Labor Inspector will resolve it, and its resolution may be appealed before a labor court.

5. Exceptional working hours systems: The faculty of the Labor Directorate to authorize exceptional systems for the distribution of working hours and rest is maintained, establishing a 30-day period for resolving requests.

Resolutions that exist prior to the entry into force of the Act will remain in force for the period set by the Labor Directorate, although any interested party may request their modification to adapt them to the applicable legal regime.

Also, the labor authority may permit shifts of 42 hours on average per week, which will entitle employees to additional vacation days in proportion to the overtime hours of the shift, which may also be compensated in cash by agreement between the parties.

In addition, the Ministry of Labor and Social Security, after a report from the Labor Directorate, must issue a regulation which determines the new limits and parameters for the distribution of exceptional work schedules and rest systems.

6. Continuous shifts: The rule of compensation mentioned above for exceptional working hours will apply to employees of companies that require operational continuity. Thus, a weekly schedule up to 42 hours may be agreed upon, compensating the excess over 40 hours with additional resting days.

7. 4x3 workweek: Notwithstanding the following section 11, five years after the publication of the Act, the parties may agree to distribute the working days over four days of work and three days of rest (currently, the full-time working schedule must be distributed in no less than five or no more than six days).

8. Flexibility of start and end times: Employees who are mothers, fathers, or caregivers of children under 12 years of age may adjust their work schedules up to two hours, advancing or delaying their start times up to one hour, except for certain occupations such as customer service, jobs that require team cooperation or emergency services.

9. Special work schedules: The special work schedules for drivers and assistants of public transportation, passenger transportation services, cargo vehicle drivers, railroad crew, flight and cabin crew, rural transportation, restaurants and domestic service employees, agricultural employees, and seafarers will be adapted to this new limit of work hours according to their own particular rules.

10. Digital platform workers: The formula for calculating the minimum hourly pay rate for independent digital platform workers will be modified.

11. Possibility of agreeing to a maximum workday of 40 hours prior to the entry into force of this obligation:

Companies that adopt the maximum workday of 40 hours in advance of the entry into force of this obligation (i.e. five years after the publication of the Act): /i/ may immediately agree to distribute the workweek over four days of work and three days of rest, and /ii/ small companies will enjoy additional score to apply to programs of the Corporación de Fomento de la Producción, Servicio de Cooperación Técnica and Servicio Nacional de Capacitación y Empleo.

Gradual implementation of the reduction of the workday

In addition to what is indicated in the previous section, reductions in the special workday for drivers, intercity assistants, intercity truck drivers, rural transportation drivers or assistants, railway workers, rural passenger transportation drivers and assistants, agricultural workers, flight crew and ground staff, as well as the possibility of a four-day workweek with three days off and the rules regarding exceptional systems will come into effect on the fifth year after the publication of the Act in the Official Gazette.

As a general rule, all modifications that do not imply a reduction in the workday will come into effect within one year of the publication of the Act in the Official Gazette.

	Contact: For more information, please contact: Luis Parada Partner lparada@dlapiper.cl
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