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Authorisation under the Working Hours Act to deviate from regulations on rest periods

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<https://fimportal.de/xzufi-services/376315157/L100001>

Modul	Sachverhalt
Leistungsschlüssel	99006004017000, 99006004017000
Leistungsbezeichnung I	Authorisation under the Working Hours Act to deviate from regulations on rest periods
Leistungsbezeichnung II	
Typisierung	2/3 - Bund: Regelung (2 oder 3), Land/Kommune: Vollzug
Quellredaktion	Hessen
Freigabestatus Katalog	unbestimmter Freigabestatus
Freigabestatus Bibliothek	fachlich freigegeben (gold)
Begriffe im Kontext	
Leistungstyp	Leistungsobjekt mit Verrichtung
Leistungsgruppierung	Arbeitsschutz (006)
Verrichtungskennung	Bewilligung (017)
SDG-Informationsbereich	Gesetzlich oder durch Rechtsverordnung geregelte

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	Beschäftigungsbedingungen einschließlich Arbeitsstunden, bezahlter Urlaub, Urlaubsansprüche, Rechte und Pflichten in Bezug auf Überstunden, Gesundheitskontrollen, Beendigung von Verträgen, Kündigung oder Entlassungen)
Lagen Portalverbund	Sonderregelungen der Arbeitszeit (2030700)
Einheitlicher Ansprechpartner	Nein
Fachlich freigegeben am	17.02.2022
Fachlich freigegeben durch	Hessian Ministry of Social Affairs and Integration
Handlungsgrundlage	https://www.gesetze-im-internet.de/arbzg/_15.html https://www.gesetze-im-internet.de/arbzg/_15.html
Teaser	Under certain conditions, the Regierungspräsidium may, upon request, grant rest periods derogating from the provisions of working time law.
Volltext	<p>In the following constellations, you can apply to the Hessian regional councils for approval of a deviation from the working time regulations on rest periods, according to which employees must have an uninterrupted rest period of at least eleven hours after the end of daily working hours:</p> <ul style="list-style-type: none"> • § 15 Abs. 1 Nr. 3 Arbeitszeitgesetz (ArbZG): For the public service, the Regierungspräsidium may grant a duration and location of rest periods in the public service that deviate from the provisions on working time (Sections 5 and 11(2) of the Working Time Act) if the employees are employed on standby, on-call duty and on-call duty. <p>Public service are the administrations and operations of the Federation, the Länder, the municipalities and other corporations, institutions and foundations under public law. These include federal and state ministries, their subordinate authorities, the administrations of the district governments or regional councils, other authorities and the administrations of the municipalities.</p> <p>Businesses and companies in which the public sector holds the majority, but which, like any other company,</p>

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are active in a market economy (fiscal enterprises)
cannot be granted an exemption.

- § 15 Abs. 1 Nr. 4 Arbeitszeitgesetz (ArbZG):
A different rest period may also be granted in shift works in order to be able to carry out a regular weekly shift change.
The exemption is only permitted twice within three weeks and applies to rest periods after working days as well as after Sundays and public holidays.

You are not entitled to an exemption. The decision of the Regional Council is made at its due discretion. In the context of this decision, a balance is struck between the interests of protecting the safety and health of workers and the operational interests of the employer.

Erforderliche Unterlagen

\- for an exemption pursuant to § 15 Abs. 1 Nr. 3 Arbeitszeitgesetz (ArbZG):

- details of the activity, the number of workers for whom authorisation is to be granted and the design of standby plans
- Contact person with contact details
- Risk assessment (especially with regard to psychological stress caused by the deviating location of the rest period)
- Opinion of the occupational physician
- Opinion of the staff delegation (if any)
- Proof that flexible deployment of workers must be necessary, either for reasons of public policy or public order or services of general interest
- Schedules for night shifts, from which in particular the break possibilities can be seen

\- for an exemption pursuant to § 15 (1) no. 4 of the Working Hours Act (Arbeitszeitgesetz, ArbZG):

- precise information on the activity, number of

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employees for whom a permit is to be granted and design of shift schedules, contact persons with contact details

- Risk assessment (especially with regard to psychological stress caused by the deviating rest periods)
- Opinion of the occupational physician
- Opinion of the staff delegation (if any)
- Proof that the deviating rest period allows a regular weekly shift change
- Schedules for night shifts, from which in particular the break possibilities can be seen

Voraussetzungen

- for an exemption according to § 15 Abs. 1 Nr. 3 Arbeitszeitgesetz (ArbZG): An exemption is only considered if the employees are employed with standby duty, on-call duty and on-call duty in the public service. The authorisation must take into account the special features of a corresponding use in the public service. These specific features are characterised by the need for flexible deployment of workers, either for reasons of public security and order or services of general interest.
- for an exemption according to § 15 Abs. 1 Nr. 4 Arbeitszeitgesetz (ArbZG): An exemption is only possible for shift companies that want to enable a regular weekly shift change. Authorisation can only be granted twice within 3 weeks.

In both cases, the granting of a different rest period depends on the circumstances of the individual case. It is essential that the health of workers is not adversely affected. An exemption can only be granted if, in the context of a balance between the interests of protecting the safety and health of employees and the employer's operational interests, the latter prevail.

Kosten

The amount of the fees to be determined results from the list of administrative costs for the administrative costs regulation for the business area of the Hessian Ministry of Social Affairs and Integration (VwKostO-HMSI).

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Verfahrensablauf	<p>Since the exemption can only be granted upon application, you must submit a corresponding application to the Regional Council and attach all documents required for a decision on your application.</p> <p>The documents submitted by you will be checked for completeness and conclusiveness and, if necessary, additional documents will be requested.</p> <p>If you meet all the requirements, the permit can be granted. You will then receive a corresponding approval notice.</p> <p>If the conditions are not met, a negative decision will be issued.</p>
Bearbeitungsdauer	Depending on the examination effort (usually a few weeks after submission of the complete documents)
Frist	There is no legal deadline for submitting the application. However, the application should be applied for in good time, at least four weeks before the start of the requested deviation from the rules on the rest period. As a rule, the permits are limited in time.
weiterführende Informationen	
Hinweise	In order to simplify communication and speed up the procedure, you should name a contact person in your company and provide their contact details when submitting the application.
Rechtsbehelf	An appeal against the decision may be brought before the Administrative Court. For more information, please refer to the notification of your application for a derogation from the rules on rest periods.
Kurztext	<ul style="list-style-type: none"> • Derogation from regulations on rest periods Authorisation <ul style="list-style-type: none"> • Upon request, a rest period deviating from § 5 and § 11 (2) of the Working Hours Act may be granted. • Authorisation can only be granted under certain conditions • Approval is limited in time • Responsible: Regional Councils
Ansprechpunkt	Please contact the responsible regional council.

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Zuständige Stelle	
Formulare	<ul style="list-style-type: none"> • Forms: none • Online procedure possible: yes • Written form required: no • Personal appearance required: no
Ursprungsportal	Bewilligung nach dem Arbeitszeitgesetz zur Abweichung von Regelungen zur Ruhezeit, Authorisation under the Working Hours Act to deviate from regulations on rest periods