

WORKING TIME AND FLEXIBILITY CONCLUSIONS

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Abstract

The Comparative Labor Law Dossier (CLLD) in this issue 1/2016 of IUSLabor is dedicated to working time and flexibility. Aside from Spain, we have had the collaboration of internationally renowned academics and professionals of the following countries: Belgium, France, Greece, Italy, Luxembourg, the United Kingdom, Argentina, Brazil, Chile, Costa Rica, Dominican Republic, Mexico, Peru, Uruguay, Canada and the United States.

Without detriment to recommend our readers the reading of these articles, we have drawn the top 10 conclusions. Furthermore, we have elaborated a summary table with the most relevant issues regarding working time and flexibility in the different legal systems analyzed in this issue of IUSLabor.

El Comparative Labor Law Dossier (CLLD) de este número 1/2016 de IUSLabor está dedicado a tiempo de trabajo y flexibilidad. Además de España, hemos obtenido la participación de académicos y profesionales de prestigio de los siguientes países: Bélgica, Francia, Grecia, Italia, Luxemburgo, Reino Unido, Argentina, Brasil, Chile, Costa Rica, México, Perú, República Dominicana, Uruguay, Canadá y Estados Unidos.

Sin perjuicio de recomendar a nuestros lectores la lectura del capítulo correspondiente a cada uno de los países citados, en las páginas que se suceden hemos incluido las 10 conclusiones principales que hemos alcanzado. Asimismo, hemos elaborado un cuadro-resumen con aquellas cuestiones más relevantes en materia de tiempo de trabajo y flexibilidad en los distintos ordenamientos jurídicos analizados en este número de IUSLabor.

Título: Seguridad y salud laboral. Conclusiones

Keywords: working time, flexibility, maximum working hours, rest periods, work-life balance, zero hour contract

Palabras clave: tiempo de trabajo, flexibilidad, jornada laboral máxima, períodos de descanso, conciliación de la vida laboral, familiar y personal, contrato de cero horas.

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1. «Top ten» conclusiones

El Comparative Labor Law Dossier (CLLD) de este número 1/2016 de IUSLabor está dedicado al tiempo de trabajo y flexibilidad e incorpora artículos, elaborados por académicos de prestigio a nivel internacional, sobre la regulación de esta importante materia.

En el contexto de las nuevas tecnologías y el trabajo digital, hemos considerado que es un buen momento para analizar desde una **perspectiva comparada** las cuestiones más relevantes en esta disciplina, tanto a nivel comunitario como a nivel internacional. Así, en el presente dossier abordamos 10 cuestiones principales en materia de tiempo de trabajo y flexibilidad en los ordenamientos jurídicos de **Bélgica, España, Francia, Grecia, Italia, Luxemburgo, Reino Unido, Argentina, Brasil, Chile, Costa Rica, México, Perú, República Dominicana, Uruguay, Canadá y Estados Unidos**.

El CLLD ha partido del siguiente **test de preguntas** a las que han dado respuesta los colaboradores internacionales de la revista:

1. ¿La regulación en materia de tiempo de trabajo establece una jornada laboral máxima diaria, semanal y/o anual? En su caso, ¿cuál es esta jornada laboral máxima?
2. ¿Cuál es la regulación en materia de descansos diarios, semanales y anuales?
3. ¿Existen regulaciones especiales de jornada laboral y descansos en atención a determinadas características personales de los trabajadores (por ejemplo, edad) o para determinadas profesiones? Indicar, en su caso, estas jornadas laborales máximas.
4. ¿Están admitidas las horas extraordinarias? En caso afirmativo, ¿cuál es el límite máximo anual de horas extraordinarias? ¿Estas horas se incluyen dentro de la jornada máxima? ¿Cómo se compensan estas horas extraordinarias?
5. La regulación en materia de tiempo de trabajo, ¿admite la posibilidad que la empresa unilateralmente determine o altere la jornada laboral inicialmente establecida de los trabajadores? En su caso, determinar en qué supuestos y condiciones.
6. ¿Tienen los trabajadores capacidad para unilateralmente determinar, modificar o reducir su jornada inicialmente establecida debido a necesidades de conciliación de la vida laboral y familiar? En su caso, determinar en qué supuestos y condiciones.
7. ¿Y debido a necesidades de conciliación de la vida laboral y personal (por ejemplo, formación)?

8. ¿Cuál es la definición y régimen jurídico de trabajo a tiempo parcial? ¿Se prevé la posibilidad de realizar horas extraordinarias por parte de los trabajadores contratados mediante un contrato a tiempo parcial?
9. ¿Se admite en su ordenamiento jurídico el denominado contrato de cero horas? Esto es, un contrato sin concreción de la jornada laboral del trabajador y su determinación por parte de la empresa.
10. La evolución de la regulación del tiempo de trabajo en su país, ¿ha aumentado o disminuido la flexibilidad empresarial en la gestión del tiempo de trabajo de sus trabajadores?

A continuación se exponen, siguiendo el mismo orden de las preguntas, **las 10 conclusiones principales en materia de tiempo de trabajo y flexibilidad** alcanzadas en base a los artículos elaborados por nuestros académicos internacionales.

1. En todos los ordenamientos jurídicos analizados la regulación en materia de tiempo de trabajo incluye **límites máximos de la jornada laboral**. La única excepción la constituye la **regulación estadounidense** que no incluye una jornada máxima para trabajadores mayores de edad. En los demás países, la regulación en materia de tiempo de trabajo se concreta en el establecimiento de una **jornada laboral máxima diaria y mensual**, destacando únicamente la **regulación francesa** que incluye una jornada máxima anual.

Aunque generalmente la jornada laboral máxima se encuentra regulada en **normas laborales**, deben destacarse los casos de **Brasil, Costa Rica, México y Perú**, que incluyen la regulación de la jornada máxima en su Constitución Política.

Existe una interesante variabilidad en cuanto a la **jornada laboral máxima** en los distintos ordenamientos jurídicos analizados. Esta variabilidad es especialmente interesante en las **regulaciones europeas**, más si tenemos en cuenta la **Directiva 2003/88/CE** del Parlamento Europeo y del Consejo, de 4 de noviembre de 2003, relativa a determinados aspectos de la ordenación del tiempo de trabajo. Directiva que, recuérdese, establece una jornada máxima de 48 horas semanales, incluidas las horas extraordinarias. Sin embargo, la facultad de los estados miembros de aplicar disposiciones más favorables para los trabajadores se ha traducido en una **variabilidad importante** en la jornada máxima semanal en los distintos estados de la Unión Europea, que oscila **desde las 35 horas semanales en Francia** hasta la jornada de **48 horas en Italia o el Reino Unido**.

La regulación de tiempo de trabajo en **Bélgica y Grecia** establece una jornada laboral máxima distinta en función del número de días laborables a la semana. Así, la jornada

máxima en Bélgica es de 8 horas diarias, que aumenta hasta 9 horas diarias para aquellos trabajadores que gozan de más de un día de descanso semanal. Similarmente, la jornada máxima en Grecia es de 40 semanales para los trabajadores con una jornada semanal de cinco días y 48 horas para los que trabajan seis días a la semana.

La **variabilidad es significativamente menor entre los países de Sudamérica**, donde la jornada máxima se sitúa en torno a los 8-10 horas diarias, mientras que la jornada semanal oscila desde las 40 horas máximas en **Costa Rica** hasta las 48 horas en **Argentina** y **Perú**. Destacar también las regulaciones de **Uruguay** y **Costa Rica** que establecen distintas jornadas máximas en función del sector económico o del número de días a la semana trabajados, respectivamente. En **Ontario (Canadá)**, la jornada laboral máxima es similar a las regulaciones de algunos países europeos y sudamericanos, situándose en las 8 horas diarias y las 48 horas semanales.

2. La regulación en materia de tiempo de trabajo complementa la jornada laboral máxima con el establecimiento de **períodos mínimos de descansos diarios, semanales y anuales**, existiendo, en este punto, una **clara homogeneidad** en los ordenamientos jurídicos analizados. Las únicas excepciones son la regulación **peruana** y **estadounidense**, que no incluyen periodos de descanso para trabajadores mayores de edad –salvo un descanso de 30 minutos para comidas en la última.

Entre los **países de la Unión Europea**, la homogeneidad es resultado de la **Directiva 2003/88/CE**, que establece un descanso en jornadas superiores a seis horas, un descanso mínimo diario de once horas consecutivas y un período de descanso ininterrumpido de veinticuatro horas ininterrumpidos cada siete días. En este sentido, la regulación en materia de periodos de descansos en los distintos estados miembros analizados es de mínimo 15-20 minutos en jornadas superiores a seis horas y entre 11-12 horas de descanso diario. La regulación del descanso semanal está sujeta a mayor variabilidad, desde las 24 horas en el caso de **Bélgica, Grecia** y el **Reino Unido** hasta las 48 horas de descanso ininterrumpido semanal en el caso de **Italia**.

También existe homogeneidad en la regulación de los periodos de descanso en los países extracomunitarios analizados. Así, la gran mayoría de los ordenamientos jurídicos de Norte y Sudamérica analizados reconocen a sus trabajadores un descanso diario de entre 15-30 minutos (alcanzando hasta 1 hora en **Brasil** y **República Dominicana**) y un descanso semanal de entre 24-36 horas. Son pocos, no obstante, los países que regulan asimismo un descanso mínimo entre jornadas, destacando **Argentina, Brasil** y **Chile**.

La regulación del **descanso anual** presenta, no obstante, **mayor variabilidad** entre los distintos ordenamientos jurídicos analizados. En los estados miembros, la regulación respeta el **mínimo cuatro semanas de vacaciones anuales retribuidas** regulado en la **Directiva 2003/88/CE**, existiendo, no obstante, diferencias significativas. Así, algunos estados miembros, como es el caso de **Bélgica**, reconocen el derecho de los trabajadores a 20 o 24 días de vacaciones, variable en atención al número de días laborables y, en el caso de **Grecia**, a la antigüedad del trabajador. En otros, como es el caso del **Reino Unido**, este derecho se ha ampliado hasta 5,6 semanas.

Mayor variabilidad todavía encontramos entre los países extracomunitarios, donde el derecho a vacaciones retribuidas es entre 6 días en **México** hasta 30 días en **Brasil** y **Perú**. No obstante lo anterior, y a diferencia de la regulación europea, son muchos los ordenamientos jurídicos que incrementan las vacaciones reconocidas a los trabajadores en función de la antigüedad del trabajador; este es el caso de **Argentina, Chile, República Dominicana, México** y **Uruguay**.

Finalmente, en cuanto a la regulación de las vacaciones, es interesante destacar la **regulación canadiense** que, contrariamente a muchas regulaciones europeas, admite la posibilidad de que los trabajadores renuncien a sus dos semanas de vacaciones, aunque no a la retribución correspondiente a este período.

3. En la totalidad de ordenamientos jurídicos analizados, la regulación en materia de tiempo de trabajo establece **jornadas laborales y periodos de descanso especiales** en atención a determinadas características personales de los trabajadores o para determinadas profesiones o sectores económicos –en **Estados Unidos** esta regulación se encuentra en estatutos especiales y/o estatales. Esencialmente, se establecen más **restricciones en materia de tiempo de trabajo** para trabajadores menores de edad, con alguna discapacidad, mujeres embarazadas, trabajadores nocturnos y actividades peligrosas. Por el contrario, se **amplía la jornada laboral máxima y se reducen descansos para ciertas profesiones o sectores**, como son empleados del hogar, personal de alta dirección, sector de la hostelería, trabajadores del mar, transportistas, aviación civil, médicos, etc.

4. Las horas extraordinarias son admitidas en todos los ordenamientos jurídicos analizados. No obstante lo anterior, destacar la **regulación chilena** que limita la realización de horas extraordinarias a la existencia de acuerdo de duración máxima de 3 meses y, también en la **regulación dominicana**, a la existencia de causas empresariales. Asimismo, cabe señalar que en muchos de los ordenamientos jurídicos analizados, existe una **prohibición de realización de horas extraordinarias para determinados trabajadores** como son los trabajadores menores de edad y trabajadores nocturnos –en

algunos países, esta prohibición se extiende incluso a trabajadores a tiempo parcial, como en el caso de **España**, e incluso a trabajadores externos, puestos de trabajo de riesgo y personal de alta dirección en **Brasil**.

Generalmente, la **realización es voluntaria** por parte de los trabajadores, salvo la existencia de un acuerdo colectivo o individual que imponga su realización. Existen, no obstante, **excepciones importantes al requisito de la voluntariedad**, nuevamente también entre estados miembros de la Unión Europea. En este sentido, no es exigido en la **regulación francesa**, salvo que se requiera superar el número máximo; la **regulación belga** únicamente reconoce al trabajador capacidad para rechazar la realización de horas extraordinarias en supuestos de modificación importante de la jornada laboral; la **regulación italiana** no requiere el requisito de la voluntariedad en supuestos de concurrencia de causas técnicas y productivas; y la **regulación griega** tampoco en supuestos de necesidades de trabajo o fuerza mayor.

El número máximo de horas extraordinarias es, no obstante, una de las materias sujetas a **mayor variabilidad**, también entre los estados miembros de la **Unión Europea**. En algunos ordenamientos europeos el número máximo de horas extraordinarias se remite a la negociación colectiva, como en el caso de **Francia**, o se remiten a la jornada laboral máxima, como son las regulaciones de **Luxemburgo** y **Reino Unido**. Otras regulaciones, por el contrario, han optado por establecer una jornada laboral máxima inferior a las 48 horas semanales previstas en la **Directiva 2003/88/CE** y, por consiguiente, establecen un número máximo de horas extraordinarias al año. Incluso dentro de este segundo grupo de países, existen diferencias importantes en el número máximo de horas extraordinarias: 78 horas anuales en la **regulación belga** y 80 horas en **España**, entre 5-8 horas semanales en **Grecia** y hasta 250 horas anuales en **Italia**. Esta variabilidad en el número máximo de horas extraordinarias también se observa en los **estados extracomunitarios**, desde máximo 2 horas diarias en **Brasil** y **Chile**, las 30 horas mensuales y 200 horas anuales en **Argentina**, hasta las 80 horas trimestrales en **República Dominicana**.

Finalmente, en cuanto al régimen jurídico de las horas extraordinarias es importante destacar que existe **notable homogeneidad** entre los distintos ordenamientos jurídicos analizados –tanto comunitarios como extracomunitarios– **en cuanto a la compensación de las horas extraordinarias**. La **gran mayoría de estados miembros de la Unión Europea** analizados admiten la posibilidad de **retribuir las horas extraordinarias o compensarlas mediante descanso** equivalente, destacar únicamente las excepciones de **Grecia** y el **Reino Unido**. En sentido contrario, en las regulaciones extracomunitarias la tendencia mayoritaria es la retribución de las horas extraordinarias, destacando las

regulaciones de **Brasil, Perú y Ontario (Canadá)** que admiten también la compensación por descanso.

En todo caso, es un **denominador común** en la práctica totalidad de ordenamientos jurídicos analizados **la retribución de la hora extraordinaria por encima de la hora ordinaria**. Con la excepción de **Italia, España, el Reino Unido y Argentina**, en la mayoría de ordenamientos jurídicos analizados el precio de la hora extraordinaria incluye un recargo entre el 25 al 100% de la hora ordinaria, pudiendo alcanzar hasta el 200% en **México**. Este recargo incluso se encuentra en **Estados Unidos** que, a pesar de no contar con una jornada máxima ni un número máximo de horas extraordinarias, prevé dicho recargo en las horas extraordinarias que superan 40 horas semanales. Más allá, en los ordenamientos jurídicos de **Luxemburgo, Brasil u Ontario (Canadá)** este recargo también existe en la compensación de las horas extraordinarias mediante descanso equivalente, debiéndose compensar, por tanto, una hora extraordinaria con una hora y media de descanso.

5. La distribución irregular de la jornada está admitida en la práctica totalidad de ordenamientos jurídicos analizados, con la excepción de Argentina.

La regulación en materia de tiempo de trabajo en los ordenamientos analizados incluye, como se ha apuntado anteriormente, jornadas máximas diarias y semanales. Sin embargo, mediante distribución irregular de la jornada se admite la superación de dichos límites máximos en días, semanas o meses concretos siempre que dichos límites se respeten de media dentro del período de referencia –período de referencia que se extiende desde 4 semanas en **Luxemburgo** hasta 1 año en **España y Reino Unido**. Además de los límites anteriores, las **regulaciones belga, griega y chilena** incluyen límites adicionales referentes al número de horas máximas de distribución irregular: la regulación belga distingue entre “*small flexibility*” limitada a 2 horas diarias o 5 horas semanales y “*big flexibility*” que admite la prestación de servicios hasta 12 horas diarias; la regulación griega establece un máximo de 2 horas diarias durante 3 meses o 256 horas anuales durante un máximo de 32 semanas; y la regulación chilena limita la distribución irregular a 60 minutos al día.

No obstante lo anterior, entre los estados miembros de la **Unión Europea, no existe homogeneidad en relación con la capacidad empresarial para establecer dicha distribución irregular de la jornada de forma unilateral**. El **Reino Unido y Grecia** únicamente admite la distribución irregular de la jornada mediante acuerdo contractual. Por el contrario, en los ordenamientos jurídicos de **Bélgica, Francia, Italia y España** se reconoce la facultad empresarial de unilateralmente imponer una distribución irregular

de la jornada. En el caso español, no obstante, esta facultad se encuentra limitada al 10% de la jornada anual de los trabajadores.

Entre los estados extracomunitarios, la mayoría admiten la facultad empresarial de unilateralmente imponer una distribución irregular de la jornada. La única excepción la constituye **Perú**, que no admite dicha facultad cuando la jornada estuviera regulada en convenio colectivo. Además, las regulaciones de **Chile, Perú y Uruguay** exigen la concurrencia de causas empresariales u objetivas para la introducción de una distribución irregular en la empresa de forma unilateral. Finalmente, destacar la regulación de **Ontario (Canadá)**, que requiere el consentimiento del trabajador o acuerdo con los representantes de los trabajadores para la distribución irregular de la jornada que suponga la superación de la jornada diaria y semanal máxima.

6. La regulación en materia de medidas de conciliación de la vida laboral y familiar presenta importantes diferencias entre los países miembros de la Unión Europea y demás países extracomunitarios.

En concreto, **son los estados europeos** quienes reconocen mayoritariamente a los trabajadores, además de permisos de maternidad y paternidad, el **derecho a reducir su jornada laboral por circunstancias familiares**. En la mayoría de **estados extracomunitarios** analizados, se reconocen permisos parentales o derechos de reducción de la jornada por lactancia natural. Sin embargo, son pocos los que reconocen el derecho del trabajador de reducir su jornada por circunstancias familiares; las excepciones la constituyen la **República Dominicana**, que requiere acuerdo con la empresa, **Uruguay**, que reconoce un subsidio parental para cuidados del recién nacido consistente en una reducción horaria y **Ontario (Canadá)**, que lo prevé en limitadas circunstancias cuando no existe alternativa posible.

No obstante lo anterior, incluso entre los estados miembros de la **Unión Europea** existe una **importante variabilidad en cuanto al régimen jurídico** o alcance de dicho derecho de reducción de la jornada por circunstancias familiares. En este sentido, **Bélgica, Luxemburgo y España** reconocen este derecho como un derecho individual de los trabajadores, no requiriéndose, por consiguiente, acuerdo con la empresa. Por el contrario, en **Francia, Grecia, Italia** y el **Reino Unido**, dicho derecho se encuentra sujeto a alcanzar un acuerdo con la empresa o la empresa puede oponerse por causas justificadas.

En todo caso, en **ninguno de los estados miembros** se reconoce al trabajador el derecho de imponer unilateralmente a la empresa una **adaptación o modificación de la distribución de su tiempo de trabajo por circunstancias familiares**.

7. Son muchos los ordenamientos jurídicos que regulan derechos de adaptación de la duración o distribución de la jornada para atender a circunstancias de **formación**. A modo de ejemplo, **Bélgica** reconoce 100 horas anuales de permiso retribuido para formación; este permiso es de 20 horas anuales en **España**; no tienen carácter retribuido en **Grecia**; se limitan a determinadas instituciones o formaciones en **Luxemburgo** y a trabajadores jóvenes en el **Reino Unido**. También entre los estados extracomunitarios, algunos reconocen permisos formativos, como es el caso de **Argentina, Costa Rica** – aunque limitado a trabajadores menores de edad– y **Uruguay**.

Sin perjuicio de los anteriores permisos formativos, son **pocos los ordenamientos jurídicos** que reconocen el **derecho de los trabajadores de modificar la duración o distribución de su tiempo de trabajo por circunstancias personales** distintas a necesidades familiares. Destacan como excepción **Bélgica**, que reconoce el derecho de reducción del tiempo de trabajo a trabajadores mayores de edad; **Grecia** reconoce el derecho de los trabajadores del sector público de solicitar una reducción del 50% de la jornada por cualquier causa como medida de contención del gasto público; y **Chile**, que reconoce el derecho de ausencia del puesto de trabajo a trabajadores mayores de edad para acudir a exámenes médicos. En los **demás ordenamientos jurídicos**, cualquier modificación del tiempo de trabajo requiere **acuerdo con la empresa**.

8. La definición de trabajo a tiempo parcial es común en muchos de los estados analizados. En la **gran mayoría de ordenamientos jurídicos** el trabajo a tiempo parcial es aquél que se desarrolla en **número de horas inferior al trabajo a tiempo completo comparable**. Esta homogeneidad no resulta sorprendente entre los estados miembros de la Unión Europea, por cuanto la cláusula 3 de la **Directiva 97/81/CE** del Consejo de 15 de diciembre de 1997 relativa al Acuerdo marco sobre el trabajo a tiempo parcial concluido por la UNICE, el CEEP y la CES define trabajador a tiempo parcial como aquél “*cuya jornada normal de trabajo, calculada sobre una base semanal o como media de un período de empleo de hasta un máximo de un año, tenga una duración inferior a la de un trabajador a tiempo completo comparable*”. Sin embargo, son muchos los estados extracomunitarios que utilizan también esta definición de trabajo a tiempo parcial, destacando únicamente como excepción **Brasil, Chile y Perú** que establecen una jornada máxima para el trabajo a tiempo parcial de 25 horas a la semana, 2/3 partes la jornada a tiempo completo y 4 horas diarias, respectivamente. En sentido contrario, es interesante destacar la **regulación francesa**, que exige al trabajo a tiempo parcial una jornada mínima de 24 horas semanales –salvo acuerdo establecido en convenio colectivo.

La mayoría de ordenamientos jurídicos analizados aceptan la **realización de horas extraordinarias en el contrato a tiempo parcial**. Las excepciones las constituyen

Argentina, Brasil y España –aunque en este último supuesto se admite la realización de las denominadas horas complementarias que, a pesar de tener un régimen jurídico distinto, también son horas adicionales a las horas ordinarias. Asimismo, aunque en **Bélgica y Grecia** se admite la realización de horas extraordinarias por parte de los trabajadores a tiempo parcial, éstas se encuentran limitadas: en el caso belga a supuestos excepcionales y en el caso griego a la concurrencia de necesidades empresariales pudiendo el trabajador rechazar su realización por causas justificadas.

Finalmente, es interesante destacar el **ordenamiento belga**, que reconoce un **derecho preferente a ocupar una vacante** a tiempo completo en la empresa, y el **peruano**, que no consagra el principio de igualdad de trato entre trabajadores a tiempo completo y parcial, no reconociéndoles derecho a vacaciones, compensación por despido o desempleo.

9. A pesar del debate social creciente en muchos países, el denominado **contrato de cero horas se reconoce únicamente en algunos ordenamientos jurídicos europeos y norteamericanos**; en concreto –entre los países analizados– el contrato de cero horas es admitido en **Grecia, Italia y Reino Unido**. Por el contrario, **en los demás estados europeos analizados y en ninguno de los estados de América del Sur se admite dicho contrato de cero horas**, al requerirse la especificación del tiempo de trabajo en el contrato de trabajo.

En el **Reino Unido**, a pesar de ser probablemente uno de los países más conocidos por el contrato de cero horas, existe un importante debate social y doctrinal entorno a esta figura contractual. Aunque la regulación de este contrato no confiere una protección especial a los trabajadores, es interesante destacar su compatibilidad con otros contratos laborales, declarándose nulas las cláusulas de exclusividad.

10. La **mayoría de académicos internacionales** que han participado en la elaboración del presente dossier de derecho comparado afirman que la evolución de la regulación en materia de tiempo de trabajo ha **aumentado la flexibilidad empresarial en la gestión del tiempo de trabajo de sus trabajadores**. Esto es, afirman que la regulación del tiempo de trabajo ha evolucionado para permitir una mayor adaptación del tiempo de trabajo a las necesidades técnicas o productivas de la empresa.

Destacar, no obstante, los casos de **Reino Unido, República Dominicana y Uruguay**, donde no se observa una evolución significativa en la regulación en materia de tiempo de trabajo, ni tampoco un incremento o reducción en términos de flexibilidad. Subrayar también las regulaciones de **España y Chile**, donde ha habido una importante evolución en materia de derechos de conciliación de la vida laboral, familiar y personal.

2. «Top ten» conclusions

The Comparative Labor Law Dossier (CLLD) in this issue 1/2016 of IUSLabor is dedicated to working time and flexibility and it includes articles, elaborated by internationally renowned academics and professionals, regarding this important matter.

In the context of new technologies and digital work, we considered it a good time to analyze, from a **comparative perspective**, the most relevant issues in this matter, both at EU and international level. In this dossier we analyzed the most relevant 10 issues in the legal systems of **Belgium, France, Greece, Italy, Luxembourg, Spain, the United Kingdom, Argentina, Brazil, Chile, Costa Rica, Dominican Republic, Mexico, Peru, Uruguay, Canada and the United States**.

The international advisors of the law review have responded to the following questions:

1. Does the regulation on working time establishes a daily, weekly and/or annual limit of working hours? If so, what is the maximum working hours?
2. What is the regulation regarding daily, weekly and annual rests periods?
3. Are there special regulations for working hours and rest periods in response to certain personal characteristics of workers (for example, age) or for certain professions? In this case, indicate these maximum working hours.
4. Is overtime allowed? If so, what it is the maximum annual limit of overtime? Are these hours included within the maximum working hours? How is overtime compensated?
5. Does the regulation on working time allow the employer to unilaterally determine or alter the working hours of workers initially established? If so, determine under which circumstances and conditions.
6. Do workers have the ability to unilaterally adapt, modify or reduce their working hours due to work-family balance reasons? If so, determine under which circumstances and conditions.
7. And due to work-life balance needs (for example, training or education)?
8. What is the definition and legal regime of part-time work? Does the regulation of part-time work allow part-time workers to perform overtime?
9. Does your legal system recognized the so-called zero hour contract? This is, a contract that does not require the specification of working time and working hours are determined by the employer?
10. Has the evolution of the regulation of working time in the country increased or decreased flexibility in managing working time?

Following, and in the same order of the above questions, are the **10 most important conclusions** working time and flexibility, drawn from the articles written by our international consultants.

1. In the vast majority of legal systems analyzed in this comparative dossier the regulation on working time includes **maximum working hours**. The only exemption is the **regulation in the United States** that sets no limits on working hours for employees over the age of 18. In the other countries analyzed, the regulation on working time usually take the form of **daily and monthly maximum working hours**, highlighting the **French regulation** that also includes an annual maximum.

Although usually the maximum working time is regulated by **labor standards**, it should be highlighted the cases of **Brazil, Costa Rica, Mexico and Peru**, where the regulation of maximum working time is included in the Constitution of these countries.

There is an interesting variability in the maximum working hours in the different legal systems analyzed. This variability is especially interesting in European regulations, especially if we take into account **Directive 2003/88/EC** of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time. This Directive, as it is well known, establishes a maximum working week of 48 hours, including overtime. However, the right of member states to regulation more favorable provisions has resulted in a **significant variability** in the maximum weekly working time in the different states of the European Union, **ranging from 35 hours a week in France to 48 hours in Italy or the United Kingdom**.

The regulation of working time in **Belgium and Greece** establishes different maximum working hours depending on the number of working days a week. As a result, the maximum working day in Belgium is 8 hours, increasing to 9 hours for workers with more than one day of rest a week. Similarly, the maximum working time in Greece is 40 hours per week for workers with a five-day working week and 48 hours for those working six days a week.

Variability is significantly lower among countries in South America, where the maximum working time is about 8-10 hours a day, while working week ranges from 40 hours in **Costa Rica** to 48 hours in **Argentina and Peru**. It is also interesting to highlight the regulations in **Uruguay and Costa Rica** that set different maximum days depending on the economic sector or the number of days worked per week, respectively. In **Ontario (Canada)**, the maximum workday is similar to regulations in some European and South American countries: 8 hours per day and 48 hours per week.

2. The regulation on working time complements the maximum working hours with the establishment of minimum **daily, weekly and annual rest periods**, and, in this matter, there is a **clear uniformity in the different legal systems** analyzed. The only exceptions are **Peru** and the **United States** that do not include regulation of rest periods for workers –except a 30 minute break period for meals in the former.

Among **countries of the European Union**, homogeneity is the result of **Directive 2003/88/EC** that establishes a break for working days of more than six hours, minimum eleven consecutive hours of daily rest and an uninterrupted rest period of twenty-four hour days every seven days. In this sense, the regulation of rest periods in the different member states analyzed is at least 15-20 minutes for working days that exceed six consecutive hours and between 11-12 hours daily rest days. The regulation of weekly rest is subject to greater variability, from 24 hours in **Belgium, Greece** and the **United Kingdom** to 48 hours of uninterrupted weekly rest in **Italy**.

There is also uniformity in the regulation of rest periods in non-EU countries. Thus, the vast majority of the non-EU legal systems analyzed recognize workers a rest period of between 15-30 minutes (reaching up to 1 hour in **Brazil** and the **Dominican Republic**) and a weekly rest period of 24-36 hours. However, only few countries regulate a minimum rest period between working days, highlighting **Argentina, Brazil** and **Chile**.

The regulation of **annual rest** presents, however, **greater variability** among the different legal systems analyzed. In the member states, the regulation respects the **minimum of four weeks of paid vacations** established in the **Directive 2003/88/EC**, existing, however, significant differences. Some member states, such as **Belgium**, recognize workers the right of between 20 or 24 days vacation variable on the number of working days and, in the case of **Greece**, the age of the worker. In others regulations, as is the **United Kingdom**, this right has been extended to 5.6 weeks of vacations.

Greater variability is found among non-EU countries, where the right to paid vacations is between 6 days in **Mexico** and 30 days in **Brazil** and **Peru**. Notwithstanding the foregoing, and unlike European regulations, many legal systems increase the number of day's vacations as worker's seniority increase; this is the case of **Argentina, Chile, Dominican Republic, Mexico** and **Uruguay**.

Finally, with regard to the regulation of vacations, it is interesting to note the Canadian regulation that, contrary to many European regulations, admits the possibility that workers give up their two-week vacation, but not the corresponding retribution.

3. In all legal systems analyzed, the regulation on working time establishes **different working hours and rest periods** for workers that require special attention as a result of their personal characteristics or for certain professions or economic sectors –in the **United States**, however, this regulation is found in specific and state statutes. Essentially, **more restrictions on working time** are placed for underage workers, workers with disabilities, pregnant women, night workers and hazardous activities. By contrast, the **maximum working time is extended and rest periods are reduced** for certain professions or sectors, such as domestic workers, senior management, hospitality industry, seafarers, transport, civil aviation, medical, etc.

4. Overtime is allowed in all legal systems analyzed. Notwithstanding the foregoing, it is interesting to note the **Chilean regulation** that limits overtime in cases of an agreement of maximum 3 months duration, as well as the **Dominican regulation** that requires business reasons. It should also be noted that in many legal systems analyzed, there is a **ban on overtime for certain workers** such as minor and night workers –in this prohibition extends to part-time workers in **Spain** and to outside workers, workers in hazardous activities and senior management personnel in **Brazil**.

Generally, **overtime is voluntary for workers**, except if there is a collective or individual agreement imposing its realization. There are, however, **important exceptions to the requirement of voluntariness**, again also among member states of the European Union. In this sense, it is not required by the **French regulation**, unless the maximum number of overtime is exceeded; the **Belgian regulation** recognizes only the worker ability to refuse overtime in cases of substantial change in working hours; the **Italian regulation** does not require overtime to be voluntary in cases of technical and production causes; and the **Greek regulation** in cases of *force majeure*.

The maximum number of hours of overtime is, however, one of the matters subject to **greater variability**, also among member states. In some European jurisdictions the maximum overtime refers to collective bargaining, as in **France**, or the maximum working week established in the labor standards, as in **Luxembourg** and the **United Kingdom**. Other regulations, however, have chosen to establish a maximum working week under the 48 hours provision of the **Directive 2003/88/EC** and, therefore, set a maximum number of hours of overtime hours. Even within this second group of countries there are significant differences in the maximum overtime allowed: 78 hours per year in **Belgium** and 80 hours in **Spain**, between 5-8 hours per week in **Greece** and up to 250 hours per year in **Italy**. This variability in the maximum overtime allowed is also observed in non-EU states: from a maximum of 2 hours a day in **Brazil** and **Chile**, 30 hours a month and 200 hours a year in **Argentina**, to 80 hours a trimester in the **Dominican Republic**.

Finally, regarding the legal regime of overtime, it is important to note that there is a **remarkable consistency** between different legal systems analyzed –both EU and non-EU countries– **regarding compensation for overtime**. The vast majority of member states of the European Union allow the possibility of compensating overtime with compensatory rest or through an additional payment; the only two exceptions are **Greece** and the **United Kingdom**. On the contrary, in non-EU regulations the majority trend is payment for overtime, although **Brazil, Peru** and **Ontario (Canada)** also allow compensator rest.

In any case, it is a **common denominator** in nearly all legal systems analyzed that **remuneration for overtime is higher than the payment for an ordinary working hour**. With the exception of **Italy, Spain, the United Kingdom** and **Argentina**, in most legal systems analyzed the price of overtime includes a surcharge between 25 to 100%, which can reach up to 200% in **Mexico**. This surcharge even exists in the **United States** that, despite not including a maximum working time or on overtime in its legislation, establishes a surcharge for overtime that exceeds 40 hours a week. Furthermore, in the legal systems of **Luxembourg, Brazil** and **Ontario (Canada)** this surcharge also exists when compensation overtime with equivalent rest, having to compensate an hour of overtime with an additional half hour of rest.

5. The irregular distribution of working time is allowed in practically all legal systems analyzed, with the exception of **Argentina**.

The regulation on working time in the analyzed legal systems generally includes, as noted above, maximum daily and weekly working time. However, by irregular distribution of working time overcoming these maximums in given days, weeks or months is permitted, provided that these limits are observed on average in the period of reference –period of reference extending from 4 weeks in **Luxembourg** to 1 year in **Spain** and the **United Kingdom**. In addition to the above limits, the **Belgian, Greek** and **Chilean regulations** include additional limits regarding the number of maximum hours of irregular distribution: the Belgian regulation distinguishes between “small flexibility” limited to 2 hours a day or 5 hours a week and “big flexibility” that allows work up to 12 hours a day; the Greek regulation sets a maximum of 2 hours per day for 3 months or 256 hours per year during 32 weeks; and the Chilean regulation limits the irregular distribution to 60 minutes a day.

Notwithstanding the foregoing, among the member states of the **European Union**, **there is no homogeneity regarding the employer’s capacity to establish such irregular distribution of working time unilaterally**. The **United Kingdom** and **Greece** only allow irregular distribution of working hours by contractual agreement. By

contrast, in the legal systems of **Belgium, France, Italy** and **Spain** employer's faculties include the ability to unilaterally impose an irregular distribution of working time. In the Spanish case, however, this ability is limited to 10% of the annual working time.

Among non-EU regulations, most allow the employer's capacity to unilaterally impose an irregular distribution of working time. The only exception is **Peru**, which does not allow this option working time was regulated by collective agreement. In addition, the regulations of **Chile, Peru** and **Uruguay** require the existence of business or objective reasons to justify the introduction of an irregular distribution of working time unilaterally by the employer. Finally, note that the regulation of **Ontario (Canada)** requires the employee's consent or an agreement with workers' representatives to introduce an irregular distribution of working time in the company that exceeds the maximum working day and week.

6. The regulation of work-family balance measures presents significant differences between countries of the European Union and other countries.

Specifically, it is **mainly the European regulations** that recognize workers, in addition to maternity and paternity leave and other parental leave rights, the **right to reduce their working time due to family responsibilities**, such as care of a child or dependent family member. Most non-EU countries analyzed recognize parental leave rights or the right to reduced working hours for breastfeeding. However, there are very few who recognize the worker's right to reduce their working time due to family responsibilities; the exceptions are the **Dominican Republic** that requires an agreement with the employer, **Uruguay** that recognizes workers the right to reduce their working time in cases of newborns and **Ontario (Canada)** that allows such reduction on working time only when there is no alternative.

Notwithstanding the foregoing, even among **member states** there is **significant variability regarding the legal regime or scope** of such right to reduced working hours due to family responsibilities. In this regard, **Belgium, Luxembourg** and **Spain** recognize this right as a worker's individual right not requiring, therefore, agreement the company. By contrast, in **France, Greece, Italy** and the **United Kingdom**, this right is subject to reaching an agreement with the company or the employer may oppose the exercise of this right for justified reasons.

In any case, **none of the member states** recognized workers the right to unilaterally impose on the company an adaptation or modification of the distribution of their working time due to family circumstances.

7. Many legal systems include workers' rights to adapt the duration or distribution of their working time due to training circumstances. For example, **Belgium** recognizes 100 hours of annual paid leave for training; this permit is equivalent to 20 hours per year in **Spain**; in **Greece** it is a non-paid leave; and it is limited to certain institutions or trainings in **Luxembourg** and for young workers in the **United Kingdom**. Also among non-EU states, some recognize training leave, as is the case of **Argentina, Costa Rica** –although limited to minor workers– and **Uruguay**.

Besides the above training leave, **very few legal systems recognize the worker's right to modify the duration or distribution of their working time due to personal needs** different from family responsibilities. They stand out as an exception **Belgium**, which recognizes older workers the right to reduce their working time; **Greece** recognizes the right of public sector workers to request a reduction of 50% of their working day for any reason as a measure to contain public spending; and **Chile** recognizes the right of absence from work for older workers to attend medical exams. In **other legal systems**, any modification of working time requires an **agreement with the company**.

8. The definition of part-time work is common in many of the countries analyzed. In the **vast majority of legal systems** part-time work is that developed in **fewer hours than the comparable full-time work**. This homogeneity is not surprising among the member states of the European Union, as clause 3 of the **Council Directive 97/81/EC** of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and ETUC defines part-time worker as those “*whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker*”. However, many non-EU countries also use this definition of part-time work, highlighting only as an exception **Brazil, Chile** and **Peru** that establish a maximum time for part-time work of 25 hours a week, 2/3 full-time work and 4 hours per day, respectively. Conversely, it is interesting to mention the **French regulation**, which requires part-time work a minimum of 24 hours per week –except other regulation established in the collective agreement.

Most legal systems analyzed accept overtime in part-time work. The exceptions are **Argentina, Brazil** and **Spain** –though in the latter case the realization of the so-called complementary hours is allowed, which, despite having a different legal regime, are also additional hours. Also, while in **Belgium** and **Greece** it is also allowed for part-time workers, overtime is limited to exceptional circumstances in Belgium and the existence of business reasons in Greece, allowing the worker to refuse overtime for justified reasons.

Finally, it is interesting to note the **Belgian regulation**, which recognizes part-time workers a **preferential right to occupy a full-time vacancy in the company**, and the **Peruvian regulation**, which does not enshrine the principle of equal treatment between full and part-time workers, not recognizing the latter right to vacation, severance pay or unemployment.

9. Despite the growing social debate existing in many countries, the so-called **zero-hour contract is recognized only in some European and American legal systems**; in particular –among the countries analyzed– the zero-hours contract is admitted in **Greece, Italy, the United Kingdom, Canada and the United States**. By contrast, in the other member states and in none of the South American countries analyzed the zero-hour contract is accepted, as a result of the requirement to specify the working time in the employment contract.

In the **United Kingdom**, despite probably being one of the European countries known for the zero-hour contract, there is an important social and doctrinal debate surrounding this contractual figure. Although the regulation of this contract does not confer special protection to workers, it is interesting to note its compatibility with other labor contracts, declaring void any exclusivity clause.

10. **Most international scholars** who have participated in the elaboration of this comparative dossier claim that the evolution of the regulation on working time has **increased the employer's flexibility in managing its worker's working time**. That is, they claim that the regulation of working time has evolved to allow better adaptation of working time to the company's technical or production needs.

Noted, however, the cases of the **United Kingdom**, the **Dominican Republic** and **Uruguay**, where it is not possible to observe a significant evolution of working time, nor an increase or decrease in terms of flexibility. It is important to emphasize that in the cases of **Spain** and **Chile** there has also been a significant evolution in the recognition of worker's rights of work-family-life balance.

3. Summary table

3.1. Europe

| | Belgium | France | Greece | Italy | Luxembourg | Spain | United Kingdom |
|--|---|---|---|---|--|---|---|
| 1. Does the regulation establishes a daily, weekly and/or annual limit of working hours? What is the maximum working hours? | Yes. 38 hours/week and 8-9 hours/day (variable on workweek) | Yes. 35 hours/week or 1.607 hours/year. | Yes. 8 hours/day and 40-48 hours/week (variable on workweek). | Yes. 48 hours/week. | Yes. 8 hours/day and 40 hours/week. | Yes. 9 hours/day and 40 hours/week. | Yes. 48 hours/week (average 17-23-52 weeks). |
| 2. What is the regulation regarding daily, weekly and annual rests periods? | Rest periods: (i) 15 min. and 11 hours a day (ii) Sunday rest. (iii) 10 paid holidays + 20/24 days of vacation (variable on workweek). | Rest periods: (i) 15 min. and 11 hours a day. (ii) 35 hours uninterrupted a week (14 days) (iii) 11 paid holidays + 30 days of vacation. | Rest periods: (i) 15 min. and 11 hours a day. (ii) 24 hours week. (iii) 20/24 days of vacation (variable on workweek) + seniority. | Rest periods: (i) 10 min. and 11 hours a day. (ii) 2 days a week. (iii) holidays + 4 weeks vacation. | Rest periods: (i) Daily rest and 11 hours a day. (ii) 44 uninterrupted hours week. (iii) 10 holidays + 25 days of vacation. | Rest periods: (i) 15 min. and 12 hours a day. (ii) 1,5 days uninterrupted a week. (iii) 14 holidays + 30 days of vacation. | Rest periods: (i) 20 min. and 11 hours a day. (ii) 24 hours a week. (iii) 5,6 weeks of vacation. |

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| <p>3. Are there special regulations in response to certain personal characteristics of workers or for certain professions?</p> | <p>Yes.</p> <p>Stricter rules youngsters, pregnant women and older night workers.</p> <p>Less strict rules: homeworkers, executives, doctors, bakeries, hotel industry, etc.</p> | <p>Yes.</p> <p>Stricter rules minor workers.</p> <p>Less strict rules executives (<i>forfeit-jour</i> arrangements).</p> | <p>Yes.</p> <p>Stricter rules minor workers.</p> <p>Less strict rules: executives, doctors, road transport, seafarers, etc.</p> | <p>Yes.</p> <p>Stricter rules minor workers.</p> <p>Less strict rules school staff, police services, public libraries, museums, etc.</p> | <p>Yes.</p> <p>Stricter rules: pregnant women, disabled and minor workers.</p> <p>Different regulation: executives, housecleaning, hotel industry, restaurants, etc.</p> | <p>Yes.</p> <p>Stricter rules for minor, night workers and specific sectors: mines, underground work, etc.</p> <p>Less strict rules: hotel industry, sea, agricultural, etc.</p> | <p>Yes.</p> <p>Stricter rules for minor workers.</p> <p>Less strict rules seafarers, civil aviation, drivers, etc.</p> |
| <p>4. Is overtime allowed?</p> <p>What it is the maximum annual limit of overtime?</p> <p>Are these hours included within the maximum working hours?</p> <p>How is overtime compensated?</p> | <p>Yes.</p> <p>Prohibited for youngsters.</p> <p>Max. 78 hours (exceptionally: 143 hours).</p> <p>No right to refuse.</p> <p>Compensatory rest or payment (+ 50-100%) (employee's</p> | <p>Yes.</p> <p>Prohibition minor and night workers.</p> <p>Max. collective agreement.</p> <p>No right to refuse.</p> <p>Compensatory rest or payment (+ 25-50%).</p> | <p>Yes.</p> <p>Prohibition minor workers.</p> <p>Max. 5-8 hours week (variable on workweek).</p> <p>No right to refuse.</p> <p>Payment (+40-60-80%).</p> <p>No payment if</p> | <p>Yes.</p> <p>Limit: 48 hours/week (collective) and 250 hours/year (individual agreement).</p> <p>Compensatory rest or payment.</p> <p>Voluntary.</p> <p>Except technical and productive</p> | <p>Yes.</p> <p>Limit: 10 hours/day and 48 hours/week.</p> <p>Compensatory rest (+0,5 hours) or payment (+40%).</p> | <p>Yes.</p> <p>Prohibition minor and night workers.</p> <p>Maximum: 80 hours/year (only paid overtime).</p> <p>Voluntary (unless collective agreement)</p> <p>Compensatory</p> | <p>No specific regulation.</p> <p>Limits \leq 48 hours a week.</p> <p>Payment.</p> <p>Voluntary (contractual agreement).</p> |

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| | choice). | | no command employer. | needs. | | rest or payment. | |
| 5. Does the regulation allow the employer to unilaterally determine or alter the working hours of workers initially established? | <p>Yes.</p> <p>(i) Small flexibility: max. 2 hours/day or 5 hours/week.</p> <p>(ii) Big flexibility: max. 12 hours/day.</p> <p>Limits: average period 3 months.</p> <p>Collective agreement or unilaterally.</p> | <p>Yes.</p> <p>Collective agreement or employer's decision.</p> | <p>Yes/No.</p> <p>(i) Max. 2 hours/day for max. 6 months;</p> <p>(ii) Max. 256 hours/year for max. 32 weeks.</p> <p>Limits: 10 hours day, 48 hours week and no increase hours.</p> <p>Compensatory rest.</p> <p>No right to refuse.</p> <p>Collective agreement.</p> | <p>Yes.</p> <p>Limits: 11 hours rest, 35 hours rest every 14 day, 48 hours week.</p> <p>No part-time workers.</p> | <p>Yes/No.</p> <p>Limits: max. 40 hours week, period 4 weeks and no increase total hours.</p> <p>Adoption employer organizational working plan or flexitime regulation.</p> | <p>Yes.</p> <p>Limits: 12 hours rest, 3 days rest every 14 days, average 40 hours week.</p> <p>Collective agreement or unilaterally employer (10% working hours).</p> | <p>No.</p> <p>Contractual agreement.</p> |
| 6. Do workers have the ability to unilaterally adapt, modify or reduce their working hours | <p>Yes.</p> <p>Right to reduce working time with 1/5 or 1/2.</p> | <p>Yes/No.</p> <p>Right to reduce working time: employer can</p> | <p>Yes/No.</p> <p>Right to reduce working time: agreement</p> | <p>Yes/No.</p> <p>Right to reduce working time.</p> <p>Parental leaves.</p> | <p>Yes.</p> <p>Right to reduce working time: max. 1 year.</p> | <p>Yes.</p> <p>Right to reduce working time 1/8-1/2: no</p> | <p>Yes/No.</p> <p>Right to request flexible working arrangements:</p> |

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| due to work-family balance reasons? | No right to determine schedule. Parental leaves. | justifiably refuse. Parental leaves. | employer. Parental leaves. | | Parental leaves. | opposition employer. Parental leaves. No unilateral right to adapt working time. | statutory reasons to refuse. |
| 7. And due to work-life balance needs? | Yes. Right to reduce working time with 1/5 or 1/2 for older workers. Paid educational leave (100 hours/year). | Yes/No. Not unilaterally. | No. Full or non-pay leaves for training needs. Public sector: right to request reduction 50%. | No. Only working pupils or pregnant workers. | Yes. Leaves for training needs. 80 days leave for training during professional career. | Yes/No. Not unilaterally. Leaves for training needs + 20 hours/year paid-leave. | Yes/No. Paid time off young workers for training. Right to request non-paid time off for qualified workers: statutory reasons to refuse. |
| 8. What is the definition and legal regime of part-time work? Can part-time workers perform overtime? | Part-time work < hours full-time work. Overtime only exceptionally. Preference to occupy full-time position. | Part-time work < hours full-time work. Minimum 24 hours/week (exceptions collective agreement). | Part-time work < hours full-time work. Short-time work. Overtime for business needs: workers right to justifiably refuse. | Part-time work < hours full-time work. Overtime and supplementary hours. | Part-time work < hours full-time work. Overtime. | Part-time work < hours full-time work. No overtime. Complementary hours: up to 90% ordinary hours (> 10 hours). | Part-time work < hours full-time work. Overtime > hours full-time work. |

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| | | Overtime (+10-25%). | | | | Strictly voluntary. | |
| 9. Does the legal system recognized the so-called zero hour contract? | No. Umbrella contract: hotel industry. | No. Part-time work \leq 24 hours/week. | Yes. Not specifically regulated. “Intermittent easement”: accepted by courts. | Yes. No requirement to specify working time. Special compensation waiting time. | No. Obligation to specify working time in contract. | No. Obligation to specify working time in contract. Limits on overtime. | Yes. No special regulatory protection. Null exclusivity clauses. Important debate. |
| 10. Has the evolution of working time regulation increased or decreased flexibility? | Increase on flexibility for business needs. | Increase on flexibility for business needs. | Increase on flexibility. | Increase on flexibility for business needs. | Increase on flexibility for business needs. | Increase on flexibility for business needs. | Ambiguous effect on flexibility. |
| Other relevant aspects regarding working time and flexibility | Not all working time must be remunerated. Social partners can set the number of working hours in some industries. | Agreements to maintain employment in critical economic situations can modify working time. New legislation on Sunday work. | Important role of EU Laws. Commuting is not working time. | - | - | - | - |

3.2. South America

| | Argentina | Brazil | Chile | Costa Rica | Dominican Republic | Mexico | Peru | Uruguay |
|---|--|---|--|--|---|--|--|--|
| <p>1. Does the regulation establishes a daily, weekly and/or annual limit of working hours?</p> <p>What is the maximum working hours?</p> | <p>Yes.</p> <p>8 hours/day and 48 hours/week.</p> | <p>Yes.</p> <p>8 hours/day and 44 hours/week.</p> <p>Constitutional regulation.</p> | <p>Yes.</p> <p>10 hours/day and 45 hours/week.</p> | <p>Yes.</p> <p>8-10 hours/day (variable working week) and 40 hours/week.</p> <p>Constitutional regulation.</p> | <p>Yes.</p> <p>8 hours/day and 44 hours/week.</p> | <p>Yes.</p> <p>8 hours/day.</p> <p>Constitutional regulation.</p> | <p>Yes.</p> <p>8 hours/day or 48 hours/week.</p> <p>Constitutional regulation.</p> | <p>Yes.</p> <p>8 hours/day and 44-48 hours/week (variable sector).</p> |
| <p>2. What is the regulation regarding daily, weekly and annual rests periods?</p> | <p>Rest periods:</p> <p>(i) 12 hours day.</p> <p>(ii) 35 hours a week.</p> <p>(iii) 14 days vacation (+ seniority)</p> | <p>Rest periods:</p> <p>(i) 15 min. - 1 hour and 11 hours.</p> <p>(ii) 1 day a week.</p> <p>(iii) 30 days vacation.</p> | <p>Rest periods:</p> <p>(i) 30 min. and 12 hours.</p> <p>(ii) 1 day a week.</p> <p>(iii) 15 holidays + 20 days vacation (+ seniority).</p> | <p>Rest periods:</p> <p>(i) 30 min.</p> <p>(ii) 1 day a week (Sunday min. 2 times month).</p> <p>(iii) 2 weeks vacation.</p> | <p>Rest periods:</p> <p>(i) 1-1,5 hours.</p> <p>(ii) 36 hours a week.</p> <p>(iii) 14 days vacation (+ seniority): prohibition to work.</p> | <p>Rest periods:</p> <p>(i) 30 min.</p> <p>(ii) 1 day a week.</p> <p>(iii) 9 holidays and min. 6 days vacation (+ seniority)</p> | <p>No regulation daily rest periods.</p> <p>Holidays and 30 days vacation.</p> | <p>Rest periods:</p> <p>(i) 30 min.</p> <p>(ii) 24-36 hours week (sector).</p> <p>(iii) 5 holidays and 20 days vacation (+ seniority).</p> |

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| <p>3. Are there special regulations in response to certain personal characteristics of workers or for certain professions?</p> | <p>Yes. Stricter rules: minor workers, night and dangerous work. Less strict rules for shift work.</p> | <p>Yes. Stricter rules specific sectors (mines, banc, etc.) and professions (drivers and housekeeping).</p> | <p>Yes. Stricter rules minor workers and specific sectors or professions: telework, sea, professional sportsmen, drivers, etc. Less strict rules for sea work.</p> | <p>Yes. Stricter rules minor workers, night and dangerous work. Less strict rules for managers, position of trust, agents, housekeeping, etc.</p> | <p>Yes. Stricter rules minor and night workers, dangerous work and specific sectors: agriculture, transportation, sea, etc. Less strict rules for housekeeping,</p> | <p>Yes. Stricter rules minor and night workers. Less strict rules for housekeeping, pilots and flight attendants, etc.</p> | <p>Yes. Stricter rules minor workers. Specific regulation for dockworkers, doctors, miners, drivers, journalists, etc. Less strict rules for managers, surveillance services, etc.</p> | <p>Yes. Stricter rules minor workers. Specific regulation agriculture, sea, managers, professors, etc.</p> |
| <p>4. Is overtime allowed? What it is the maximum annual limit of overtime? Are these hours included within the maximum working hours? How is overtime</p> | <p>Yes. Max. 30 hours/month and 200 hours/year. Voluntary. Payment.</p> | <p>Yes. Prohibition dangerous and part-time work, external workers and managers. Max. 2 hours a day. Compensatory</p> | <p>Yes. Prohibition pregnant workers. Max. 2 hours a day and business need. Voluntary: agreement max. 3 months</p> | <p>Yes. Prohibition dangerous work and minor workers. Temporary. Limits: max. 12 hours. No right to</p> | <p>Yes. Max. 80 hours trimester. Limits: business reasons. Voluntary. Payment (+35-100%).</p> | <p>Yes. (i) Max. 3 hours/day and 3 times week. (ii) More if workers consent. Payment (+100-200%).</p> | <p>Yes. Voluntary. Compensatory rest or payment (+25-35%).</p> | <p>Yes. Max. 8 hours week. Payment (100-150%).</p> |

| compensated? | | rest (+0,5) or payment (+50%). | (possible extension). Payment (+50%). | refuse. Payment (+50%). | | | | |
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| 5. Does the regulation allow the employer to unilaterally determine or alter the working hours of workers initially established? | No. | Yes. Unilateral increase of working time (no decrease). | Yes. Max. 60 min. working day + business reasons. | Yes. Agreement labor contract or unilateral (except serious harm). | Yes. Limits: max. working hours and no harm for worker. | Yes. Limits: max. working hours. | Yes. Limits: max. 48 hours/week, consultation period and causes. Except working time regulated in collective agreement. | No specific regulation. <i>Ius variandi</i> Objective reasons. |
| 6. Do workers have the ability to unilaterally adapt, modify or reduce their working hours due to work-family balance reasons? | No. Leave for breastfeeding. | No. Right to change vacations if overlap family member. | No. Parental leaves. | No. Leave for breastfeeding. | Yes/No. Agreement required. Parental leaves and for breastfeeding | No. Reduction working time breastfeeding. Parental leaves. | No. | Yes/No. Reduction working time. Parental leaves. |

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| 7. And due to work-life balance needs? | Yes. Right to leave for training. | No. | Yes. Right to leave for medical exams older workers. | Yes. Only minor workers. | Yes. Only housekeeping: agreement required. | Yes/No. Obligation to promote training. | No. | Yes. Training leave: min. 6 days. |
| 8. What is the definition and legal regime of part-time work? Can part-time workers perform overtime? | Part-time work < hours full-time work. No overtime. | Part-time work < 25 hours week. No overtime. | Part-time work < 2/3 full-time work. Overtime. | No legal definition. Part-time work < hours full-time work. Overtime. | No legal definition. Part-time work < hours full-time work. Overtime. | No legal definition. Part-time work < hours full-time work. | Part-time work < 4 hours/day on average. No vacation, compensation dismissal or unemployment. | No legal definition. Part-time work < hours full-time work. Overtime. |
| 9. Does the legal system recognized the so-called zero hour contract? | No. Obligation to specify working time in contract. | No. Obligation to specify working time in contract. | No. Obligation to specify working time in contract. | No. Obligation to specify working time in contract. | No. Obligation to specify working time in contract. | No. On-demand labor contract. | No. Obligation to specify working time in contract. | No. |

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| 10. Has the evolution of working time regulation increased or decreased flexibility? | Increase on flexibility. Restrictive case law. | Increase on flexibility for business needs. | No significant evolution. Recognition of work-life balance rights. | Increase on flexibility for business needs. No major effective reform. | No significant evolution nor increase in flexibility. | Increase on flexibility for business needs. | Increase on flexibility for business needs. | No significant evolution nor increase in flexibility. |
| Other relevant aspects regarding working time and flexibility | - | - | - | - | - | Informal economy: problem for protection of working time. | - | - |

3.3. North America

| | Canada | United States |
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| 1. Does the regulation establishes a daily, weekly and/or annual limit of working hours? What is the maximum working hours? | Yes. 8 hours/day and 48 hours/week. | No. Maximums in specific and states statutes. |
| 2. What is the regulation regarding daily, weekly and annual rests periods? | Rest periods: (i) 30 min. and 11 hours/day. (ii) 24 hours a week. (iii) 9 holidays and 2 weeks of vacation (possibility to waive). | No. State regulation: min. 30 minutes for meals. |
| 3. Are there special regulations in response to certain personal characteristics of workers or for certain professions? | Yes. Less strict regulation: film industry, mine, live performances, public transit, automobile manufacturing, paramedics, housekeeping, IT professionals, managers, firefighters, etc. Max. 13 hours/day and 60 hours/week. | No. Specific and states statutes: maximum daily hours for truck drivers, pilots, physicians, etc. |
| 4. Is overtime allowed? What it is the maximum annual limit of overtime? | Yes. No annual limit. Max. 44 hours/week average. | Yes. No annual limit Payment (+0,5% > 40 hours/week). |

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| <p>Are these hours included within the maximum working hours?</p> <p>How is overtime compensated?</p> | <p>Compensatory rest (+0,5) or payment (+50%).</p> <p>Specific regulation for various groups of workers. Ex: managers (no overtime pay), hospital workers, drivers, agriculture, etc (max. 50-60 hours week).</p> | |
| <p>5. Does the regulation allow the employer to unilaterally determine or alter the working hours of workers initially established?</p> | <p>Yes/No.</p> <p>(i) Exceed 8 hours/day or 48 hours/week: worker's consent or union's agreement.</p> <p>(ii) No exceed limits: employer's unilateral decision (except express provision contract).</p> <p>No regulation min. period notice.</p> | <p>Yes.</p> <p>At will regime.</p> <p>Exception: collective agreements.</p> |
| <p>6. Do workers have the ability to unilaterally adapt, modify or reduce their working hours due to work-family balance reasons?</p> | <p>Yes/No.</p> <p>Reduction working time: limited circumstances: when no alternative arrangements.</p> <p>Parental leaves (seniority requirements).</p> | <p>No.</p> <p>Reasonable break for breastfeeding.</p> <p>Parental and health leaves: 12 workweeks in 12 month period.</p> |
| <p>7. And due to work-life balance needs?</p> | <p>No.</p> <p>Personal emergency leave.</p> | <p>No.</p> |
| <p>8. What is the definition and legal regime of part-time work?</p> <p>Can part-time workers perform overtime?</p> | <p>No legal definition.</p> <p>Part-time work < hours full-time work.</p> <p>Overtime > max. working time.</p> | <p><i>Not applicable.</i></p> |

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| 9. Does the legal system recognized the so-called zero hour contract? | <p>Yes.</p> <p>No legal prohibition.</p> <p>Legality of on call workers: no requirement min. 11 consecutive hours rest.</p> | <p>Yes.</p> <p>No specific regulation.</p> <p>At will regime.</p> |
| 10. Has the evolution of working time regulation increased or decreased flexibility? | <p>Increase on flexibility for business needs.</p> | <p><i>Not applicable.</i></p> |
| Other relevant aspects regarding working time and flexibility | <p>Employment Standards Act of Ontario (ESA).</p> | <p>-</p> |