

**Remuneration for road transport sector drivers (Freight transport)**

**Poland**

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In 2022 the minimum remuneration is **PLN 3010 gross**.

**Allowance for night work**

Employees working at night are entitled to an allowance for each hour of night work, amounting to **20% of the hourly rate resulting from the minimum remuneration**.

**Remuneration and allowance for overtime**

An employee is always entitled to regular remuneration for each hour of overtime work. Normal remuneration is understood as remuneration regularly paid to employees. In addition, overtime work must be compensated by either **an allowance (100% or 50%) or time off work**.

**An of 100%** of the remuneration is payable to employees for overtime work falling:

- at night
- on Sundays and public holidays which are not work days for the employee, in accordance with their working time schedule
- on a day off work granted to the employee in exchange for work on a Sunday or public holiday, in accordance with their working time schedule
- for each hour of overtime in excess of the standard weekly working time of 40 hours in the settlement period adopted, unless this standard has been exceeded as a result of overtime for which employees are entitled to an allowance of 50%.

**An allowance of 50%** of the remuneration is payable to employees for overtime work falling on days which are work days for the employee, in accordance with their working time schedule (including working Sundays and public holidays). There is an exception for overtime night work (with additional remuneration equal to 100% of the remuneration).

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**Additional information**

Driver's daily and weekly working time and the maximum weekly limit of working hours together with overtime are regulated by the Act of 16 April 2004 on Drivers' Working Time (Journal of Laws of 2019, item 1412 as amended). The Act also includes a definition of driver's overtime

### Remuneration for road transport sector drivers (Freight transport)

work and the maximum annual limit of overtime hours worked by a driver to satisfy the special needs of the employer. Compensation for overtime work with allowances in an appropriate amount or with time off, however, takes place in accordance with the general rules regulated by the Labour Code provisions. In connection with the above, the verification whether overtime work was performed as well as checking the correctness of calculations requires the knowledge of the following concepts and principles:

**Driver's working time** is the time from the beginning to the end of their work, which includes all the activities associated with carrying out road transport, in particular:

- Driving a vehicle;
- Loading and unloading and supervising loading and unloading;
- Supervising and assisting persons entering and leaving the vehicle;
- Forwarding activities;
- Day-to-day maintenance of vehicles and trailers;
- Other work undertaken with a view to carrying out official tasks or ensuring the safety of persons, vehicles or goods;
- Necessary administrative formalities;
- Keeping the vehicle clean.

Driver's working time includes a break of 15 minutes, which the employer must provide if the driver's daily working time is at least 6 hours. Also included in the driver's working time shall be the time outside the normal working time schedule during which the driver remains at their workstation in readiness for work, in particular while waiting for loading or unloading, the foreseeable duration of which is not known to the driver before departure or before the start of the relevant period.

The following is not included in drivers' working time:

- On-call duty if the driver did not work during on-call duty;
- Unjustified stopping while driving;
- Daily uninterrupted rest;
- Breaks from work arising from the application of an interrupted working time system.

#### **Daily working time**

For the purposes of calculating working time and determining entitlement to overtime pay, a day is understood to be 24 consecutive hours, beginning with the time when a driver starts work in accordance with their working time schedule. The employee's personal work schedule established by the employer may provide for different start and end times, in which case the employee's repeated performance of work during the same day shall not constitute overtime.

#### **Night time**

a) Night time for the purpose of calculating a driver's working time – pursuant to the provisions of Drivers' Working Time Act. According to Art. 21 of the Drivers' Working Time Act, if work is performed during night time, the driver's working time may not exceed 10 hours in a given day.

### Remuneration for road transport sector drivers (Freight transport)

Night time means the period of four hours between 00:00 AM and 07:00 AM; the definition of night time contained in this provision applies only for the purposes of determining working time.

b) Night time for the purpose of determining entitlement to allowance – pursuant to the provisions of the Labour Code: Night time comprises 8 hours between 09:00 PM and 7:00 AM. Night time is established by the employer in the work regulations (Art. 104<sup>1</sup> § 1(4) of the Labour Code), it may also be established in a collective agreement (Art. 240 § 1(1) of the Labour Code), and : if the employer is under no obligation to establish work regulations or has not concluded a collective agreement, the employer is obliged to inform the employee in writing about the night time in force at the workplace (Art. 29 § 3 of the Labour Code).

#### **Allowance resulting from night work**

A driver who performs night work is entitled to an allowance for every hour of work amounting to 20 per cent of the hourly rate defined based on the statutory minimum wage, as defined in separate regulations (Art. 151<sup>8</sup> § 1 of the Labour Code).

The night work allowance is due to all employees working at night and is independent of other allowances; in particular, it is due regardless of the overtime allowance attributable to that time.

The employer may provide for more favourable rules of remuneration for night work than those provided for in the Labour Code.

With regard to employees who perform night work outside of the employer's establishment on a permanent basis, the night work allowance may be replaced by a lump sum amount that corresponds to the expected time of night work (Art. 151<sup>8</sup> § 2 of the Labour Code).

The amount of the lump sum should be set so that it corresponds to the expected duration of night work. Setting the lump sum at an amount lower than the amount of hours actually worked during night time does not release the employer from the obligation to compensate for work actually performed during night time to the amount specified in the Labour Code.

**On-call duty** is the time during which the driver remains, outside of working hours, ready to perform the work resulting from the employment contract, in the workplace or in another place designated by the employer.

For the time of on-call duty referred to above, except for on-call duty performed at home, the driver is entitled to time off work in the amount corresponding to the length of on-call duty, and in the event it is not possible to grant such time off – the remuneration resulting from their job grade based on the assigned hourly or monthly pay rate, and if no such remuneration component was specified when defining the terms and conditions of pay – to 60 per cent of the employee's remuneration.

If a vehicle is driven by two or more drivers, the time not spent driving is on-call duty. For such on-call duty, the driver is entitled to remuneration specified in the employer's remuneration regulations, but not less than half of the remuneration due for "regular" on-call duty, as described above.

**Periods on call** are periods, other than breaks and rest periods, during which the driver is not required to remain at the driver's workstation, while at the same time being available to commence or continue driving or to perform another activity. These periods of availability include, in particular, the time during which the driver accompanies a vehicle on a ferry or on a train, the time spent waiting at border crossing points and during traffic restrictions.

Periods when a driver is on call outside their working time schedule are counted as on-call duty.

**Remuneration for road transport sector drivers (Freight transport)**

Where a driver to whom task-based working time applies has not worked a full eight-hour daily working time, periods of time when he is on call shall be included in the eight-hour daily working time and the remaining time shall be counted as on-call duty.

**Working time**

Driver's working time shall not exceed 8 hours a day and on average 40 hours in an average five-day working week in a reference period not exceeding 4 months.

Drivers in road transport may work according to working time schedules where it is permissible to extend the working time to 12 hours a day – in the equivalent working time system. If that is the case, the reference period shall not be longer than 1 month, except for justified cases where it can be extended to no more than 3 months, and in the case of work depending on seasons or atmospheric conditions – to no more than 4 months.

Drivers' weekly working time, overtime included, shall not exceed on average 48 hours in the adopted reference period which shall not exceed 4 months. However, weekly working time may be extended to up to 60 hours on condition that the average weekly working time does not exceed 48 hours in the adopted reference period which shall not exceed 4 months.

The aforesaid regulation applies also to any driver employed by more than one employer. Therefore, the average weekly working time, irrespective of the number of employers (entities) for which work is performed by a driver, shall not exceed on average 48 hours in the adopted reference period which does not exceed 4 months. The working time thus refers to a driver and not to a given employer.

The regulation allowing to extend the weekly working time to 60 hours on condition that the average weekly working time does not exceed 48 hours in the adopted reference period, as well as application of this regulation to drivers irrespective of the number of employers, shall not be applied to vehicles specified in Art. 3 and 13 (1) of Regulation (EC) no. 561/2006 and Art. 2 (2b) of the AETR agreement.

**Overtime work**

Work exceeding the working time standards agreed for an employee, as well as work that exceeds the extended daily working time that results from the employee's working time system and schedule, is considered overtime work (Art. 20 of the Drivers' Working Time Act).

Overtime work is permissible:

- in cases where a driver must take action in order to save human life or health, to protect property or the environment, or to recover from a breakdown,
- to satisfy special needs of the employer.

The number of overtime hours worked by a driver shall not exceed 260 hours in a calendar year.

A bigger limit may be defined in a collective labour agreement or in work regulations, or in a contract of employment if the employer is not covered by any collective labour agreement or is under no obligation to adopt work regulations.

### Remuneration for road transport sector drivers (Freight transport)

#### Average weekly overtime work limits

Drivers' weekly working time, overtime included, shall not exceed on average 48 hours in the adopted reference period which shall not exceed 4 months. The weekly working time referred to above may be extended to 60 hours on condition that the average weekly working time does not exceed 48 hours in the adopted reference period not exceeding 4 months.

The aforesaid regulation applies also to any driver employed by more than one employer. Therefore, the average weekly working time, irrespective of the number of employers (entities) for which work is performed by a driver, shall not exceed on average 48 hours in the adopted reference period of up to 4 months.

#### Remuneration for overtime work

The Labour Code provides for two ways of compensating for overtime work:

- payment of remuneration with an allowance of 50 per cent or 100 per cent of remuneration
- granting time off work.

As per Art. 151<sup>1</sup> § 1 of the Labour Code, in addition to the standard remuneration, an employee is entitled to an allowance for overtime work in the amount of:

- 100 per cent of the remuneration – for overtime work performed:
  - o at night, on Sundays and holidays other than the employee's working days in accordance with their working time schedule,
  - o on a non-working day granted to an employee in exchange for work performed on a Sunday or a holiday, in accordance with the employee's working time schedule,
- 50 per cent of the remuneration – for overtime work performed on any day other than those referred to in point 1 above.

The allowance of 100 per cent of remuneration shall also be paid for every hour of overtime work in excess of the average weekly working time standard in the adopted reference period, unless that standard was exceeded as a result of overtime work for which the employee is entitled to overtime pay for exceeding the daily working time standard.

The remuneration that constitutes the basis for calculation of the overtime allowance is equal to the employee's remuneration resulting from their job grade based on the assigned hourly or monthly pay rate, and if no such remuneration component was specified when defining the terms and conditions of pay - to 60 per cent of the employee's remuneration.

An employer may be exempt from the obligation to pay the overtime allowance only in the following cases (Art. 151<sup>2</sup> § 3 Labour Code):

- if before the date of payment of remuneration for work immediately after overtime work in excess of the daily working time standard, an employer grants time off to an employee at their request. As per Art. 151<sup>2</sup> § 1 of the Labour Code, at the request of an employee, the employer may grant the employee time off work in exchange for overtime work, of the amount equal to the overtime work (1:1). The a/m request shall be in writing. Based on the employee's request, time off in exchange for overtime work may also be granted in the next reference period.

- if an employer grants time off in exchange for overtime work without the employee's request (Art. 151<sup>2</sup> § 2 of the Labour Code). If this is the case, time off work may be granted by the employer not later than by the end of the reference period in an amount that is 50 per cent higher than the number of overtime hours worked (1:1,5). This must not, however, reduce the employee's remuneration due for the full monthly working time.

**Remuneration for road transport sector drivers (Freight transport)**

In conclusion, an employer shall pay an allowance for overtime work in addition to standard remuneration. Nevertheless, if time off is granted in exchange for overtime work (with or without an employee's request), the employee shall only receive standard remuneration without the allowance for overtime work.

Payment of remuneration, including the overtime allowance, may be replaced with a lump-sum amount. Payment of a lump-sum amount instead of remuneration and overtime work allowance is only permissible if an employee performs work outside of the employer's establishment on a permanent basis (Art. 151<sup>1</sup> § 4 of the Labour Code). The amount of the lump-sum shall correspond to the expected duration of overtime work.

*Information updated: 20 May 2022*

**Disclaimer:**

The information in this table is provided solely for general guidance purposes about the different remuneration schemes applicable in the Member States on posting of transport sector drivers. This document is an ELA working document to support its stakeholders with the collection of relevant information in this area. It is shared with ELA stakeholders as a practical tool for their use.

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