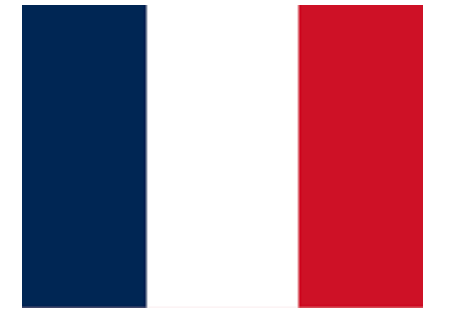




## **Overtime - a legal comparison between France and Germany**



## Germany - France: Introduction



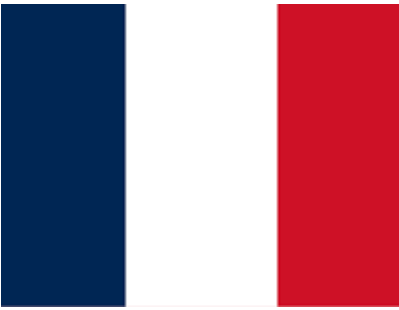
The increasing shortage of skilled workers is currently posing new challenges for both Germany's and France's labour market and economy. This is partly due to the economic fluctuations in recent years due to political crises or the pandemic. Experts suspect that overtime will be increasingly used as a flexible tool in the coming years to overcome staff shortages and to counter fluctuations in production and/or demand.



## I. How is overtime defined in your national law and what are the main sources of law governing it (legislation, case law, collective agreements)?

Under German law, there are two terms: overtime (“Überstunden”) and extra work (“Mehrarbeit”), which are used very inconsistently in practice. Sometimes, they are even used synonymously. In legal usage, overtime is described as work performed in excess of the contractually agreed working hours. In contrast, extra work is the exceeding of the statutory upper limits of working hours, e.g. according to the German Working Hours Act (Arbeitszeitgesetz). As overtime can be agreed and arranged on a contractual basis (in contrast to statutory law), only overtime will be subject to the following. Although overtime can be agreed on contractually or in collective agreements, the statutory law refers to the legal term overtime in several laws as well, such as:

- Section II (I) s. I of the German Federal Leave Act (Bundesurlaubsgesetz),
- Section 4 (Ia) s. I of the German Continued Remuneration Act (Entgeltfortzahlungsgesetz).



I. **How is overtime defined in your national law and what are the main sources of law governing it (legislation, case law, collective agreements)?**

In France, overtime (“heures supplémentaires”) refers to any working hours worked more than the statutory 35-hour working week. The legal framework governing overtime is mainly based on:

- The French Labour Code (“Code du travail”), in particular Articles L. 3121-28 to L. 3121-40.
- Collective bargaining agreements (“conventions collectives”), which may include specific provisions on overtime, such as increased compensation or alternative working time arrangements.
- Case law (“jurisprudence”), which provides interpretations of the law regarding employers’ obligations and employees’ rights regarding overtime.

The overtime rules apply to most French employees, including managers, except those who are subject to special working time arrangements, such as a system of fixed annual working days (“forfait-jours”) or senior managers (“cadres dirigeants”).



## II. Is there an obligation to work overtime? Under what conditions and to what extent can an employee refuse to work overtime?

In principle, the employee is not obliged to work beyond the contractually agreed working hours, unless contractually agreed on. In particular, the employer's right to issue instructions in accordance with Section 106 s. 1, 2 of the German Industrial Code (Gewerbeordnung) does not cover the excess of working hours, if not contractually agreed on. Therefore, an individual contractual agreement, a collective agreement or a works agreement is required. When the employer is entitled to request overtime, the employee is obliged to comply. If the employee refuses to do so, this constitutes a contractual breach and can result in a disciplinary warning.

However, if there is no corresponding contractual obligation to work overtime, some regional labour courts hold that an obligation to work overtime can also be based on so-called “consideration-duties” (“Rücksichtnahmepflichten”) under Section 241 (2) of the German Civil Code (Bürgerliches Gesetzbuch), if the employer is in an urgent situation that cannot be remedied otherwise.



## II. Is there an obligation to work overtime? Under what conditions and to what extent can an employee refuse to work overtime?

In principle, employees may not refuse to work overtime if requested to do so by their employer, provided that:

- The request for overtime is in accordance with the law and collective agreement provisions.
- The employee is informed in advance, and the overtime is necessary for the operation of the business.
- The total working time, including overtime, does not exceed the legal maximum limits (i.e., 10 hours per day and 48 hours per week or an average of 44 hours per week over 12 weeks).

Unjustified refusal to work overtime may be considered misconduct and may result in disciplinary action by the employer.





### III. How is overtime compensated?

Overtime in Germany must be remunerated if remuneration is expected according to section 612 (I) of the German Civil Code. The law assumes that remuneration is tacitly agreed if work is only to be expected in return for remuneration.

Another prerequisite for overtime pay is that the overtime has been ordered, approved, tolerated or at least been necessary to complete the work owed by the employer.

Compensation for overtime can generally be agreed on in a contractual clause by means of a lump-sum payment taking into account a specific amount of overtime per month.

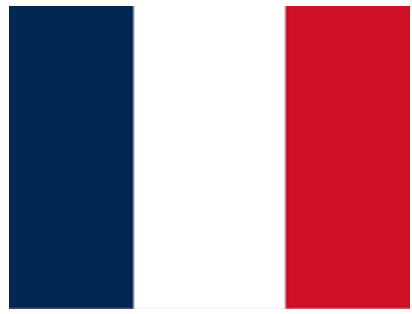
Such clauses are only effective if the employee can recognise from the regulatory context what he or she will have to do and the maximum amount of work he or she will have to perform in terms of time for the agreed remuneration. In short, these clauses must be transparent. As for the amount of overtime for which the remuneration can be contractually agreed on,

there is no common judicial practice. The Federal Labour Court

has recognised a lump-sum compensation of 20 hours of overtime per month in one case (= 11.6 % for a 40-hour week); in some cases, it is argued more restrictively that a maximum of 10 % of working hours is appropriate.

An expectation of remuneration is not assumed if services of a higher nature are owed or if a significantly higher remuneration is paid overall, i.e. the remuneration exceeds the contribution assessment ceiling in the German Pension Insurance. In this case, however, the parties should agree contractually on setting-off any overtime with the actual monthly gross salary.

Moreover, in general, the employer may determine whether the overtime is being compensated in time-off instead of payment. This can be subject to company practice or by choice of the employee as well. The employer is not obliged to pay an overtime allowance without a special collective or individual contractual agreement.



### III. How is overtime compensated?

In France, overtime work must be compensated either financially or by compensatory rest. The minimum legal compensation for overtime is:

- +25% for the first 8 hours of overtime (i.e., from the 36th to the 43rd hour in each week).
- +50% for each additional hour of overtime after the 43rd hour.

However, collective agreements may provide for different rates of compensation, if they are at least equal to the statutory minimum.

As an alternative to monetary compensation, employees can be granted compensatory time off (“repos compensateur de remplacement”) by agreement.

In addition, compulsory compensatory rest (“contrepartie obligatoire en repos”) applies when an employee exceeds a certain amount of overtime (e.g., more than 220 hours per year under the French Labour Code).

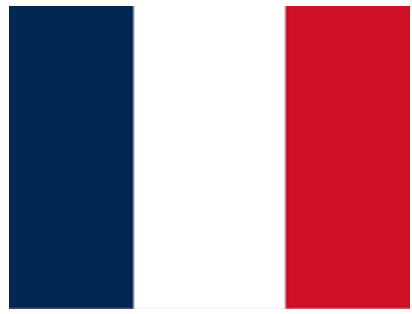




#### IV. What are the legal requirements for monitoring and regulating overtime? What are the penalties for non-compliance?

Until now, employers have been obliged under Section 16 of the German Working Hours Act to record employees' working hours in excess of 8 hours per working day. A breach of this is an administrative offence under the German Working Hours Act and can be punished with a fine of up to EUR 5,000.

In addition, the Federal Labour Court (Bundesarbeitsgericht) requires employers to determine the beginning and end and thus the duration of their employees' working hours and to record them using an objective, reliable and accessible system. This judgement from 2022 has not yet been implemented into law.



## IV. What are the legal requirements for monitoring and regulating overtime? What are the penalties for non-compliance?

Employers must ensure that overtime is properly monitored and regulated by:

- Accurately recording hours worked through timesheets, digital tracking systems, or attendance records.
- Respecting maximum working hours (e.g., daily and weekly limits).
- Consulting employee representatives (« CSE – Comité Social et Économique ») when implementing some overtime practices.

Failure to comply with overtime rules can result in:

- Criminal penalties for employers who violate working time limits.
- Claims for unpaid wages, where employees can claim back pay for unpaid overtime and additional damages.
- Potential litigation for excessive working hours, particularly where overtime leads to employee health risks for employees (e.g., burnout claims).

Labour authorities (“Inspection du travail”) have the power to audit companies, issue warnings and impose sanctions for overtime violations.



## V. Are there any special rules on overtime for part-time employees?

There are no special statutory regulations on overtime for part-time employees.

According to the previous case law of the Federal Labour Court, part-time employees were generally only entitled to overtime pay for the times in which the agreed full-time working hours were exceeded. This case law was reversed by the decision of the European Court of Justice of 19 October 2023, which stated that rules linking the payment of additional remuneration for part-time employees and comparable full-time employees to the same number of worked hours being exceeded constitutes less favourable treatment of part-time workers under the Framework Agreement on part-time work annexed to Directive 97/81/EC. The Federal Labour Court has responded to this issue in its latest decision, ruling that a collective agreement stipulating that overtime pay is only granted when the hours worked exceed those of a full-time position violates Section 4 (I) of the German Part-time and Fixed-term Employment Act (Teilzeit- und Befristungsgesetz), which prohibits discrimination against part-time employees. However, such a provision may be deemed lawful if justified by objective reasons.



## V. Are there any special rules on overtime for part-time employees?

Yes, part-time employees are subject to special rules on overtime, which is referred to as additional hours (“heures complémentaires”) rather than standard overtime. The main principles are:

- Additional hours cannot exceed 10% of the contractual working time (or up to 1/3rd if a collective agreement allows it).
- Each additional hour must be paid at a minimum rate of +10% (or higher if agreed in a collective agreement).
- If a part-time employee regularly works more than the contractual hours, they may have the right to request a revision of the contract to reflect a higher working time arrangement.

Unlike full-time employees, part-time employees cannot exceed the statutory 35-hour threshold - doing so would reclassify their contract as a full-time position, giving them the corresponding rights and benefits. Yes, part-time employees are subject to special rules on overtime, which is referred to as additional hours (“heures complémentaires”) rather than standard overtime.

The main principles are:

- Additional hours cannot exceed 10% of the contractual working time (or up to 1/3rd if a collective agreement allows it).
- Each additional hour must be paid at a minimum rate of +10% (or higher if agreed in a collective agreement).
- If a part-time employee regularly works more than the contractual hours, they may have the right to request a revision of the contract to reflect a higher working time arrangement.

Unlike full-time employees, part-time employees cannot exceed the statutory 35-hour threshold - doing so would reclassify their contract as a full-time position, giving them the corresponding rights and benefits.



**Luise Brunk**  
**Attorney at Law**  
**at Altenburg**

Dr. Luise Brunk is an Attorney at Law at Altenburg, the German member of Ellint.

She is specialized on Social law (company audits, status determination procedures), New work models (mobile working, workation)

Labour and employment contract law, Dismissal protection law, Works constitution law,

She studied in Freiburg and Paris and Doctorate on 2020.

Read more [here](#).



**Julien Delemarle**  
**Associate at**  
**MGG Legal**

Julien assists French and international clients in particular during the negotiation of individual or collective agreements, but also in the context of the employment audits carried out through the lifecycle of companies (transfer, sale, merger, refinancing, etc.).

He is also interested in developing new ways of working, through digital platforms in particular, and is keen to help his counterparts in the industry gain a better understanding of the relevant applicable rules and their evolution.

Read more [here](#).

