

# 14 FLEXIBILITY OF THE LABOUR LAWS

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Abbreviations used

BW The Civil Code of St Maarten

## **1. Flexibility of labour laws**

### **1.1 Abolishing the competition clause**

A competition clause is a clause which limits the employee's ability to seek certain types of work after the expiration of the employment agreement, in most cases under a penalty. The clause protects the employer against (dishonest) competition from the former employee.

A competition clause is not valid as of 1-8-2000. The employer doesn't get the protection of such a clause. If after the termination of employment the employee is employed by the competition and makes unlawful use of the knowledge he has acquired with his former employer the (former) employer can sue for damages based on dishonest competition (unlawful act). Also he can ask the court to forbid any further dishonest competition.

A clause, which forbids the employee to compete with the employer during the time the employee works for the employer, is allowed.

Purpose Stimulate the mobility of the employee

Article of law Article 1613v BW

## **1.2. Simplification of notice period**

### **PERIOD OF NOTICE FOR THE EMPLOYER**

The period of notice the employer has taking into consideration 1-8-2000 depends on the duration of the employment:

- a. If the employment is no longer than five years: one month
- b. if the employment is more than five years, but not exceeding ten years: two months
- c. if the employment is more than ten years, but not exceeding fifteen years: three months
- d. if the employment is longer than fifteen years: four months.

In case of individual dismissal after having obtained a permit from the Secretary General (of the Department of Labour) and also in the case of collective dismissal the time it takes to handle the petition for the permit or to review the plan of redundancy by the Secretary General of the Department of Labour (see paragraph 1.4) may be subtracted from the period of notice as long as the remaining period of notice is a minimum of one month.

The period of notice for the employer may only be shortened through a collective labour agreement (CLA). The period of notice can be extended through a written agreement.

In case of continued employment agreement (within three months) the period of notice is to be calculated by taking into consideration the date of the first employment agreement. This will also apply when an employment agreement for an indefinite period of time is followed by an employment agreement for a certain period of time (see chapter 3 chain system in case of short-term contract).

### **PERIOD OF NOTICE FOR THE EMPLOYEE**

The period of notice for the employee (for the weekly, the biweekly and the monthly wagers) is as of 1-8-2000 one month. This period can be shortened or extended through a written agreement. The period of notice for an employee may not be extended for more than six months.

Purpose - To simplify the rules of dismissal.

Article of law Articles 1615i, 1615e and 1615fa BW.

## **1.3. Liberalizing the day of notice**

The day of termination is the day on which the employment agreement terminates due to

the notice (this is not the day the notice is being given).

As of 1-8-2000 notice can be given on any day, unless parties agreed otherwise by writing. The situation has changed: if nothing has been agreed/arranged, notice can be given on any day. For example: on January 18th notice is given; a period of notice of one month will dictate that the employment agreement ends as of February 19th.

Purpose - To reduce the factual period of notice (as long as parties wish to do so).

Article of law Article 1615h first paragraph BW

#### **1.4 Amendment of the dismissal law**

As of 1-8-2000 the Lei di Retiro is not applicable; to new cases but still holds true for existing exceptional cases; to the employment agreement with a director, an employment agreement for a certain period of time, with exception of an employment agreement for a certain period of time which follows an employment agreement for an indefinite period of time; also agreements where the same employee has been in service of several employers which, can be considered each other's successors; and also in case of a bankruptcy..

Furthermore, the cases in which the preventive individual dismissal check is applicable, government can be levy restrictions.

Purpose - Simplify the laws regarding dismissal.

Article of law Article 2, paragraph e, article 2a

Article 4, paragraph d and e

Article 5 third and fourth paragraph Landsverordening beeindiging arbeidsovereenkomsten

#### **1.5 Extending the maximum period of working temporary**

As of 1-8-2000 temporary workers may be assigned to the same business or enterprise for a maximum of 12 months.

Postings which follow each other within 3 months are to be considered as one posting (the same said for the so-called "revolving door-constructions"). After a posting the former enterprise may request and post the same temporary worker once a period of 3 months has passed.

Mind you: exceeding of this period doesn't have any consequences for the relationship (employment agreement) between the temporary worker and the temping agency. The employment agreement of the temporary worker doesn't change. The temping agency can

be fined though.

Purpose - To promote the use of temporary workers

## **1.6 Introduction of private labour mediation**

Private labour mediation is allowed as of 1-8-2000.

Purpose - To promote the mobility of employees

## **2. Labour law securities**

### **2.1 Abolishing verbal trial period**

During a trial period both employer and employee may cancel an employment agreement at any time, without a period of notice or giving a reason.

As of 1-8-2000 a trial period is only valid if this has been agreed to in writing. The existence of a trial period can only be shown through a written agreement between the employer and employee. The maximum duration of a trial period is still two months.

Purpose - To prevent uncertainty regarding the existence of a trial period.

Article of law Article 1615n BW

### **2.2 Mandatory salary slip**

As of 1-8-2000 the employer is obligated to provide the employee with a salary slip with each payment.

The salary slip should mention the following:

- the total salary and the what comprises this amount
- all amounts which are withheld from the salary
- the minimum salary which applies for the employee based on the Landsverordenning Minimumlonen
- the name of the employer and of the employee
- the date of entering service
- the period during which the salary is being paid

- the time of labour parties has been agreed upon (the labour hours per week or month).

Purpose - To give information to employees about the salary and withholdings and fortify the legal position of the employees

Article of law Article 1614pa BW

### **2.3 Refutable suspicions in case of part time work and call up contracts**

A refutable suspicion means that if certain circumstances apply, the court has to accept the situation as described in the regulation as being correct in applying the relevant article of law, but the counterpart may prove that the legal position is somewhat other than suspected.

Legal suspicion of the existence of an employment agreement.

As of 1-8-2000 it is presumed that an employment agreement exists if during three consecutive months an employee works for a person and is being paid, weekly a minimum of 8 hours or a minimum of 35 hours per month. If the employee can prove that his situation applies to these criteria for example by providing of a salary slip, an employment agreement exists, unless the employer can prove the contrary.

Legal suspicion regarding the agreed period of labour

If an employment agreement where no period of labour has been agreed upon (for example nil hours contract or a min/max contract) has existed for at least three months, as of 1-8-2000 the amount of labour hours in the fourth month is presumed to be the average of the hours of labour during the three previous months.

For example: if an employee has worked an average of 100 hours per month during the months January until March, then we should assume that the same applies for the month of April. He can then claim a salary equal to 100 hours, unless the employer can prove, for example with time clock sheets, that the employment was less during that month compared to the three previous months and that parties have agreed on a "no work no pay" basis.

Purpose - To strengthen the legal position of the employees with a flexible contract.

Article of law Article 1613ca and 1613cb BW

### **2.4 Minimum payment in case of nil hours and on call contracts**

If an employee with a nil hours contract, a call up contract or a contract to work for certain hours for less than 15 hours a week is called on a certain day to perform his duties, then there is as of 1-8-2000 a minimum duration of the labour of three hours. These three

hours have to be paid, even if the labour lasts less.

Purpose - To strengthen the position of employees with a flexible contract.

Article of law Article 1614da BW

## **2.5 Introduction prohibited notices (illness, pregnancy, child birth and marriage)**

As of 1-8-2000 termination by notice during the first year of illness, during the pregnancy-child birth leave of absence of the employee, and also notice in case of marriage of the employee is invalid. This means that the employment agreement stays in effect notwithstanding the notice. The employer has to pay the salary of the employee upon demand till the employment agreement has come to a lawful end.

Also a resolute condition based upon which the employment relationship (automatically) ends in case of marriage of the employee or in case of pregnancy or child birth of the female employee is invalid.

The employment agreement is still in effect because the employer can't make use of such a resolute condition.

If the employee doesn't contest the invalidity, then the employment agreement is considered to be terminated. In this case the employee can sue for damages based upon irregular notice.

Purpose - To strengthen the position of the employee in case of discriminatory dismissal or dismissal during disablement.

Article of law Article 1615e, fifth and sixth paragraph, and article 1615h, second and fifth paragraph BW.

## **2.6 Introduction prohibited notice in case of union membership or union activities**

As of 1-8-2000 the employer under penalty of invalidity, can't terminate an employment relationship by notice because of the membership of the employee in a union or because of union activities. That is unless these activities are conducted during the working hours of the employee and the employer has withheld permission on reasonable grounds.

Article of law Article 1615h, sixth paragraph BW

## **3. Chain system in case of short term contract**

For termination of a continued employment agreement for a certain period of time as of 1-8-2000 no notice is required, which means that the continued employment agreement for a certain period of time also expires. On the other hand after four continued employment

agreements for a certain period of time, with an interruption of less than three months, the fourth contract automatically becomes one for an indefinite period of time ("in permanent service")

The same applies if less than four employment agreements for a certain period of time has followed one another with an interruption of less than three months and all together (inclusive the interruption) have surpassed a period of 36 months.

Also continued employment agreements between an employee and different employers who are considered to be each other's successor regarding the employment, fall within the reach of this regulation.

An exception to this rule is an employment agreement for a certain period of time exceeding three years, which has only been extended once for a period less than three months. In his case no permanent service is created.

If after the creation of the permanent service the employer wishes to terminate the employment agreement, the period of notice -which depends on the duration of the employment relationship- is to be calculated as from the date of the first employment agreement (inclusive the interruptions) (see paragraph 1.2).

Purpose - To ease the use of short-term contracts on the one hand and on the other hand to protect employees who constantly have to deal with this kind of contracts.

Article of law Article 1615fa BW

## **4. Labour regulation 2000**

### **4.1. What does the Labour regulation 2000 cover?**

Content of the

The Labour regulation (Arbeidsregeling) 2000 contains rules with regards to:

- Working hours, period of rest and timetable
- The maximum working hours per day
- The maximum duration of labour per week (calculated over four weeks)
- Overtime
- Nightshift
- Standby-shift (consignment service)
- Labour on rest days, Sundays, and holidays

The Arbeidsregeling 2000 contains to these matters what is allowed and what is not allowed, how long the labour should be, under which conditions one may work overtime etc.

The Arbeidsregeling 2000 also has regulations with regards to:

- Labour by children
- Dangerous and nightshift by youths (is the same as the Arbeidsregeling 1952)
- Labour by domestic personnel ("live in")

Purpose New regulations of labour laws, which are on one hand more flexible and on the other hand give more securities.

## **4.2 Some differences with Arbeidsregeling 1952**

### Group of Employees

The Arbeidsregeling 1952 has several rules for different groups of employees. The differences originate because of the several applicable labour regulations for example the regulations regarding the hotel and catering industry, the labour regulation regarding casino, etc.

In the Arbeidsregeling 2000 there exists only difference between schedule workers and non- schedule workers. The first mentioned are employees who work on different hours (outside the regular office hours).

### Horeca

Hotel and catering industry because of the fact that hotels, restaurants and casinos are sensitive to international competition and are very labour intensive, under the present circumstances the government has chosen for different rules for these sectors.

### Timetable

Under the Arbeidsregeling 1952 deviated timetables should be approved by Secretary General of the Department of Labour. Also, every deviation of a timetable was considered to be overtime, unless Secretary General of the Department of Labour has given prior approval.

Under the Arbeidsregeling 2000 timetables don't have to be approved by Secretary General of the Department of Labour. Timetables for schedule workers needs to be sent to Secretary General of the Department of Labour for notification. The Secretary General of the Department of Labour has the right to forbid certain timetables.

Incidental deviation of the timetable is possible, if the employee is notified 48 hours in

advance.

### Working hours

The Arbeidsregeling 1952 sets working hours at 40 per week, but for several employees there exists longer working hours because of the Labour regulations. If the weekly labour hours is exceeded, then there is overtime.

The weekly working hours under the Arbeidsregeling 2000 is 40 hours (non-schedule workers) or 45 hours (schedule workers). The working hours for schedule workers is longer because it doesn't contradict the existing timetable.

The determination of the working hours is per four weeks which means that one can shuffle with the hours without there being overtime. The possibility to shuffle is limited by the maximum allowed hours per day, which is 10 hours for both non-schedule workers and schedule workers.

Permits For the application of non-regular time tables, to work overtime, and for deviation of the time tables under the Arbeidsregeling 1952 had to be approved by the Secretary General of the Department of Labour.

The Arbeidsregeling 2000 doesn't contain a prior approval. But employees can complain about certain matters, after which measures can be taken. Parties can appeal decisions of Secretary General of the Department of Labour.

### Rules of protection

The Arbeidsregeling 1952 doesn't contain legal rules to protect "weak" employees, such as employees who work nightshift. The protection is being given through the individual permits.

The Arbeidsregeling 2000 contains special protection rules for employees who work nightshift or have standby duty.

### Sanctions

Sanctions under the Arbeidsregeling 1952 are the minimum (the maximum penalty is Nafl. 600,-- per violation).

The Arbeidsregeling 2000 has modern penalties and makes differences between a felony and a misdemeanour. The maximum penalty for a felony is an imprisonment for a maximum 4 years and/or a fine of maximum Nafl. 100.000,-, the maximum penalty for a misdemeanour is an imprisonment for a maximum of one year and/or a fine of maximum Nafl. 25.000,-.

## Domestic Personnel

For the domestic personnel, under the Arbeidsregeling 2000, in contrary to the Arbeidsregeling 1952, there are certain rules of protection (see chapter 5).

### Prohibition of child Labour

The prohibition of child labour applies to children up to, and including 14 years of age (Arbeidsregeling 1952 up to 14 years of age). This, in connection with the forthcoming ILO-treaty 182 which when in effect should banish the worst cases of child labour. Equal to the former regulations children may perform work that is commonly performed by children or that physically and mentally doesn't require too much from the child or is dangerous to the child (paper delivery, packing goods at the supermarket etc.) as long as these activities don't occur during school time and not before 7.00 o'clock or after 19.00 o'clock.

### **4.3. Schedule workers / non-schedule workers**

#### Two groups

In the Arbeidsregeling 2000 a difference is made between schedule workers and non-schedule workers. For both groups there are different rules as to the working hours, time tables etc. It is important to know if an employee is a schedule worker or not.

#### Definition

According to the Arbeidsregeling 2000 a schedule worker is a worker whose regular working hours (not overtime) are mostly:

- daily before 7.00 o'clock in the morning or after 20.00 o'clock at night
- on Sundays
- on holidays

#### Choice through Timetable

The employer can decide through a timetable if his employees are schedule workers or not. Schedule work is sometimes inconvenient and so employees can ask the Department of Labour to forbid schedule work within their company. If the department forbids schedule work, the employer has to comply with the rules that apply to non-schedule workers.

#### Full continuous Service

For schedule workers who work with a full continuous time table (a timetable that guarantees continuous work for 24 hours usually with three shifts) a couple of exceptions apply (see paragraph 410).

#### To deviate from the timetable

To deviate from the timetable is acceptable. The employer doesn't need prior approval

from the Department of Labour. A deviated timetable has to be given to the employee 48 hours in advance though.

Article of law Articles 2, paragraph 2, c and 13 Arbeidsregeling 2000

#### **4.4. Duration of labour (not included overtime)**

##### Non-schedule Workers

The duration of labour allowed (overtime not included) is a maximum of 10 hours per day and maximum of 40 hours per week. These 40 hours are calculated over a period of four weeks. During a busy week one may work a maximum of 40 hours (during 5 days a maximum of 2 hour per day) without there being overtime. This is under the condition that the employer notifies the employee in advance and that the hours are given back within three weeks.

If the employee works over 10 hours, then there is overtime. Also if the extra hours are not given back or not given back in time there is overtime. Overtime has to be paid extra (see paragraph 4.7).

##### Schedule Workers

For schedule workers the same as above applies with the exception that the maximum duration of labour in an average of four weeks is 45 hours with a maximum of 10 hours per day (not including overtime).

Nightshift In case of nightshift and standby shift different rules applies (see paragraph 4.8 and 4.9).

##### Longer duration of Labour

The Secretary General of the Department of Labour based on a petition (of the employer) can determine longer labour hours, regarding the schedule workers as well as regarding the non-schedule workers.

Article of law Articles 8, 14 and 24 Arbeidsregeling 2000

#### **4.5. Working hours and resting hours**

##### Non-schedule Workers

The resting hours for non-schedule workers are:

- The period between 20.00 o'clock at night and 7.00 o'clock in the morning
- Two free parts of the day (may be continuous, for example on a Saturday)

- Sundays
- Holidays

The regular working hours may not fall within the resting period. If one is obligated to work during this period, this is considered as overtime and has to be paid accordingly.

#### Store personnel

For store personnel the time of 20.00 o'clock may be later if the official hours of closing are later. The resting time begins half an hour after the official closing time.

#### Schedule workers

For schedule workers there is another regulation. The resting hours of a schedule worker are the following:

- Daily the period that lies before and after the working hours according to his timetable, taking into consideration that his resting period per 24 hours (continuously) has to be (continuously) a minimum of 11 hours. This resting period may be reduced once every seven weeks to a minimum of eight hours
- The weekly day off according to his time table (this has to be on a Sunday once every seven weeks)
- Once every week, a part of a day prior to or after to 13.00 o'clock
- Five holidays per year

In case of holidays special rules applies (see paragraph 5.8).

Obligation to report Time tables for schedule workers have to be reported to the Department of Labour (see paragraph 4.12). The Secretary General of the department has the power to forbid the time table in certain cases.

Article of law Article 9 Arbeidsregeling 2000

### **4.6. Pause**

Break - The period during which the employee has to work has to be interrupted for at least half an hour after five hours of work, overtime included. An interruption of less than fifteen minutes doesn't count as a break. For employees in a full continuous shift separate rules apply.

Working through breaks - It is forbidden to have the employee work through the break other than by way of overtime.

Stand by - If the employee has to stay available during the break to go to work if he's called upon, then this can be considered as consignment (see paragraph 4.9).

Article of law Article 10 Arbeidsregeling 2000

#### **4.7. Overtime**

Overtime

There is overtime in the following situations:

- If the employee works during his period of rest
- If the employee works longer than the maximum period of labour per day or per week.

Mind you, in case of a part time contract of for example 20 hours per week, there is only overtime if the regular 40 hours per week is exceeded (or for schedule workers 45 hours per week). Only if parties make other arrangements will other rules apply.

If the employee is called upon when standing by there is also overtime (see 5.9).

Period of labour

The maximum time of labour inclusive overtime for non-schedule workers is 11 hours per day and 50 hours per week, considering that the total period of labour inclusive overtime calculated over 13 weeks may not exceed 45 hours.

The maximum time of labour inclusive overtime for schedule workers is 11 hours per day and 55 hours per week, considering that the total period of labour inclusive overtime calculated over 13 weeks may not exceed 50 hours. Equal to non-schedule workers schedule workers may work 10 hours of overtime above their regular hours calculated over four weeks.

For nightshift workers there is a maximum period of labour inclusive overtime of 9 hours per day considering that this may not exceed 45 hours per week calculated over a period of 13 weeks (see paragraph 4.8).

Compensation

Overtime has to be compensated by a surplus above the salary of 50%.

The employee and employer may agree by writing that overtime is not to be paid in money but in time-back (1,5 hours per 1 hour overtime).

Partial overtime hours will always be rounded up to half hours. Overtime which doesn't exceed 15 minutes per day and which is not on a regular basis, is not considered as

overtime.

#### Extra Compensation

In certain cases above the normal overtime compensation, an extra compensation should be paid. The total compensation will then exceed 150%.

#### Overview

The total compensation for non-schedule workers for every hour overtime is as follows:

#### Situation Compensation

(incl. salary)

exceeding the maximum period of labour

(per day or after 4 weeks) 150%

overtime on the day that the employee is free

according to his work schedule 175%

overtime on a rest day 200%

overtime on a holiday 250%

The total compensation for schedule workers for every hour overtime is as follows:

#### Situation Compensation

(incl. salary)

exceeding the maximum period of labour

(per day or after 4 weeks) 150%

overtime on the day that the employee is free

according to his work schedule 175%

overtime on a rest day 200%

overtime on a holiday 250%

overtime in combination with nightshift 175%

## Conditions

If the employer calls upon the employee to work overtime during a day which the employee is free according to his work schedule, then a minimum of three hours overtime should be paid.

If the labour hours per day inclusive the overtime is a minimum of ten hours, the employer is obligated to give the employee a hot meal or a compensation to be used towards a hot meal.

An instruction to work overtime has to be given by the employer to the employee as soon as possible. When instructing the employee to work overtime the employer has to take the interests of the employee into consideration.

## Overtime obligatory?

The Arbeidsregeling 2000 doesn't answer the question; If the employee can refuse overtime or if there is no obligation to work overtime. This question has to be answered through the labour laws. In general an instruction to work overtime may not be denied without a valid argument.

Article of law Articles 14 up to and including 17 Arbeidsregeling 2000

## **4.8. Nightshift**

Definition Nightshift is when a schedule worker works according to his schedule on or after 0.00 o'clock and before 6.00 o'clock, other than by way of overtime.

### Duration of the Labour

The duration of the labour in a nightshift, the break not included, is a maximum of 8 hours (overtime included a maximum of 9 hours). Furthermore the duration of the labour for schedule workers who work on a nightshift is not 45 but 40 hours per week, calculated over a period of time of 13 weeks (when including overtime a maximum of 45 hours).

Work schedule The work schedule of an employee who works nightshifts has to comply with the following conditions:

- the employee may only work a maximum of 14 times a nightshift in a period of 4 weeks (unless it concerns a specific night job for example night security or personnel of the hotel and casino industry);
- the employee should have a continuous resting period after a nightshift of:
  - a. a minimum of 12 hours if the nightshift ends before or at 2.00 o'clock

b. a minimum of 14 hours if the nightshift ends after 2.00 o'clock

- the period of rest mentioned above may be in a continuous period of 7 days shortened to 8 hours one time;
- the employee has a resting period of a minimum of 48 hours if he has worked continuously 6 times in a nightshift.

Article of law Articles 12 and 14 Arbeidsregeling 2000

#### **4.9. Standby shift**

##### Definition

Under consignment is understood: a period of time between two continuous shifts or a break, during which the employee is obligated to stay in touch to get back to work in case of unforeseen circumstances.

In case of so called split-shifts or shifts that have been discontinued, for example when the employee has to work early in the morning and in the afternoon, there is no consignment if the employee doesn't have to stay in touch during the break.

Several prohibitions - It is forbidden to force a consignment on employees younger than 18 years of age.

Per 4 weeks during a period of 14 continuous days no consignment may be forced to an employee.

Also no consignment may be forced in combination with a nightshift on the same day.

##### Duration of the Labour

If the consignment also includes the period between 0.00 and 6.00 o'clock, then for schedule workers it is not the normal working period of 45 hours, thus the duration of labour calculated over a period of 13 weeks should be no more than 40 hours a week. Other than this the duration of labour will stay the same.

The labour resulting from the consignment, doesn't count towards the calculation of the normal period of labour (with or without overtime) as mentioned in paragraph 4.4 and 4.7

##### Compensation

The labour time which has to be compensated during the consignment is the real time the employee has worked when called upon.

One call or several calls within half an hour are considered to last at least half an hour, if after the employee has worked during consignment and within half an hour he is called upon, the period which lies between has to be compensated as if during that period one

has been working.

Labour conducted during standby has to be paid as overtime.

#### Stand by Compensation

Unless otherwise agreed in writing, the employer decides which employee has to bare consignment notwithstanding if the employee is called upon or the employee has worked. The compensation is 1% of a month salary before deductions. This compensation may not be deducted from the compensation that has to be paid if the employee is called upon.

Article of law Article 11 Arbeidsregeling 2000

### **4.10. Full continuous shift**

#### Definition

A full continuous company is defined as a company in which business is conducted 24 hours a day such as parts of the medical sector and the oil refinery.

#### Special rules

For employees who work nightshift the following applies:

the day of rest should be once in every 13 weeks on a Sunday

if time doesn't permit at work, the break can be taken after 5 hours of work has past.

there is no maximum period of labour inclusive overtime per day

the period of labour inclusive overtime is a maximum of 60 hours per week. The time of labour without the overtime is 45 hours per week (in case of a nightshift also 45 hours per week)

For consignment shift (see paragraph 4.9) there is for schedule workers in a fully continuous shift a 14 day consignment free period, consignment shift in combination with nightshift is forbidden. The consignment compensation is not applicable.

Article of law Article 26 Arbeidsregeling 2000

#### 4.11. Administrative obligations for the employer

List of employees - Every company should hang a list of employees in a place where the employees have free access to it. This list gives a systematic view of the various functions in the company and the amount of employees, and also the period of labour and work schedule in the company and the period of rest. The model of this list is equal to the list according to the Arbeidsregeling 1952.

### Informing Obligations

Lists which contains working schedules for schedule workers have to be submitted to the Department of Labour. This also applies to structural changes in the lists.

### Incidental changes

If an employee incidentally has to work longer or shorter than according to the work schedule, (in connection with the possibility to move working hours between days; see paragraph 4.4) then he has to be notified 48 hours in advance.

### Prohibition Secretary General

The Secretary General of the Department of Labour can forbid a work schedule regarding an employee or a group of employees or can give binding instructions regarding this schedule if:

he is of the opinion that there is no schedule work necessary in this company

he is of the opinion that this is the case because of the health (risk) of the employee or employees.

### Register of Personnel

The employer is obliged to hand over a register of personnel if asked by the Department of Labour. The register of personnel contains the names, dates of birth, and nationalities of the employees. Regarding employees who are not allowed by law in St Maarten, the number and the date of the permit should be mentioned.

### Register of overtime

The employer should have a register of the overtime that is being worked in his company and is obligated to hand this over to the Department of Labour. The register of overtime contains the names of the employees who have worked overtime, the date of the overtime and the duration of the overtime per employee.

Article of law Articles 28 till 30 Arbeidsregeling 2000

## **4.12. Date the regulation becomes effective and transitional regulation**

### Date of Effectiveness

The date of effectiveness is august 1, 2000.

### Transitional Regulation

There is a transitional regulation of 12 months. This may have effect for existing (collective) labour agreements, regulations and approved timetables.

### Agreements

Existing agreements or regulations which differ in a negative way for the employees from the regulations of the Arbeidsregeling 2000 will stay in effect for a maximum of one year after this regulation has become effective. As far as the Arbeidsregeling 2000 makes it possible to create adverse circumstances for the employee, these differences may stay in effect after that year.

#### Negative effect for the employee

If implementing one of the regulations of the Arbeidsregeling 2000 has a negative effect on the employee compared to a similar regulation from the Arbeidsregeling 1952, then the adverse regulation may only be put into effect after 12 months, unless the employee agrees by writing that the regulation becomes effective on an earlier date, or if it is agreed by a collective labour agreement that the regulation becomes effective on an earlier date.

#### Labour regulations

The employer who at the time the Arbeidsregeling 2000 becomes effective has an approved timetable based on the Arbeidsbesluit I, the regulation regarding the hotel industry and the regulation regarding casino, where the working hours are more than 45 hours per week, is considered to have the approval of the Secretary General of the Department of Labour, to let the employees work the longer hours, for a maximum of 12 months.

For employees in a bakery who falls under the Arbeidsbesluit II, there is a special rule set forth in article 40.

#### Cutting the wages

The prohibition to adjust the wages of the employees to reduce working hours as a consequence of the Arbeidsregeling 2000 becoming effective, has lapsed as per January 1, 2001 (PB 2000 nr. 172).

Article of law Articles 37 up to and including 43 Arbeidsregeling 2000

## **5. Domestic personnel**

#### Former regulation

To the domestic personnel the regulation of the Arbeidsregeling 1952 doesn't apply, because this regulation only applies to work done in a 'company'. The private house holding doesn't fall under this category.

#### New regulation

In the Arbeidsregeling 2000 (as of August 1, 2000) there is a stipulation regarding domestic personnel, this stipulation contains norms the employer has to take into

consideration.

#### Working hours

The working hours are a **maximum of 11 hours per day and 55 hours per week**. Overtime has to be compensated at 150%

#### Pause

After 5 hours of work there should be a break of at least half an hour. Labour during the break should be compensated at 150%

#### Resting period

The hours between 22.00 and 6.00 o'clock are considered to be the resting period unless the labour relates to nursing which occurs between said period. Labour within these hours should be compensated at 150%.

The employee has the right to one day of rest every seven days. Labour performed on the day of rest should be paid at a rate of 200%.

#### Holidays

The employee is exempted from labour on holidays with the retention of salary. Labour on a holiday is compensated at 200%.

#### Minimum salary

The minimum salary of domestic personnel is as of 1-8-2001, a minimum per hour salary. (See folder Gross hourly minimum wages) and shall be equalized in phases to the level of category 1, with the understanding that the sums mentioned hereafter regarding board and lodging (life in personnel) or meals (non resident personnel) may be subtracted from the salary.

#### Board and lodging

Naf. 425

#### Breakfast or a sandwich

Naf. 2,10

#### A warm meal

Naf. 7,

Article of law Article 25 Arbeidsregeling 2000, article 9 paragraph 4 Landsverordening minimumlonen

