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## FACTSHEET ON ON-CALL DUTY

EmpA:	Employment Act, SR 822.11
EmpO 1:	Ordinance 1 to the Employment Act, SR 822.111
EmpO 2:	Ordinance 2 to the Employment Act, SR 822.112
Art.:	Article
para.:	Paragraph
let.	Letter

### Introduction

On-call duty in hospitals and clinics (Art. 15 and 8a EmpO 2) is covered by the [Factsheet on the application of employment law in hospitals and clinics](#) (available in German, French and Italian). It can be consulted on the SECO website.

### General provisions

#### Definition (Art. 14 para. 1 EmpO 1)

Employees are on-call if, outside their normal work duties, they are ready to be called to work to remedy faults, provide emergency help, conduct inspections or deal with similar extraordinary events.

#### Limitation of scope

On-call duty must be differentiated from other types of stand-by work, such as *work on demand*. Work on demand is a system where workers make themselves available to employers to work when there is an increase in the normal workload. By contrast, on-call duty involves extraordinary, urgent work that can neither be planned nor predicted. If the volume of work required increases, employers have other ways of dealing with increasing workloads, such as increasing the maximum weekly working time (Art. 22 EmpO 1), introducing statutory overtime (Art. 12 and 13 EmpA and Art. 25 EmpO 1), enacting organisational measures, recruiting additional personnel or taking on temporary staff.

Employees who are on call must be available to come into work at any time; this encroaches on their private lives and may have a detrimental effect on health, especially when emergency situations are involved and when employees have to be ready to work at short notice.

The inspections referred to in Art. 14 para. 1 EmpO 1 are basically unforeseeable, occasional inspections that arise in emergencies. Employees are normally called to work while on call in order to remedy unexpected faults. If an employee who is called in uses the time to do his or her normal work duties, this will not be considered on-call duty.

## Authorisation

Where employees are required to be on call at night, on Sundays or on public holidays, authorisation must be obtained (Art. 16, 17, 18, 19, 20a EmpA).

However, specific types of companies or employees, under the terms of the special provisions of EmpO 2, are exempted from the need to obtain authorisation for work at night or on Sundays.

## Compensation

The question of compensation is not treated by the EmpA as this essentially comes under private employment law, although the Federal Supreme Court has held that the period of availability, i.e. the time during which the employee must be ready to perform any work that arises, must be compensated for (see court decision BGE 124 III 249). Compensation does not necessarily have to be equal to the wage paid for the employee's normal duties. It can be determined by contract between employer and employee, or under the terms of a collective employment agreement (CEA). Compensation for on-call duty may also be included in the basic pay package. The relevant documents on compensation are thus employment contracts, personnel regulations and any CEAs.

## Compensation under EmpA

On-call employees who are called in to work at night or on Sundays are entitled to the statutory salary and time bonuses, as chiefly governed by Art. 17b, 19, 20 EmpA. For more details, see p.6 of this document and the [Factsheet on the 10% time bonus for regular night shifts](#) available in German, French or Italian on the SECO website.

## Organising and planning on-call duty

### Principle (Art. 14 para. 2 EmpO 1)

The statutory provisions on on-call duty envisage a schedule covering a four-week period. During this time, the employee may not be on call for more than seven days, either consecutively or otherwise. The number of times an employee may be called in during this period is not limited. Once one on-call period ends, regardless of whether the employee has been called in or not, a two-week period must elapse before another one can begin. During this time, the employee may not be placed on call, even if he or she was not called in during the last period of on-call duty. The two-week rest periods may be counted within the four-week scheduling period or may follow this period.

### Exception (Art. 14 para. 3 EmpO 1)

The following rule is only applicable in exceptional cases. It should be noted that both points 1) and 2) must be met:

An employee may be placed on call for up to 14 days within a period of four weeks if both of the following conditions are met:

- 1) due to its size and set-up, the company does not have sufficient human resources for an on-call service in accordance with Art. 14 para. 2 and
- 2) the employee does not get called in more than five times each month on average over a calendar year.

**NB:**

To determine the size of the company in accordance with Art. 14 para. 3 EmpO 1, the size of the entire company should be taken, not just the unit in which the employee does on-call duty. The company must be able to demonstrate that not enough staff are available and that it is not objectively possible to recruit additional staff.

The definition of a small business in Art. 2 EmpO 2 can be taken as a basis for the calculation.

If special professional qualifications are required to perform on-call duty and only a small proportion of the employees possess these qualifications, in exceptional circumstances a larger company may also apply the exemption in Art. 14 para. 3 EmpO. In this case, the company must be able to demonstrate that it is not able to train further staff or recruit new qualified staff.

Days absent on holiday should not be considered when calculating the five-days-per-year average. The average number of times an employee is called in for work is calculated by dividing the number of times an employee was called in by the number of months worked.

The rule concerning the two-week rest period, set out in Art. 14 para. 2 EmpO 1, does not apply in cases subject to Art. 14 para. 3 EmpO 1. Wherever possible, however, efforts should be made to ensure that employees can work entire weeks free from on-call duty.

For companies that require a licence for night work and Sunday work, it must state in the licence that the exception in accordance with Art. 14 para.3 EmpO 1 may be applied. In the case of uncertainty regarding the application of Art. 14 para.3 EmpO 1, please contact SECO before sending in an application.

**Employee participation in the establishment of work schedules (Art. 48 EmpA) and advance announcements (Art. 69 para. 1 EmpO 1)**

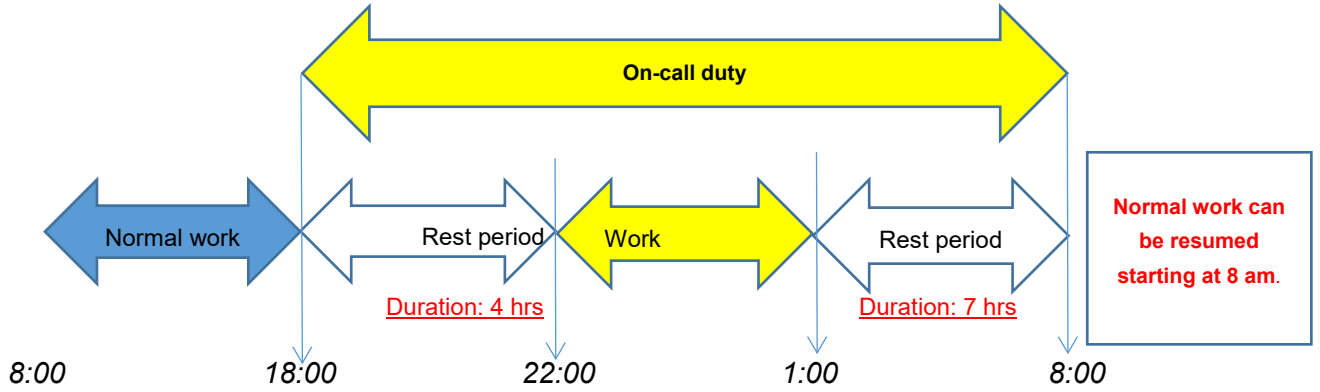
Generally speaking, employee participation relates to the organisation of working hours and the arrangement of the schedules (Art. 48 EmpA). Consequently, employees must be consulted whenever the company's work schedule is established or modified. Even if work schedules are approved by the employees, they must still abide by the legal framework conditions. New work schedules should be issued at the earliest possible opportunity - as a rule, no later than two weeks before employees begin working under them (Art. 69 Para. 1 EmpO 1). Unless there is good reason, this time interval may not be shortened.

**Compliance with daily rest periods (Art. 19 para. 3 EmpA 1)**

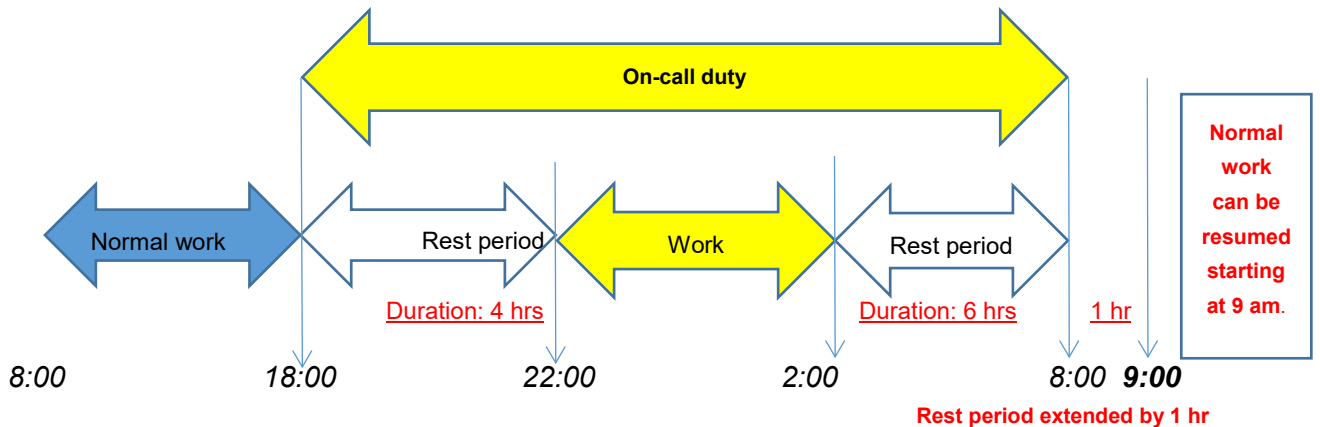
The 11-hour daily rest period (Art. 15a para. 1 EmpA) must be respected, although in the context of on-call duty it may be interrupted by assignments. Where a worker is unable to rest for four consecutive hours due to an assignment while on call, a full period of 11 hours must be granted before the worker can resume his or her job.

Real-life examples:

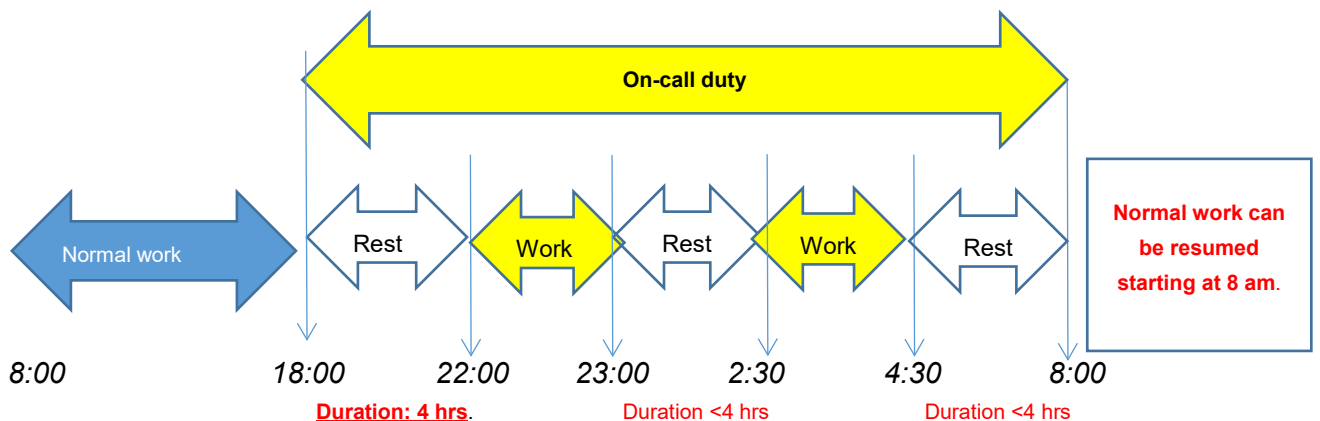
*Called in once: the total rest period, before and after the worker was called in, complies with the statutory minimum of 11 hours. Subsequently, the worker can resume his or her normal work.*



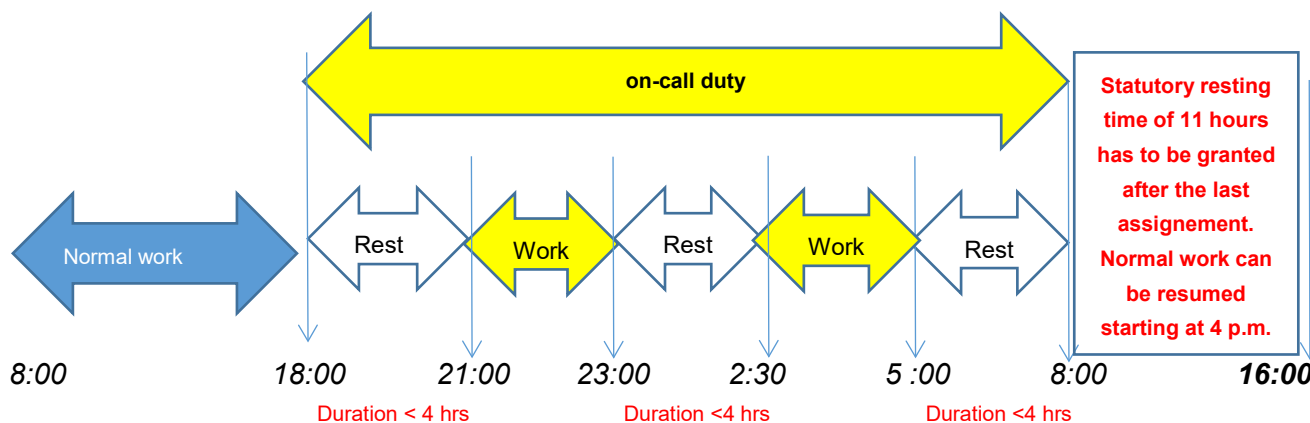
*Called in once: the total rest period, before and after the worker was called in, amounts to only 10 hours instead of the statutory minimum of 11 hours. The rest period must be extended by 1 hour to reach this statutory minimum.*



*The rest period consists of at least one period of four consecutive hours, and the total rest period complies with the statutory minimum of 11 hours. Subsequently, the worker can resume his or her normal work.*



The employee is called in multiple times, with none of the rest periods in between amounting to four hours. The total rest period also falls short of the statutory minimum of 11 hours. After being called in a final time (in this example, at 5 a.m.), the employee must be granted the full 11 consecutive hours of rest.



## Working hour credits (Art. 15 EmpO 1)

### Principle

Where employees are on call on company premises, the whole on-duty period counts as working time (Art. 15 para. 1 EmpO 1). Consequently, Art. 19 para. 3 EmpO 1 does not apply. Since the entire duration of on-call duty spent on company premises counts as working time, the employee must afterwards be granted the full 11-hour daily rest period (Art. 15a para. 1 EmpA). In addition, it must be verified that on-call periods have been spent as such and not used to perform *normal* work duties. Cantonal authorities are competent to make this type of decision (Art. 41 para. 3 EmpA).

Where on-call duty takes place off company premises, only the time corresponding to work performed when called in is counted, together with the travel time to and from the premises (Art. 15 para. 2 EmpO 1). In this case, Art. 19 para. 3 EmpO 1, as described above, applies. Where on-call duty requires a fast response time (e.g. less than 15 minutes after receiving notification), employees have to remain on the company premises while they are on call and therefore are not free to use their time as they please. The cantonal authorities must decide whether such cases constitute on-call duty or normal working time (Art. 41 para. 3 EmpA).

### Relation to other provisions on working time

The general provisions governing working time (Art. 10 EmpA for daytime and evening work, Art. 17a EmpA for night work) do not apply to on-call duty. By definition, on-call duty takes place when the employee is not doing his or her normal work (Art. 14 para. 1 EmpO 1). The strict application of Art. 10 and 17a EmpA to on-call duty, either on or off company premises, would make it impossible to run an on-call service in practice. For the same reason, Art. 21 para. 3 EmpO 1, according to which no more than six days may be worked consecutively, does not apply to on-call duty either.

In contrast, other provisions still apply, especially those concerning maximum weekly working time (Art. 9 EmpA) and statutory overtime (Art. 12 EmpA). On-call duty is therefore the only ground on which the maximum weekly working time (Art. 9 EmpA) may be exceeded. The resulting additional hours must be treated as statutory overtime (Art. 12 EmpA) and compensated for in accordance with the provisions of Art. 13 EmpA and Art. 25 EmpO 1. In this respect, it should be remembered that statutory overtime worked at night or on Sundays in the context of on-call duty is permitted by Art. 26 para. 1 let. b EmpO 1. It should be pointed out that time spent on company premises when on on-call duty always counts as working time (Art. 15 para. 1 EmpO 1), which under Art. 9 EmpA may not exceed

the maximum weekly working time. When scheduling on-call duty on company premises, the resulting working time under Art. 15 para. 1 EmpO 1 must therefore be taken into consideration. The maximum weekly working time may only be exceeded, in the form of statutory overtime, if the employee is called in while on call.

### **Compensation for on-call duty on Sundays**

If an employee who is on call off company premises on a Sunday is not called in, a compensatory day of rest does not have to be granted. Even so, that particular Sunday does not count as a Sunday on which the employee did not work. It is therefore impossible for an employee to be on call every Sunday of the year, as he or she must have every second Sunday off (Art. 20 para. 1 EmpA). If an employee on call is called in, the hours must be compensated in accordance for with the provisions of Art. 20 EmpA and Art. 21 EmpO 1. On-call duty on company premises counts as working time and must always be compensated for under the terms of Art. 20 EmpA and Art. 21 EmpO 1. Cases discussed in EmpO 2 are excluded.

### **Supplementary protection for employees with family commitments**

#### **Short-term changes (Art. 14 para. 4 EmpO 1)**

If an on-call schedule is amended by the company and not at the request of the employee, employees with family commitments (Art. 36 EmpA) benefit from increased protection. These employees can only be called in if they expressly agree and if no reasonable alternative for the company exists.

### **Special protection for women – maternity protection**

Under Art. 60 para. 1 EmpO 1, pregnant women and nursing mothers may not work longer than the standard agreed daily working time. As a consequence, they may not be assigned to on-call duty.