

French managers and flexitime. How the annual working days system is used and abused

The "annual working days system" for calculating working time came about with the introduction of the 35-hour week in France. It has gone way beyond the "non-office-based managers" originally aimed at and is open to abuse. This means of regulating managers' individual working time is anything but straightforward, especially when the workload increases. But employees by and large like it.

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Big French businesses have found the answer to the 35-hour week. The annual working days system applies to over 10% of workers. The Défense district, the Paris 'city'.
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The system for calculating annual working time in days originally intended for managers with self-arranged working hours (see Box) – the annual working days system (AWDS) – appeared in France in 2000, tied into the work-time reduction (RTT) scheme established by the Aubry Acts¹: the celebrated 35-hour week. "We saw it as a break with double standards: managers typically don't keep count of their hours, so we needed a system that doesn't rely on clocking on and off and offers compensation through days off. And managerial staff were pretty much in favour", says Jean-Paul Bouchet, General Secretary of the CFDT Cadres white-collar union. As Philippe Masson, of the Rights and Freedoms Alliance of the CGT's union of engineering, managerial and technical staff (Ugict-CGT) says, "this method of reducing working time [...] was based on the belief of many managerial staff that taking extra time off was the only way out of an increasingly all-consuming time and pace of work, and to fulfil their desire for more freedom to organize their work and leisure time".

LFoundry manufactures integrated circuits (650 employees including 140 managerial staff) in Rousset (Bouches-du-Rhône). "The employees concerned were mainly looking at the 18 days they could take off (RTT plus public holidays) for 218 worked", says Patrick Chini, CFDT union rep for managerial staff. "But at the same time, when we'd already gone over to the 35-hour week, the problem of managerial staff working too many hours had reached crisis point, so AWDS offered a way out". It's the same story at Thales Systemes Aeroportes (Thales Airborne Systems) in Brest, Finistère (450 managerial staff concerned): "Management was keen to bring in a different system because the labour inspectorate had come down on it for unpaid overtime working. RTT days off and freedom to organize their time found willing takers – only 27 people out of 450 refused and stayed on the annualised working hours system", says CGT union rep Roland Mainpin.

Elsewhere, some firms have cashed in on what the scheme allows – especially non-payment of overtime (there being no requirement to set maximum hours after which overtime starts) – to apply it to employees it was not originally intended for, dangling the carrot of promotion. In 2002, the Decathlon

1. Named after the then Socialist Minister of Employment, Martine Aubry.

2. Confédération française de l'encadrement – Confédération générale des cadres – managerial and supervisory staff union.

3. Workforce employment conditions survey "Activités et conditions d'emploi de la main-d'œuvre", Dares, June 2011.

4. "Votre travail, comment le voulez-vous ?" Ugict-CGT survey of 2210 managerial staff between 15 September and 15 November 2008.

sporting goods chain got its department heads – then classed as supervisors – to sign a contract amendment turning them into non-office-based managers on AWDS (agreement signed by two unions). "There was a brief period of euphoria", recalls the Toulouse CFE-CGC² union rep Fabien Gautier, "when we were supposed to be getting more autonomy and responsibility out of it; it was held out as the only way to get career advancement...". Another example in a bank: "When we went over to the 35-hour week, promotions followed in droves; three quarters of the staff found themselves on AWDS! It's basically a way to avoid paying overtime", says CFE-CGC union rep Ida Magneron.

"You keep going until it's done"

Today, 12% of full-time employees are on AWDS.³ A Ugict-CGT survey on how managers feel about their work⁴ show that they remain strongly attached to the work-time reduction days off system (69%), despite struggling to take them (25%) and finding it hard to keep on top of the pace of work and long hours (54%). "This 'advance' has opened the door to abuse. Without controls, people can be doing up to 13 hours a day with no grounds for complaint, whereas before there was a psychological barrier and overtime could be negotiated", says CFE-CGC National Secretary Bernard Salengro.

So, is AWDS just a trap? "Department heads' excessive workloads regularly get flagged up to management. Since 2002, they have been working steadily longer days", notes Fabien Gautier. Decathlon's "house rules" recommend that they be there at opening and closing times, key points in the day

An exception to the rule

Introduced so that managers whose working hours are difficult to calculate could also benefit from a reduction of working time, AWDS stands outside the statutory 35-hour week and the limits of the 10-hour day and 48-hour week.

It can only be set up by a company or industry-wide collective agreement, and the employee concerned needs to opt in. Originally designed to enable non-office-based managers whose jobs are not tied to standard office hours to organize their time use, it has been extended to non-managerial staff whose working time cannot be set in advance.

AWDS provides for a number of days worked over the year: 218 days maximum (leaving about 11 extra days off on top of public holidays, Saturdays, Sundays and paid holiday entitlement), but in practice extended to 235 since 2008 through the option to take pay in lieu of days off. It includes an annual interview with each employee to monitor workload. The only constraints are 11 hours rest a day between two work periods, 35 consecutive hours a week free of duty requirements, and no more than six days worked per week, giving rise to the theoretical possibility of working 78 hours per week condemned by the European Committee of Social Rights. The French Supreme Court of Appeal held that protection of employees' health required that working hours should remain "reasonable" and the firm should have the means to make sure that they were. Failing that, the AWDS system may become inoperative and overtime claimed.

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5. Shop sales figures are reviewed daily at various times. Other required presence times include "money time" between 5 pm and 8 pm when department heads have to be on-site to give leadership to their sales teams and ensure optimum customer service, or team meal breaks between noon and 2 pm.

(deliveries, sales figure reviews⁵, etc.) and for the various activities: moving, stock-taking, preparation of marketing exercises, etc., before and after business hours. Days of 8 am to midnight are not uncommon. There is no set work day, so you go on until you're done. And you can't really do a four-hour day to make up for it. We average over 50 hours but get paid less than the hourly minimum wage". The problem is the workload: the company's total selling space is growing, but employee numbers are shrinking. "The social balance sheets show nearly 900 jobs lost in three years", says the union rep.

Working time, workload and work intensification are all bound up. "You do 10 to 12 hours a day as a senior manager, near enough 10 as a department head, not counting work taken home... The 15 RTT off days and the flexibility of AWDS are a safety valve you need to unwind, take care of personal stuff, or work at home without distractions...", says a senior tax official. His big concern is the stresses of his job, the results-based management culture and the public service accountability of civil servants, all against a backdrop of downsizing.

"We're constantly pulled in opposite directions every day: we have discretion and relative free agency, but an imposed workload that has risen over ten years and numerous constraints", says Martine Flacher, CFDT Cadres national secretary with the public service portfolio. It's hard to work the odd shorter day – and anyway, "it's not done" – and use up all their work-time reduction days off. Building up the "working time accounts" as some do to take early retirement also creates problems with workforce management.

Nor is it easy to put the autonomy to best use, even when not totally swamped

with work. "Projects are increasingly under time and cost pressures. Everything always has to be done at a rush. You can almost never take even a day off to compensate", says Roland Mainpin, who calculates he does about a 45-hour week, with 15 RTT off days. Pressures and workload make themselves felt at LFoundry, too – contacts with customers and production staff, morning and even evening meetings. "People get their job done as best they can in the time they have", says Patrick Chini. AWDS is strictly controlled there in terms of working time, with compensation for night and weekend work, and a time registration system and annual report for managers' working time – in 2010-2011, they averaged 42½ hours, with 13% working over 46 hours.

But AWDS seems to suit some kinds of job and firm down to the ground. People working for IT services companies, for example. "The system only has benefits for me", says a consultant. "I switch between really busy days in the field and slower days. And I have 10 RTT off days to recharge my batteries.

That makes for an OK balance, but then also the work is interesting and the firm has it down to a fine art", says one consultant who did not want to be named. André Bryssine, now a freelance consultant, also finds AWDS well-suited to his job, although he did clash with his previous employer over his time management. "I had no set working hours and worked unsupervised on assignments so I put down my actual time worked and took time off for overtime, but the boss was only happy about people working more, not less". The grounds for sacking this staff representative included: late timesheets, unclear time allocations, and unjustified absences.

Management works the competition angle

The regulation is based on a delicate balancing act. Elsewhere, at Schneider Automation in Sophia Antipolis (800 employees, 60% of them engineers and managerial staff, half

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working in R&D), before its recent move to Carros (Alpes-Maritimes) "there was real flexibility", says CGT central official Antoine Marchese. "People organized their time according to their work and personal obligations and were able to do things during the lunch break, even if it meant finishing a report at home. It isn't the time as such that's a problem. It's how it links into other factors, like working conditions and the feeling of having free agency. Since moving to a remote site which means longer travelling times and some having to take a works shuttle, attitudes have changed: employees are more fixated on their jobs, organization is less flexible and interaction has gone down".

Environment, workload, pressure... It isn't easy to order individual working times independently. It all comes down to self-organization: conscientiously setting one's own priorities while juggling multiple constraints. "You feel you're constantly playing catch-up, constantly firefighting. And you feel guilty. At the same time, you want to stay interested in your work, to get it done properly within time and budget, and get recognition. Management plays on our professional conscience", says Roland Mainpin. Behind which looms the pressure of performance assessments. "It's hard for people to admit that they're running behind: it's seen as a sign of poor organization or incompetence", says Ida Magneron. And that means a black mark, but also the risk of being given less interesting projects later, especially for engineers, who tend to the individualistic not to say competitive. And when management plays on that competition, the abuses become clear: "There are no safeguards any more; what there is, is a sort of unhealthy competition: the biggest workhorse wins. You can see in the minutes of works council meetings examples of department heads who have put in

twenty-hour days or eighty-hour weeks", says Fabien Gautier.

Work conditions like that cannot fail to affect personal organization and health. "The poor absenteeism and turnover indicators are regularly flagged to management", says the Decathlon union steward. "People are keyed-up all the time, and that creates a lot of unease: stress and difficulties balancing work and private life. Working at home eats into home life, holidays have to fit in with work duties, you only get to eat with the family at weekends. There are really busy periods that need every ounce of energy to get through; sometimes you need medication to help", says Martine Flacher. "Managers are holding up at the moment, but they are all stressed and on the edge. There are breaking points", emphasises the other tax official. "There are more outbursts in project teams, people at the end of their tether, who are on sick leave, or on tranquilisers. But it's hard to say how many because people are unwilling to admit that they can't hack it any more. They are all convinced that owning up will get them singled out as a weak link", says Roland Mainpin.

The courts step in

Feelings of not being in control and stressed out: with no fixed bounds, there's always a bit more that can be fitted in. And time can be made up by taking work home, especially

where papers are to be read or reports written. This has always been the case, but it is certainly made easier by computers and mobile technologies which blur if not erase the dividing line between work and private life times. "People can go into blind panic mode and try to offset stress by working too much, which adds to the stress", notes Stéphane Lovisa, General Secretary of CGT's metal industry engineering, managerial and technical staff federation. "With a different system of calculating time than AWDS, management would pay more heed".

Managers' inability to assess their staff's workload was specifically singled out in court verdicts on suicides (see Box). The courts have also ruled on abuses of AWDS. On 29 June 2011, France's Supreme Court of Appeal held that an employer must ensure that working time is "reasonable" with regard to the protection of employees' health. Upholding a manager's claim for overtime pay, it found that his employer had failed to keep a check on the number of days worked and to keep the workload under review as required by the metallurgical industry agreement. In practice, control of AWDS varies with the agreement: the most stringent set maxima of 10 hours a day and 48 hours a week, have a clear view of working time and set compensation time for overtime work (LFoundry), while the least rigorous simply refer to the 11 hours' daily rest requirement set by the Labour Code. The personal interview to review work load and organization is in

6. The European Committee of Social Rights is a Council of Europe body responsible for monitoring Member States' compliance with the European Social Charter.

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most cases included in the annual evaluation interview. Suffice to say that it gets glossed over compared to the review of the employee's objectives and performance evaluation. "It's barely touched on: working time is not up for discussion", notes the senior tax official. Nor is it easy to raise difficulties in coping with one's workload as part of the personal assessment.

Some firms let employees go back to the old working hours system, but those who want to are quickly deterred by "the fear of showing themselves up and losing an interesting activity", says Roland Mainpin. "Job, pay, working time, freedom, working conditions: they're all part of the equation. But when people are isolated and forced into competition, that's another story. In my firm, messing with the AWDS would spark a revolution", says Antoine Marchese. But where it

isn't wanted, it can always be challenged using the Supreme Court judgment – which is what several Decathlon employees have done in individual lawsuits.

It is less the principle of the annual working days system that the main trade unions are challenging than the abuses it leads to. Some have taken it to the European Committee of Social Rights⁶ which in its recent decision of 10 June 2010 found it to be in violation of the European Charter of Social Rights – for all the good it did. The unions are variously arguing for a more rigorous control of AWDS via, among other things, checks on hours worked, a benchmark weekly average time, guaranteed time off, and a redefinition of eligible job categories, backed up by the prospect of renegotiating collective agreements encouraged by the case law. ●

Assessing the workload in question

In its verdict of 19 May 2011 on the suicide of Antonio B., a 39 year old engineer who had jumped from the third floor of the main building of the Renault Technocentre in Guyancourt (Yvelines), the Versailles court found that the company must have been aware of the risk that this employee was exposed to from his workload and had taken no steps to protect him from it.

In her evidence to the court, his wife said that "he was showing clear signs of extreme anguish" several months before ending it all, that he was "working almost non-stop" and had "no time away from duties over a long period": twelve hour days plus working hard at home in the evenings and at weekends. The court inveighed against "(line managers') complete inability to be able to say what precise volume of work was performed by this employee in respect of all his duties", "the absence of any company provision for evaluating workload", "managers' failure to have a view of their employees' workload".

Further reading

"Comment réglementer le temps de travail des cadres ?", *Revue de droit du travail*, No. 9, September 2011.