



WORKING TIME OF DOCTORS IN MEDICAL ENTITIES TAKING INTO ACCOUNT PRACTICAL APPLICATION OF WORKING TIME SYSTEMS

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ABSTRACT

The paper discusses the process of planning the working time of doctors on duty in medical entities. Contrary to popular belief, this process is very complex. Drawing conclusions and formulation of a general view requires a study of numerous labour law institutions taking into account the specificity of the healthcare sector. The problem with planning the working time of a doctor on duty is that the employee is actually not working during all their formal working hours. In such cases it seems right to aim to reduce the number of not-working hours and complete the doctor's weekly workload with medical duty hours only when necessary. The authors present how theoretical deliberations on designing working time schedules are manifested in practice. They take into account the basic assumptions concerning working time, specific provisions of the Medical Services Act and the recent decisions of the Supreme Court (further referred to as: SC).

INTRODUCTION

The regulations concerning working time are included in Chapter 6 of the Labour Code. Their main purpose is to define the value thresholds within which the employer may schedule the work process and respect basic employee rights (such as the right to rest for example) at the same time. Article 128(1) of the Labour Code (further referred to as: LC) contains a legal definition of working time, which says that it is the time in which the employee remains at the employer's disposal at the workplace or in another place,

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where work duties are to be performed (Ustawa 1974). The employees hired in a medical entity are a separate category of employees and their working time is regulated by special laws (*lex specialis*) contained in the Medical Services Act (further referred to as: MSA). Only lack of proper regulation in the law governing a specific subject is the basis for applying the provisions of the Labour Code (Article 5 LC).

The subject matter of this paper is limited to scheduling the working time of employees authorised to be on medical duty. Article 95(1) MSA says that only employees of a medical profession with higher education can be obliged to be on duty (Ustawa 2011). Planning the working time of a person that meets these criteria in the form of medical duty does not require their consent and is included among the employee's duties (Gotkowska). Only pregnant women and employees taking care of a child under 4 are an exception from this rule – in such cases the legislators introduced additional restrictions in the form of the employee's consent to work on duty (Gotkowska).

In the standard working time system the working time standard (the maximum number of hours per day and per week during which the employee can work specified by legislators (Kajda)) for the employees hired in a medical entity¹ may not exceed 7 hours 35 minutes per day and on average 37 hours 55 minutes per week in a five-working-day week in the adopted settlement period (Article 93(1) MSA (Ustawa 2011)). A day is understood as 'successive 24 hours, starting from the time at which the employee begins their work in accordance with their working schedule, and a week is understood as 7 successive calendar days, starting at 00:00 on the first day of the settlement period and finishing at 24:00 on the last, seventh day' (Nałęcz 2011). According to legislators, such thresholds satisfy the needs of employees and protect them from excessive workload, taking into account the specificity of work in the healthcare sector. Working time is calculated on the basis of Article 130 LC. Every holiday falling in a given settlement period on weekdays or Saturdays reduces the working time. 'Adopted settlement period' in the context of medical entities should be understood as the period of no more than three months (Article 93(4) MSA), for which the working time of employees should be calculated and the rule of a five-working-day week should be verified (Ustawa 2011). In certain cases legislators modified the duration of settlement periods, e.g.: Article 94(2) MSA, Article 96(2) MSA. The employer decides on the duration of settlement periods (subject to the upper threshold defined by law) in the mode specified in Article 150(1) LC (in a collective labour agreement, work rules, or announcement).

The main rules concerning a standard working time system have been presented above. Article 94(1) of the Medical Services Act allows the employer to introduce an equivalent working time system in the situations in which it is required due to the type of work or its organisation. It consists in prolonging the working time to 12 hours a day, with the exclusion of the possibility of prolonging the working time of blind employees working on positions that require contact with patients. The working hours of the employees whose working time has been extended to 12 hours a day cannot exceed 37 hours 55 minutes per week on average in the adopted settlement period, and in the case of technical, maintenance, and support staff – 40 hours per week in the adopted settlement period. The settlement period is also changed in the case of equivalent working time system, which cannot be longer than one month and the possibility of

¹ Medical entity in the meaning of Article 4 of the Medical Services Act of 15 April 2011.

being extended to maximum 4 months only in specially justified cases. Legislators reserved in Article 94(4) MSA that in an equivalent working time system the working time of pregnant women and employees taking care of a child under 4 cannot exceed 8 hours a day without their consent. Like in other working time systems, it is possible to introduce shift work also in equivalent working time system (Article 146 LC).

The subject matter of this paper was narrowed down to scheduling the working hours of medical duty. This is exceptional institution stipulated in Article 95(2) MSA, as it is allowed in medical entities providing stationary and 24-hour medical services that professional duties are fulfilled outside normal working hours (on other rules than overtime hours). The time of being on medical duty is counted as working time (Article 95(3) MSA). Maximum duration of medical duty must not exceed 24 hours from the moment of starting work if the employee is on duty after a working day or 24 hours if the employee is on duty on a work-free day (Komunikat 2008). Article 95(4) MSA allows for scheduling the working hours of a medical duty beyond the weekly working time (37 hours 55 minutes in the adopted settlement period). This provision does not set the upper threshold to which the working time can be extended, but it is stipulated in Article 131(1) LC, which says that the maximum weekly working time including overtime hours may not exceed 48 hours in the adopted settlement period. Special regulation from Article 96(1) MSA alleviates this rule, however, and says that working more than 48 hours per week is possible if the employee gives their written consent for it (the so-called opt-out clause).

The process of planning working time, both in the basic and equivalent working time system must take into account the regulations on rest periods. Article 97 MSA says that the employee is entitled every day to at least 11 hours of uninterrupted rest, and every week to at least 35 hours of uninterrupted rest, including at least 11 hours of uninterrupted daily rest. An employee on medical duty should be given 11 hours of uninterrupted rest directly after the completion of medical duty. In cases justified by work organisation, the weekly duration of uninterrupted rest may be shortened to 24 hours (Article 97(4) MSA).

The rule of a five-working-day week on average assumes there are five working days and two days off per week in the adopted settlement period. Formulating this rule legislators used the expression 'on average', which means that for some part of the settlement period the employee may for example work for six days a week (without prejudice to the provisions on rest periods) and in the remaining part of the settlement period for less than five days a week. On a customary basis, Sunday was set to be the first day off in a five-working-day week on average. It should be emphasised that the employees who work on Sundays may obtain another day off in return, which falls within 6 calendar days preceding or following such a Sunday (Article 151¹¹(1)(1) LC), subject to the provisions of Article 151¹² LC on obligatory work-free Sunday falling at least once every 4 weeks. Legislators did not indicate another work-free day connected with the rule of a five-working-day week on average, giving employers freedom to set it in the working time schedule, subject to the regulations on rest periods (Pisarczyk 2011). An employee who was on medical duty on a work-free day resulting from the rule of a five-working-day week on average is not entitled to another work-free day until the end of the settlement period (the application of Article 151¹³ LC has been excluded), but to standard remuneration plus proper bonus. The rule of a five-working-day week on

average may turn out to be a particularly useful tool of planning working time in situations in which the employee does not actually work during all their formal working hours because of being on medical duty.

Working time schedule is 'the method of managing the working time of employees set by the employer' (Nałęcz 2011). Placing this issue at the end of the chapter is not coincidental. Creating a working time schedule requires taking into account all the issues discussed above in order to set the hours of starting and finishing work on particular days and work-free days on this basis. With regard to employees working on medical duty it will have the form of a work schedule, i.e. a detailed work plan set individually for particular employees (Nałęcz 2011). In accordance with Article 129(3) LC the working time schedule should be created in a written or electronic form, for a period shorter than settlement period, but not shorter than 1 month. The working time schedule planned on the basis of equivalent working time system is an exception, as it should be planned for the entire adopted settlement period, which is inferred directly from Article 94(3) MSA. The employer is obliged to present the working time schedule to the employee at least one week before the start of work in the period covered by the schedule.

RESOLUTION OF 7 SUPREME COURT JUDGES OF 6 NOVEMBER 2014 IN THE CONTEXT OF PLANNING THE WORKING TIME OF DOCTORS ON MEDICAL DUTY

The working time of doctors is regulated not only by proper statutory provisions, but also by the provisions of a job contract. The working time of a doctor defined there, which is described as formal working hours, and in statutory provisions is the employer's basis for setting the working days and the number of hours to be worked on these days in the employee's working time schedule (Kubot 2014). We should not forget, however, that the work schedule of a doctor on medical duty includes the work on medical duty (medical duty hours) in addition to the formal working hours (standard working hours), in order to classify the worked hours as either included in the working time or exceeding it (overtime hours) on this basis. The obligation to provide an employee on medical duty an 11-hour uninterrupted rest directly after the completion of their duty may lead to a situation in which formal working hours will not be worked. Therefore, doubt arose on the qualification of the medical duty hours, and hence about the admissibility of supplementing formal working hours with medical duty hours. In practice this would boil down to replacing the standard working hours not worked with medical duty hours (Kubot 2014).

The document of key importance for the abovementioned issue is the resolution of 7 SC judges of 6 November 2014 (further referred to as: the Resolution) concerning interpretation discrepancies in this matter. Previously there was no uniform stance of the SC. In its judgement dated 4 June 2013 the SC emphasised the special properties of medical duty as a separate legal overtime work category and ordered to calculate overtime work remuneration for every hour of medical duty, no matter whether the number of duty hours exceeded the standard working hours in full-time or part-time employment (Wyrok 2013). The SC judgement dated 8 October 2013 says that a doctor who agrees to be on duty whose duration makes it impossible for them to for full time ac-

According to standard working hours will not be entitled to remuneration for the standard working hours not worked as a consequence of this, which excludes the application of Article 81(1) LC (Wyrok 2013)². In the Resolution mentioned above the SC first of all invoked the provisions of directive 93/104 (directive 2003/88) (Dyrektywa 2003) and the decisions of the Court of Justice of the European Union (especially the decision from 11 January 2007 concerning the case C-437/05, Vorel) (Postanowienie 2007), according to which Member States are obliged to treat all medical duty hours as part of the working time, but they leave the issue of remuneration for such duty hours to the regulations of particular Member States (Uchwała 2014). Considering the issue of treating medical duty hours as overtime hours, the SC invoked the nature of overtime work, which includes the standard working hours until their limit is reached and the overtime working hours, which excludes the existence of hours not worked within formal working hours. The SC remarked also that Article 95(4) MSA allows the possibility of planning medical duty beyond the weekly threshold of 37 hours 55 minutes in the adopted settlement period. If the employer may schedule medical duty beyond the weekly threshold, they can also do it within the weekly working time limit. Then the work schedule will include the standard working hours and the medical duty hours. It is therefore possible to supplement the standard weekly working time of a doctor with medical duty hours (Kubot 2014). What is more, the SC decided that: 'medical duty cannot be classified entirely as overtime work (Uchwała 2013)'. Arguments denying the presented stance are sometimes based on the legal definition of medical duty and are the outcome of faulty interpretation of the expression included in it 'beyond the standard working hours'. It does not correspond to the average standard weekly working time. This means that medical duty may be included within average standard weekly working time and take place beyond the standard working hours (included in the work schedule of hours to be worked on a particular day) (Uchwała 2013). Moreover, it is also mentioned in the literature on the subject that the admissibility of supplementing standard working hours with medical duty hours results from Article 94(2) LC, which obliges the employer to organise work in such a way as to use all working time (Kubot 2014).

The rules of remuneration for working on medical duty are stipulated in Article 95(5) MSA, which orders proper application of Article 151(1-3) LC on overtime allowance in this regard. Such remuneration will include: standard pay resulting from working time stipulated in the job contract and overtime allowance of:

² In this decision the SC also stated that: 'The opinion concerning the reduction of remuneration is based on a faulty belief that the sole fact of having a work relationship is a sufficient premise to acquire the right to remuneration for the working time stipulated by statutory provisions and the job contract. Meanwhile working time means the time in which the employer has the right to demand that the employee performs work and is obliged to make it possible for them and the employee is obliged to perform work or at least remain at the employer's disposal (Article 22(1) in connection with Article 128(1) LC). The working time only does not entitle the employee to receive remuneration. Such entitlement depends on the actual behaviour of the parties of the employment relationship.'

1. 100% remuneration – for working overtime hours:
 - at night,
 - on Sundays and bank holidays that are not working days for the employee, in accordance with their working time schedule,
 - on a work-free day that the employee obtained in return for working on a Sunday or bank holiday, in accordance with their working time schedule,
2. 50% remuneration – for working overtime hours on any other day than the day specified in point 1 above.

The method of calculating remuneration described above will be used for these medical duty hours that exceed the doctor's average weekly standard working time. For the medical duty hours that supplement the average weekly standard working time the application of the above rule is not justified. This was discussed accurately by the SC in the resolution: *"The doctor is thus entitled to such standard remuneration plus allowance for every hour of medical duty exceeding their average weekly standard working time. There are no grounds, however, to decide that the remuneration for medical duty hours supplementing working time to the employee's average weekly working time standard should be calculated analogously. As it has already been said, standard working time is understood as the standard workload of the employee, who accepts the agreed remuneration for their work. The situation is similar with the remuneration of a doctor stipulated in a job contract. It corresponds to the workload of the doctor within their standard working time. They will then obtain regular pay in accordance with the rates stipulated in their job contract only for the part of the medical duty that supplements the doctor's average weekly standard working time. Therefore if this part of the medical duty has already been paid for with allowance equivalent to standard pay for their work, appropriate application of the provisions of Article 151(1-3) LC may not mean the necessity to 'double' this standard remuneration, but only an obligation to pay allowances for the duty hours supplementing the doctor's working time to their average weekly working time standard, with appropriate application of Article 151(1-3) LC to calculate them"* (Uchwała 2013).

PRACTICAL APPLICATION OF WORKING TIME SYSTEMS

This chapter presents examples of work schedules in various working time systems taking into account the interpretation of regulations proposed by the SC in its resolution. Every schedule presents a week of work of two doctors working on medical duty.

Assumptions:

1. A work schedule concerns the doctors working on medical duty in a medical entity providing medical services of the stationary and 24-hour type.
2. The doctors included in the presented examples are full time employees.
3. The daily work cycle begins at 7:25.
4. Night shift starts at 22:00 and finishes at 6:00 of the next day.
5. Settlement period is 1 month.
6. Tuesday is the first day of settlement period.

7. Work rules or collective labour agreement or other internal documents do not introduce other provisions than statutory provisions with regard to other issues.
8. Working time is scheduled in the presented examples every day within the same time framework (there are differences only in the method of setting particular components of remuneration for work)
9. The basic remuneration of a doctor is PLN 5,000 (excluding the social insurance contributions of the employer).
 - a) The cost of an hour of basic remuneration (including the social insurance contributions of the employer): PLN 37.50,
 - b) The cost of an hour of allowance of 50% remuneration (including the social insurance contributions of the employer): PLN 18.75,
 - c) The cost of an hour of allowance of 100% remuneration (including the social insurance contributions of the employer): PLN 37.50,
 - d) For the purposes of this study there are no other components of remuneration apart from standard remuneration and the sums quoted are a rough estimate.

Abbreviations used in examples:

1. Doc1, Doc2 – doctors working on medical duty,
2. Work – formal daily working time,
3. Duty – the hours between which medical duty is taking place,
4. Duty 50% – hours of medical duty subject to standard remuneration plus allowance of 50% remuneration,
5. Duty 100% – hours of medical duty subject to standard remuneration plus allowance of 100% remuneration,
6. Allowance 100% – allowance of 100% remuneration,
7. W11 – day off because of 11 hours of uninterrupted daily rest,
8. W35 – day off because of 35 hours of uninterrupted weekly rest,
9. W5 – day off because of a five-working-day week on average,
10. WN – day off because of working on a Sunday or bank holiday,
11. Hours not worked – formal working time hours not worked,
12. Hours transferred – formal working time hours transferred from other days of the current settlement period.

Table 1. Example 1 – Work schedule in standard working time system created according to rules applied before the resolution was passed

		Tue	Wed	Thu	Fri	Sat	Sun	Mon
Doc1	Work	7:25 – 15:00	7:25 – 15:00	7:25 – 15:00	W35			7:25 – 15:00
	Duty					7:25 – 7:25		
Doc2	Work	7:25 – 15:00	7:25 – 15:00	7:25 – 15:00	7:25 – 15:00			W11
	Duty						7:25 – 7:25	

Source: own work.

The most common practice is that working days are set to fall from Monday to Friday and work-free days on Saturday and Sunday. In the presented example (Table 1) in accordance with this trend medical duty has been scheduled on Saturday and Sunday, which in combination with the obligatory uninterrupted rest periods (W11 and W35) generates a day off that falls on Friday for Doc1 and on Monday for Doc2. In this way on the days off granted to doctors their formal working time was not worked (hours not worked occurred). The remuneration for medical duty is calculated on the basis of the rules of remuneration for working hours on work-free days.

Table 2. Example 1 – Summary of working hours of Doc1 and Doc2

Component	Working time (hours)	Value (gross)
Hours not worked	15:10	PLN 569
Duty 50%	08:25	PLN 473
Duty 100%	39:35:00	PLN 2,969
Total pay for duty 50% and duty 100% (excluding hours not worked)		PLN 3,442

Source: own work.

Table 2 shows the total cost of selected remuneration components incurred by the employer and the working time it covered. The existence of hours not worked means that the employer pays the remuneration despite the employee's absence. Additionally, on the days for which medical duty was scheduled (Saturday and Sunday), standard remuneration was paid plus 50% or 100% allowance calculated in the same way as overtime allowance for the entire day (24 hours). This example is the starting point for further considerations.

Table 3 presents the schedule in which the working days and work-free days have been planned in the same way as in Table 1.

Table 3. Example 2 – Work schedule in the standard working time system created in accordance with the interpretation of SC on the basis of the resolution

		Tue	Wed	Thu	Fri	Sat	Sun	Mon
Doc1	Work	7:25 - 15:00	7:25 - 15:00	7:25 - 15:00	W35			7:25 - 15:00
	Duty					7:25 - 7:25		
Doc2	Work	7:25 - 15:00	7:25 - 15:00	7:25 - 15:00	7:25 - 15:00			W11
	Duty						7:25 - 7:25	

Source: own work.

Table 4. Example 2 – Summary of working hours of Doc1 and Doc2

Component	Working time	Value (gross)	Difference
Hours not worked	00:00	PLN 0	-
Duty 50%	08:25	PLN 473	PLN 0
Duty 100%	24:25:00	PLN 1,831	PLN - 1,138
Allowance 100%	15:10	PLN 569	PLN 569
Total pay for duty 50% and duty 100% (excluding hours not worked)		PLN 2,873	PLN - 569

Source: own work.

Medical duty hours supplemented the formal working hours to meet the average weekly standard working time (37 hours 55 minutes). The employer does not have to pay the employee for the days on which they did not work (W₁₁ and W₃₅). Adoption of the interpretation of the SC means in practice reduction of the standard pay (one of the two components of remuneration for work on medical duty) by the hours not worked. This situation is shown in Table 4.

Table 5. Example 3 – Work schedule in the standard working time system with other work-free days in the five-working-day week on average in the adopted settlement period

		Tue	Wed	Thu	Fri	Sat	Sun	Mon
Doc1	Work	7:25 - 15:00	7:25 - 15:00	7:25 - 15:00	W₅	7:25 - 15:00		7:25 - 15:00
	Duty					15:00 - 7:25		
Doc2	Work	7:25 - 15:00	7:25 - 15:00	7:25 - 15:00	7:25 - 15:00	W₅	7:25 - 15:00	WN
	Duty						15:00 - 7:25	

Source: own work.

The adopted solution (Table 5) means the occurrence of hours not worked is reduced already at the stage of working time scheduling (in the presented example to 0). The trend of setting working days on the days falling from Monday to Friday and work-free days on Saturday and Sunday was abandoned, but the statutory provisions on rest periods were observed. The work-free days for Doc1 are Friday (W₅) and Sunday and for Doc2 Saturday (W₅) and Monday (WN). The days on which the doctors are on medical duty are treated here as working days and paid for on such rules. Therefore, medical duty begins at 15:00 and lasts 16 hours and 25 minutes.

Table 6. Example 3 – Summary of working hours of Doc1 and Doc2

Component	Working time	Value (gross)	Difference (example 1)
Hours not worked	00:00	PLN 0	-
Duty 50%	14:00	PLN 788	PLN 314
Duty 100%	18:50	PLN 1,413	PLN -1,556
Total pay for duty 50% and duty 100% (excluding hours not worked)		PLN 2,873	PLN -1,242

Source: own work.

Table 6 presents a considerable reduction of the cost of medical duty caused by setting other work-free days, in accordance with the rule of a five-working-day week on average in the adopted settlement period.

Table 7. Example 4 – Work schedule in the equivalent working time system with other work-free days in the five-working-day week on average in the adopted settlement period

		Tue	Wed	Thu	Fri	Sat	Sun	Mon
Doc1	Work	7:25 - 15:00	7:25 - 15:00	7:25 - 15:00	W5	7:25 - 19:25		7:25 - 15:00
	Duty					19:25 - 7:25		
Doc2	Work	7:25 - 15:00	7:25 - 15:00	7:25 - 15:00	7:25 - 15:00	W5	7:25 - 19:25	WN
	Duty						19:25 - 7:25	

Source: own work.

Table 7 shows the application of equivalent working time system, which means that it is possible to extend the daily workload to 12 hours on particular working days. The daily workload was extended to 12 hours on those days for which medical duty was scheduled. The rule of five-working-day week on average in the adopted settlement period is applied also in the equivalent working time system. This allows to set work-free days for Doc1 on Friday (W5) and Sunday and for Doc2 on Saturday (W5) and Monday (WN).

Table 8. Example 4 – Summary of working hours of Doc1 and Doc2

Component	Working time	Hours transferred	Value (gross)	Difference (example 1)
Hours not worked	00:00	0	PLN 0	-
Duty 50%	05:10	+08:50	PLN 788	PLN 314
Duty 100%	18:50		PLN 1,413	PLN -1,556
Total pay for duty 50% and duty 100% (excluding hours not worked)			PLN 2,873	PLN -1,242

Source: own work.

Because of the extension of daily workload to 12 hours on one week a need arises to compensate for this in other weeks of the settlement period, without exceeding the average weekly working time standard (37 hours 55 minutes). In Table 8, this is shown in column 'hours transferred'. Extension of daily workload reduced the number of medical duty hours to 12 hours. Like in the previous example, there were no hours not worked. For comparison, 8 hours 50 minutes, which will be paid for at the end of the settlement period anyway, were added to the value of Duty 50%.

Table 9 presents the work schedule planned on the same rules as in example 1. The difference consists in increasing the number of medical duty days to two per each doctor per week, and consequently increasing their number of work-free days (W11 and W35). This generates a higher number of hours not worked than in the schedule presented in example 1. Summing up, the work-free days of Doc1 are Wednesday (obligatory daily rest – W11) and Friday (obligatory weekly rest – W35), and Doc2 does not work on Thursday and Friday due to obligatory daily rest (W11). It should be mentioned that on Saturday the obligation of having 35 uninterrupted hours of weekly rest is fulfilled for Doc2, which is not marked on the schedule.

Table 9. Example 5 – Work schedule in the standard working time system created in accordance with the rules applied before the resolution was passed (increased number of medical duties)

		Tue	Wed	Thu	Fri	Sat	Sun	Mon
Doc1	Work	7:25 – 15:00	W11	7:25 – 15:00	W35			7:25 – 15:00
	Duty	15:00 – 7:25				7:25 – 7:25		
Doc2	Work	7:25 – 15:00	7:25 – 15:00	W11	7:25 – 15:00			W11
	Duty		15:00 – 7:25				7:25 – 7:25	

Source: own work.

Table 10. Example 5 – Summary of working hours of Doc1 and Doc2

Component	Working time (hours)	Value (gross)
Hours not worked	30:20:00	PLN 1,138
Duty 50%	25:15:00	PLN 1,420
Duty 100%	55:35:00	PLN 4,169
Total pay for duty 50% and duty 100% (excluding hours not worked)		PLN 5,589

Source: own work.

The consequences of including more than one medical duty in the schedule (Table 9) are shown in Table 10. A higher number of hours not worked intensifies the phenomenon of payment of remuneration by the employer for the days on which the employee did not work. Moreover, on Saturday and Sunday for which medical duty was planned,

standard remuneration was paid plus 50% or 100% allowance calculated in the same way as overtime allowance for the entire day (24 hours).

Table 11. Example 6 – Work schedule in the equivalent working time system with other work-free days in the five-working-day week on average in the adopted settlement period (increased number of medical duties)

		Tue	Wed	Thu	Fri	Sat	Sun	Mon
Doc1	Work	7:25 - 19:25		7:25 - 15:00	W5	7:25 - 19:25		7:25 - 15:00
	Duty	19:25 - 7:25				19:25 - 7:25		
Doc2	Work	7:25 - 15:00	7:25 - 19:25	WN	7:25 - 15:00		7:25 - 19:25	
	Duty		19:25 - 7:25				19:25 - 7:25	

Source: own work.

Table 11 shows an alternative method of working time scheduling to that presented in example 5. The schedule created in equivalent working time system is based on the rules applied in example 4. As a result, the daily workload was prolonged to 12 hours on the days for which medical duty was scheduled. In accordance with the rule of a five-working-day week on average, Friday was set to be a work-free day for Doc1 in return for work on Saturday and Wednesday was set to be a work-free day for Doc2 in return for work on Sunday. It should be emphasised that both Doc1 and Doc2 attend work only 4 days a week and at the same time comply with and even exceed the weekly working time standard (37 hours 55 minutes). For both doctors their working time actually worked in a given week is 39 hours 45 minutes, which means that in successive weeks of the settlement period the formal working hours will be reduced accordingly.

Table 12. Example 6 – Summary of working hours of Doc1 and Doc2

Component	Working time	Hours transferred	Value (gross)	Difference (example 5)
Hours not worked	00:00	-02:30	PLN 0	-
Duty 50%	13:10	+02:30	PLN 881	PLN -539
Duty 100%	34:50:00		PLN 2,613	PLN -1,556
Total pay for duty 50% and duty 100% (excluding hours not worked)			PLN 3,494	PLN -2,095

Source: own work.

Because of exceeding the average weekly standard working time (37 hours 55 minutes) in the presented working week (workload of 39 hours 45 minutes) a need appeared to balance this status quo in the other weeks of the settlement period. In Table 12, this is shown in column 'Hours transferred'. Extension of the daily workload on the

days for which medical duty was scheduled reduced the number of hours of each medical duty to 12 hours.

Example 1 shows the origin of the phenomenon of hours not worked. This problem turned out to be so significant for the settlement of the working time of doctors working on medical duty that it was necessary for the SC to decide on the interpretation discrepancies that arose in this field. As it can be concluded from Table 1 and 2, the employer incurred high remuneration costs connected with the work of their employees on the days on which they did not actually work. The interpretation presented by the SC made it possible to supplement the weekly working time standard with medical duty hours, which makes it possible to avoid the situations in which the employer had to pay the employee remuneration also for the days when they were not attending work (which was due to them because they were entitled to obligatory rest period in connection with medical duty) apart from the standard remuneration and proper allowances connected with work on medical duty.

The results of application of the assumptions of the resolution of the SC were shown in example 2. Such a method of working time settlement entails a lot of doubt, however. Not all hours not worked qualify for the use of the interpretation presented by the SC. For example, the hours not worked resulting from the employee's obligatory rest after their readiness to provide medical services (the so-called call duty, Article 98 MSA), which is not medical duty as such as it becomes one once the doctor is called to a medical entity. Moreover, calculation of remuneration for work becomes highly complicated due to the fact that many medical entities still have a paper version of working time register. Even electronic systems of working time registration require certain modifications in this respect. There is a high risk that a mistake can be made which will lead to the situation in which the employee will not obtain the remuneration due to them, the consequence of which are the sanctions stipulated in Article 282 LC (a fine of PLN 1,000 – 30,000) or overpaid remuneration, which in a public medical entity means a violation of public finance discipline. The complicated process of calculation of remuneration for work in such a situation makes it difficult for the employee to understand this entire procedure. As far as the financial aspect is concerned (Table 4), the total amount saved in comparison with the first example with one medical duty in an exemplary working week of two doctors is PLN 569.

The key to solve these difficulties is to plan working time in such a way that the occurrence of hours not worked is reduced. In every working time system, also in the standard working time system, it is possible to set other work-free days than Saturday and Sunday in connection with the five-working-day week on average in the adopted settlement period. In the adopted solution, not only Saturdays and Sundays on which medical duty hours occur are exchanged for other work-free days. Such a model of scheduling working time does not change the doctor's working hours, but only the method of their settlement. Setting other work-free days translated into a reduced number of medical duty hours, which generates total savings of approx. PLN 1,242 (with one medical duty in the exemplary working week of two doctors). Proper changes should be introduced in internal regulations if required. Creating a work schedule on the abovementioned rules is very complicated though and requires adjustment of the system to working time register (if there is one) and expert knowledge, such as for example the ability to mark in the working time register proper allowances connected

with particular medical duty hours that will be taken into account later when remuneration for work will be calculated. The discussed difficulties intensify proportionally to the number of medical duties to be accounted for. This is connected with the obligation to grant more work-free days of obligatory rest periods and the occurrence of more hours not worked.

Introduction of equivalent working time system increases the likelihood that all the formal working time hours will be actually worked. Extension of daily workload to 12 hours in example even creates the need to transfer some hours of the formal working time from the remaining weeks of the settlement period. It should be emphasised that in the presented solution extension of daily workload to 12 hours occurs only on these days for which medical duty was scheduled. Unlike in the standard working time system, in the equivalent working time system the risk of occurrence of hours not worked is very low. Moreover, equivalent working time system is characterised by high flexibility of working time planning, which makes the creation of work schedules easier. Since the daily workload is extended on medical duty days, a higher number of medical duties is no longer a problem, and even accelerates the accomplishment of formal working time hours. The solutions discussed generate savings of PLN 1,242. Introduction of equivalent working time system requires, however, proper changes in the internal regulations in force at the workplace, unless they had already been made. Like in the standard working time system, also in this solution, expert knowledge in this regard is necessary for its functioning. The more medical duties are included in the work schedule, the more complicated the process of its creation. In example 5 two medical duties per week were planned for each doctor in accordance with the rules of creating a work schedule from example 1, i.e. not taking into account the interpretation that allows for the supplementation of the weekly working time standard with medical duty hours. As a result, over 30 hours not worked occurred. In example 6, the same workload (two medical duties per week for each doctor) was settled on the basis of equivalent working time system, which made it possible to work all the formal working time hours. Thanks to the elimination of hours not worked the difficult procedure of supplementing the weekly working time standard with medical duty hours is no longer necessary. Effects of such a solution are also visible with regard to finance. The savings generated in a given working week with four medical duties of two doctors reach PLN 2,095. Equivalent working time system seems to be the most beneficial both from the financial point of view and with regard to the method of working time scheduling, which is confirmed by the examples discussed above.

CONCLUSION

Not all problems connected with working time scheduling may be solved directly by the application of proper legal regulations (both general and specific, which concern only the work of employees authorised to work on medical duty), so in certain cases it is necessary to invoke court decisions, like for example in the situation of failure to accomplish the formal working time hours or settlement of medical duty hours. The interpretation of the Supreme Court, which allows the possibility of supplementing the weekly working time standard with medical duty hours, dispelled a lot of doubt con-

cerning this matter, but only the application of such working time scheduling in which hours not worked do not occur solves the problem completely. Therefore, equivalent working time system seems to be the most effective as it reduces the occurrence of hours not worked the most. In financial terms, the notable savings resulting from the adopted solution for one doctor working on 4 medical duties (1 medical duty per week) may reach even PLN 2,500 per month³. Every medical entity has its own method of working time management. What is more, not all institutions have electronic working time registration systems, which facilitate and accelerate the creation of work schedules considerably. Additional obstacle is that hospitals usually follow standard procedures and every proposal of introduction of changes usually meets with staff disapproval. Uncertainty about the admissibility of supplementing the weekly working time standard with medical duty hours combined with the old habits concerning working time scheduling with many medical duties led to absurd situations in which only a small part of the formal working time was actually worked and full remuneration was paid. It should be emphasised that the methods of working time scheduling proposed in this paper are not new, these solutions have been stipulated in the Polish law for many years. Full use of the legal possibilities concerning working time management would have prevented the escalation of the phenomenon of hours not worked. In consequence, the issue of admissibility of supplementation of hours to accomplish the weekly working time standard would not be the object of numerous disputes.

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³ The value PLN 2,500 results from earlier estimates – in Table 8 PLN 1,242 was saved if two doctors were on one medical duty each in one working week, i.e. PLN 621 per one doctor who has one medical duty per month. This value is multiplied by 4, which gives us PLN 2,484 (approx. PLN 2,500).

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