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WORK SCHEDULES IN OILFIELD INDUSTRY

Bahar Kavuzova ¹

Abstract

The range of statutory restrictions imposed on employment in oil and gas industry causes practical challenges for operational performance of oilfield companies in Azerbaijan. Majority of violations and penalties for employers turning up during the state labour inspections attributes to the lack of clarity and misunderstanding rather than intentional wrongdoing. It proves that a number of ambiguous provisions should be clarified and the gaps should be fixed by legislators in order to catch up with the rapid rhythm of developments. The article provides a comprehensive overview of local laws and complementing international standards and draws conclusions regarding the need of modernisation of labour legislation.

Keywords: overtime, working hours, regular hours, rest time, cumulative calculation, rotation, time sheet, labour inspections.

1. Introduction

Azerbaijan, being one of the world's oldest oil-producing countries and a crucial oil and gas supplier in the Caspian Sea region, makes wide-scale use of diverse workforce. Job sites that used to be run by a single company nowadays often have dozens of smaller contractors with sometimes over 100 workers each performing the work, which significantly adds complexity.

Furthermore, a range of additional statutory restrictions and applicable laws imposed specifically on the oil and gas industry, justified by its dangerous nature and difficult living conditions on offshore sites make it more vulnerable to noncompliance incidents and related sanctions. The state labour inspection continuously examines potential HSE,

¹ Bahar Kavuzova is leading employment and migration practice in PwC Azerbaijan. She carries seven years' experience in both public and private sectors two of which are associated with American Bar Association. Bahar holds a bachelor degree in Law from Baku State University and currently studying Business Law at Chicago Kent College of Law.

compensation, rest and working regime violations associated with oil and gas operations and applies corresponding enforcement actions all throughout the country.

Adding to that, international standards adopted by Azerbaijan with the aim to ensure a safe and healthy working environment and to guarantee the employees' adequate rest and leisure time complement the local laws and regulations.

The combination of these factors do not always ease the companies' business, but instead cause practical challenges for their operational performance, which in turn can adversely affect their financial bottom line.

The following analysis provides a concise but comprehensive overview of the restrictions and challenges faced by employers in Azerbaijan, specifically in the oil and gas industry and draws conclusions regarding the need of modernization of labour legislation.

Overview of international standards and statutory requirements

- **Normal working hours**

Being a member of the International Labour Organization, Azerbaijan has mandated a maximum on regular hours (pre-overtime), defining it in the amount of 40 hours per week².

*“Daily limit of working hours may not exceed 8 hours”; “Regular weekly limit corresponding to the regular daily limit may not exceed 40 hours”*³

Several foreign countries have a proviso for allowing an extension of the 40 hours' regular limit by: collective bargaining (Mozambique), upon employee's request (Senegal), for specific industry (Cameroon), self-determination for managerial and supervisory employees (Japan), offshore employees (Paraguay)⁴. However, Azerbaijani laws do not provide any kind of temporary or permanent exemptions for extension of such limits.

On the contrary, for specific groups of employees (i.e. employees under 18 years of age, pregnant women, disabled employees, employees adopting a child under 1,5 years) and work of particular kind (i.e. night shifts, employment under unsafe working conditions, such as divers, welders, etc.) the legislation mandates a limit, which is lower than general standards – not more than 24/36 hours per week⁵.

- **Overtime work**

Seeking the most flexible legislation governing overtime issues, one can see that the metrics vary considerably across countries. The member states of the European Union, which adjusted their legal regulations on total working time (regular and overtime) to EU directive limit them either by legislation (i.e. Scandinavian and Southern European countries), or by collective bargaining (i.e. Germany and Denmark). In the United Kingdom, limits are determined at the company level; in Central Europe, mainly as a consequence of the socialist legacy, overtime is still regulated to a large extent by state legislation. In contrast, the federal law in the United States contains no legal restriction on the total amount of overtime work allowed. Norway defines that overtime may be up

² Co47 - Forty-Hour Week Convention, 1935 (No. 47)

³ Article 89.2 and 89.3 of the Azerbaijani Labour Code

⁴ Working time laws: A global perspective - Findings from the ILO's Conditions of Work and Employment Database, Deirdre McCann Chapter 1- Normal hours limit

⁵ Article 91-93 of the Azerbaijani Labour Code

to 48 hours per week in average of 8 weeks, but only if there is an exceptional and time-limited need⁶. Legislation in Kazakhstan is much more rigid in this regard, stipulating that overtime cannot be more than 2 hours per day, 12 hours per month and 120 hours per year⁷.

In Azerbaijan, the limits are governed by legislation, which mandates maximum 4 hours of overtime within two consecutive working days.

“No employee shall be requested to work overtime in excess of four hours within two consecutive working days”⁸

The procedural rules, which employers must undergo before making use of overtime, also vary from country to country. In Azerbaijan, employers do not need to get approval from the government authority, (which is the case in Norway) but are restricted to request overtime work only under exceptional circumstances i.e. urgent works resulting from unforeseen circumstances.

“Overtime shall be permitted only in the following exceptional cases...”⁹

- prevention of a natural disaster, an industrial accident and their consequences;
- elimination of the consequences caused by accidental or unexpected circumstances which may lead to a disruption of water, gas and electricity supply, heating, sewerage, and communications;
- completion of work, which suspension may entail inevitable commodity damage or loss;
- performance of works related to the repair, restoration of failed equipment which can idle the majority of employee;
- elimination of operational interruption caused by absence of a rotating employee.

It is noteworthy that local laws do not distinguish between overtime that the employee is obliged to perform and that over which they can exercise a choice. At the national level, all employees have a right to refuse to work overtime and their consent is required for each occurrence of overtime work. In extreme examples, this could theoretically lead to potential industrial accidents, e.g. in case of pipe burst or pump malfunction all the employees are free to leave the workplace if it is the end of working day, even if the employer asks them to cooperate for prevention of industrial accident.

“Overtime is the time slot performed in excess of established working day based on employer’s order and employee’s consent”¹⁰

A more practical solution in this regard is implemented in Kazakhstan where the regulations state that overtime work is mandatory and non-rejectable in case of force majeure involving a danger or accident, but voluntary for production or business needs.¹¹ There is also a specific release from overtime for employees working under extra difficult and hazardous conditions, pregnant women, a parent taking care of a child younger than 3 years of age, as well as employees below 18 years of age. Employees working under

⁶ Working time laws: A global perspective - Findings from the ILO’s Conditions of Work and Employment Database, Deirdre McCann Chapter 2 – Overtime Work

⁷ Article 78 of the Kazakhstani Labour Code

⁸ Article 100 of the Azerbaijani Labour Code

⁹ Article 101 of the Azerbaijani Labour Code

¹⁰ Article 99.1 of the Azerbaijani Labour Code

¹¹ Article 77 of the Kazakhstani Labour Code

difficult and hazardous conditions are also subject to a specific limitation, which is up to 2 hours within two consecutive days.

“Employee working at workplaces with difficult or hazardous conditions shall not be requested to work overtime in excess of two hours within two consecutive working days”;
“Employees working under extremely difficult and hazardous conditions shall not be required to work overtime”¹²

Despite the international standards providing optional compensation of overtime either by remuneration, or (and) equivalent rest period, the local laws strictly prohibit replacement of overtime with extra time off. Nevertheless, the remuneration rules stipulate only minimums, they do not restrict employer to define higher rates that may be negotiated upon conclusion of the employment contract.

“Compensation of overtime shall not be replaced by an extra day off”, “higher rates for compensation of overtime work may be agreed in employment contracts”¹³

Although the Azerbaijani laws set the rates for calculation, they are silent about compensatory timing, which is in practice usually made at the end of each month together with monthly salary. The local laws also lack provisions regulating overtime hours in other specific contexts, such as coinciding with night shifts, performed on weekly rest days, public holidays and during business trips that in our opinion should be mandated separately by application of specific rates.

Thus, under the weekly limit of 40 hours and normal working conditions, the maximum duration of weekly working hours including overtime should not exceed 52 hours (5 working day per week) or 54 hours (6 working days per week) per week.

• Rest periods

International standards provide for a weekly rest day(s) to secure a substantial rest period during the working week and ensure employees’ work-life balance¹⁴.

Local legislation requires the employer to provide employees with a meal break and uninterrupted rest with period of at least 12 consecutive hours per day.

“Employees must have at least 12 hours rest between the workdays”¹⁵

However, whilst comparing local and foreign labour laws, one can see that the Azerbaijani legislation lacks specifics in this regard such as:

- maximum (Estonia – one hour, Russia – two hours, Guinea Bissau – three hours) and minimum (Kazakhstan, Norway – 30 minutes) duration of meal break;
- minimum shift length for entitlement to rest breaks (Norway - 30 minutes’ break for every 5.5 hours);
- longer breaks when daily hours are extended (Japan and Finland);
- extended breaks for exceptional industries (mining, drilling, retail) and
- division of breaks by leaving their determination to the discretion of employer¹⁶.

The picture regarding weekly rest time is relatively brighter, since the legislation allows its adjustment to the chosen working regime e.g. one day per 6 days’ working week, two days per 5 days’ working week, and the number of days stipulated by shift

¹² Article 99 of the Azerbaijani Labour Code

¹³ Article 165 of the Azerbaijani Labour Code

¹⁴ C014 - Weekly Rest (Industry) Convention, 1921 (No. 14)

¹⁵ Article 103 of the Azerbaijani Labour Code

¹⁶ Working time laws: A global perspective - Findings from the ILO’s Conditions of Work and Employment Database, Deirdre McCann Chapter 4 – Rest periods

schedule. Herewith, the local laws do not define specific days to be chosen as working (as it is in Spain either Saturday, or Monday) or not to be chosen as working (i.e. Friday in UAE), leaving it open to the discretion of parties. Generally, these days are Saturday and Sunday.

*“The number of rest days during five days’ week shall be two days and during six days’ schedule one day” “... rest days shall be granted in accordance with shift schedules...”*¹⁷ Many countries, including Azerbaijan, allow urgent work and continuous production (in certain industries, such as retail, catering, telecommunication, transportation and other service providers) to be performed during the weekly rest days. In this case, the employer provides compensation in addition to the ordinary salary for the work performed on a weekly rest day. Such compensation can take the form of a pay premium, compensatory rest or both.¹⁸

| COUNTRY | REGULAR WORKING HOURS | MINIMUM BREAK | MAXIMUM OVERTIME | REGIME applicable to oilfield |
|-------------------------------------|---|-----------------------------------|--|---|
| Azerbaijan ¹⁹ | 8 hours a day 40 hours a week | Not specified | 4 hours within two days | Cumulative calculation: 12 hours a day Duration of shift is not specified |
| Kazakhstan ²⁰ | 40 hours a week | 30 minutes | 2 hours a day 12 hours a month 120 hours a year | Cumulative calculation: 12 hours a day 15 or 30 day’s shift |
| Russia ²¹ | 40 hours a week | 30 minutes | | Cumulative calculation: 12 hours a day 30 day’s shift |
| Norway ²² | 9 hours per day 40 hours per week (a number of exemptions applies) | 30 minutes | 20 hours a week, 50 hours within 4 weeks (a number of exemptions applies) | Normal working hours may be extended up to 12,5 hours per day and 50 hours per week as long as, on average over a reference period of 52 weeks, they do not exceed nine hours per day and 40 hours per week |
| United Kingdom ²³ | 40 hours a week | 20 minute breaks for each 6 hours | 8 hours per week | Cumulative calculation: 12 hours a day 14 day’s shift |
| USA ²⁴ | 40 hours a week | 30 minutes | No limitation | No US labour laws directly address the issue of 12-hour work shifts. There is no limit on work hours, but employees must receive overtime pay after 40 hours per week. |

¹⁷ Article 104 of the Azerbaijani Labour Code

¹⁸ Article 164 of the Azerbaijani Labour Code

¹⁹ Labour Code of the Azerbaijan Republic

²⁰ Labour Code of the Kazakhstan Republic

²¹ Labour Code of the Russian Federation

²² Act relating to working environment, working hours and employment protection, etc. (Norwegian Working Environment Act)

²³ Employment Rights Act and Regulation 4 of the Working Time Regulations

²⁴ Fair Labour Standards Act

- **Production Sharing Agreements**

Production Sharing Agreement, being a regulator of the legal and commercial relationship between the government of Azerbaijan and international oil companies, reckons for implementation of regulatory framework based on the best experience and judgment of employers, which are familiar with international oil and gas operations. Therefore, it does not prescribe any specific clauses with regard to employment issues and leaves the determination of such frames to the discretion of employer.

Employees “shall be hired pursuant to written employment contracts, which shall specify the hours of work required of the employee”. Employers “shall be free to implement ... programmes and practices that are customary in international Petroleum operations and in their experience and judgement are best able to promote an efficient and motivated workforce.”²⁵

Work schedules used in oilfield industry²⁶

Companies operating in the oil and gas industry may face several challenges while defining the appropriate type of working schedule, which not only will insure uninterrupted continuance of operations but also comply with requirements of local labour laws.

Below are three most relevant types of work schedules used in the oilfield industry in Azerbaijan:

- **Fixed Work Schedule**

A fixed work schedule is a timetable that generally consists of the same number of hours and days worked per week. This schedule is usually used for onshore/office workers such as procurement managers, quality specialists, document controllers, HSE specialists and so on.

The main requirements are as follow:

- duration: daily limit – up to 8 hours, weekly limit- up to 40 hours;
- schedule: 5 working days (8 hours per day) or 6 working days (7 hours per 5 days + 5 hours on sixth day);
- rest time: not less than 12 hours per day, one or two days per week either Saturday, or Saturday and Sunday;
- overtime: not more than 4 hours within two consequent days and subject to compensation in the form of a pay premium at “double rate” basis.

- **Rotating Shifts**

²⁵ Articles 6.7 of Agreement on the Exploration, Development and Production Sharing for the Shah Deniz Prospective Area/ Azeri and Chirag Fields/ Deep Water Portion Of The Gunashli Field in the Azerbaijani Sector of the Caspian Sea

²⁶ The provided schedules are compiled according to the requirements of the Azerbaijani labour laws with consideration of the state inspectors' practical approach to the implementation of mentioned laws.

For avoiding interruption of operations and ensuring its continuity, the employer can distribute different shifts among all employees. This regime is mostly used for motormen, drillers, pumpers, welders, mud engineers, fluid technicians, tool and mud pushers or any other positions requiring physical power and endurance.

The main requirements are as follow:

- schedule: Morning, evening and night shifts;
- duration: A shift to be not more than 8 hours;
- rest time: not less than 12 hours per day, one or two days depending on duration of shift;
- overtime: not more than 4 hours within two consequent days and subject to compensation in the form of a pay premium at “double rate” basis;
- night shift is subject to additional payment in amount of additional 20% of hourly salary;

Specific terms and restrictions with regard to employees working under extremely difficult and hazardous conditions shall be considered.

- **“Twelve on, twelve off”** -cumulative calculation:

This regime in the CIS countries is also known as “regime of vakhta” and originally contemplated for employees, such as field engineers, wireline and pressure control operators who generally work offshore (on platform, field, vessel, rig etc.) and are not able to leave their work places due to long distance or other operational needs.

The benefit of this regime for employers is to ensure maximum retention of staff on field and for the employee is to have a longer uninterrupted rest (e.g. 15 days on field, 15 days at home) periods. The metrics can be different depending on the calculation cycle –record period and average monthly working limits, adopted annually by the Ministry of Labour and Social Protection of Population²⁷.

The main requirements are as follow:

- the period of record may be calculated in months/ quarters/year;
- the record time should not exceed following limits:
 - monthly period not more than 160,2 hours
 - yearly period not more than 1922 hours
 - daily work note more than 12 hours
- schedule: two rotating shifts;
- duration: a shift may not be more than 12 hours;

²⁷ Go to <http://www.mlspp.gov.az/en/pages/4/599> for 2017

- rest time: not less than 12 hours per day, rest days can cycle weekly, monthly or quarterly basis;
- overtime is forbidden;
- night shift is subject to additional payment in the amount of additional 20% of hourly salary;

Specific terms and restrictions with regard to employees working under extremely difficult and hazardous conditions should be considered.

- **Mixed working regime**

There are a number of cases where the employee can be requested to work both onshore and offshore due to peculiarities of their job functions (for example, a surveyor conducting seismic studies offshore, and then processing all data gathered onshore). The local legislation does not set forth any restrictions with regard to a mixture of several types of working regimes as long as the statutory limits are abided by.

COMMON OVERTIME VIOLATIONS

The following are the most commonly found violations during the state labour audits:

- **Underreported hours**

Cost saving and alleged compliance with local laws are the main reasons why some companies deliberately underreport or ask/demand their employees to underreport the worked hours. Because of the most salient feature of most labour audits - “paper over essence” some companies manage to avoid overtime compensation by presenting “edited” timesheets, knowing that labour inspectors are authorised to conduct an audit only during working hours.

Any kind of falsification made by a company is considered illegal, so the oilfield employees who have suffered an unpaid overtime are entitled to recover an amount equal to their unpaid overtime wages for the last 3 years.

- **Independent Contractors**

Misclassification as an independent contractor is another common violation within the oilfield industry. Many companies intentionally label employees as independent contractors to avoid working hour limits and provide overtime compensation and/or other benefits, such as offshore coefficient, night shift rates etc.

Employees illegally classified as independent contractors may be entitled to the benefits and compensation that they would have received if had they been classified correctly as employees.

- **“Off-the-Clock” Work**

Offshore employees have certain tasks that must be performed before they can begin or finish their job: picking up equipment, receiving instructions before driving to the job site, donning, doffing, and/or cleaning safety equipment or other similar tasks.

Some employers try to avoid paying wages for off-the-clock works, claiming that these tasks cannot be counted as hours worked. However, all job related activities that benefit the employer may be considered as a part of employees' paid time by the state labour inspectors and be subject to compensation.

- **Flat day rate**

For avoidance of overtime payment, sometimes, employers misclassify their employees as day-rate salaried employees, so that they can work more than 40 hours without being compensated.

- **Improper overtime calculations**

Oil and gas companies sometimes pay employees straight time, meaning the employees are paid the same hourly rate for every hour worked, instead of one-and-a-half times of employee's hourly rate during periods of overtime work. Moreover, companies also commonly fail to consider employee's day or weekly bonuses while determining and calculation overtime, further exacerbating the compensation question.

Conclusion

Summarizing the above, one can conclude that the labour laws of Azerbaijan by comparison is very protective of employee's rights on one hand and on the other hand, it does provide employers with enough flexibility to adjust existing labour law requirements to the operational needs.

Despite this, there is an abundance of violations and penalties for employers turning up during the state labour inspections, of which a significant portion can be attributed to the lack of clarity and misunderstanding rather than intentional wrongdoing. It proves that there is a number of ambiguous provisions to be clarified and gaps to be fixed by legislators in order to catch up with the rapid rhythm of developments related to oil and gas industry.

The practical challenges and lack of clarity sometimes induce employers to bypass statutory requirements by underreporting hours, labeling the employees as independent contractors, determining flat-day-rate payments, exclusion “off the clock” hours etc.

which in fact do not deprive the employees of the right to recover the owing compensation.

Therefore, in our opinion, a reform adding a separate chapter describing particularities of oilfield employment to the Labour Code should be conducted. Furthermore, it is crucial for employers to consider best practices in addition in order to prevent violations and penalties resulting from lack of clarity or misinterpretation.

Reference

C047 - Forty-Hour Week Convention, 1935 (No. 47)

Labour Code of the Republic of Azerbaijan

Labour Code of the Republic of Kazakhstan

Labour Code of the Russian Federation

Working time laws: A global perspective - Findings from the ILO's Conditions of Work and Employment Database, Deirdre McCann Chapter 1- Normal hours limit

Working time laws: A global perspective - Findings from the ILO's Conditions of Work and Employment Database, Deirdre McCann Chapter 2 – Overtime Work

C014 - Weekly Rest (Industry) Convention, 1921 (No. 14)

Working time laws: A global perspective - Findings from the ILO's Conditions of Work and Employment Database, Deirdre McCann Chapter 4 – Rest periods

Act relating to working environment, working hours and employment protection, etc. (Norwegian Working Environment Act)

Employment Rights Act and Regulation 4 of the Working Time Regulations

Fair Labour Standards Act

Articles 6.7 of Agreement on the Exploration, Development and Production Sharing for the Shah Deniz Prospective Area/ Azeri and Chirag Fields/ Deep Water Portion Of The Gunashli Field in the Azerbaijani Sector of the Caspian Sea

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