

**[DURATION OF WORK]**

***Managing executives out of the scope of the rules on working time may be found at a regional level as opposed to company level.***

*Cass. Soc. May 11, 2017, 15-27118*

As an exception to the complex regulation around the 35-hour legal working time, the managing executives (“*cadres dirigeants*”) are out of the scope of most of the rules on working time: the employer needs not counting the number of hours or days they work, they are not entitled to additional days off (the so-called RTT), they have no right to overtime payment, they may work on Sundays without any compensation, etc...

The definition of the managing executives in the Labour code seemed quite easy to understand: (i) they must have important responsibilities that entail they freely organize their working time, (ii) they must be authorized to make decisions in a large autonomy, and (iii) their salary must be in the upper range of company’s remunerations.

On several occasions the Supreme Court interpreted this definition and ruled that, in order to qualify as a managing executive exempted from the working time regulation, the employee must participate to the management of the company. In 2012 they judged that although she met the three conditions above mentioned, the director of a department of the company was not a managing executive because she managed a department of the company and not the company itself (Cass. Soc. January 31, 2012, 10-24412). This was introducing a criteria of appreciation of the individual’s responsibilities, in addition to the three conditions of the Labour code. In 2016, the Court clarified this and said that participation to company’s management is not an additional criteria, but the three criteria of the labour code imply that the employee participates to the management of the company. In all these decisions the issue at stake was whether or not the employee could claim a compensation for overtime.

In this context the decision of May 11, 2017 judged that a managing executive may be found at a local level and not necessarily at the level of central management.

The case concerned an employee who was the regional director in a construction company. He claimed for the payment of overtime, arguing that his responsibilities were at the local level only, hence he did not participate to the management of the company as a whole. The Court of appeal dismissed him from his claim and it was approved by the Supreme Court. The court held that he had important responsibilities on the projects in his region, with several executives reporting to him (first condition of autonomy and high level of responsibilities). They noted also that he was allowed to enter into contracts for up to one million euro, and to hire and dismiss employees (second condition of being allowed to make decisions with a large autonomy). Regarding his remuneration (third condition), the court noted that only 5 people had a higher remuneration (on a total staff of 1,000 persons). Considering that the three legal conditions were met, the Supreme

Court judged that even if the duties were only at local level, this employee qualified as a managing executives. Therefore he could not ask for overtime payment.

This decision is published by the Supreme Court, which means that it must be considered as a rule of law. It may be considered as clarifying the issue of the managers with very high responsibilities, but not at company level.

**Anne CIRET**