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EU: paid annual leave must be taken into account when calculating the overtime work hours threshold (CJEU judgment)

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In a [judgment](#) handed down on 13 January 2022, the Court of Justice of the European Union ruled that an employer could not exclude the “the hours corresponding to the period of paid annual leave” from the calculation intended to “determine whether the threshold of hours worked giving entitlement to overtime pay is reached.” A German worker claimed 72 euros, as a 25% supplement on 22.45 hours worked, because he believed that the 184-hour overtime threshold had been exceeded during a period in August 2017 when he had worked 121.75 hours over 13 working days and taken 10 days of paid leave (84.7 hours). The worker’s appeals action was dismissed on the basis of the Framework Collective Agreement for temporary employment, which states that only the hours worked can be counted to establish whether the worker has exceeded the threshold above which the pay rate for hours worked is increased. Referred to by the German Federal Labour Court, the CJEU however considered that this collective agreement provision “could be capable of deterring a worker from exercising his or her right to paid annual leave”, which is part of the [EU Charter of Fundamental Rights](#). This is in order to benefit from the extra pay allowed by higher overtime pay rates. The provision of the collective agreement is therefore declared illegal, as “any practice or omission of an employer that may potentially deter a worker from taking his or her annual leave is incompatible with the purpose of the right to paid annual leave.”

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