

EXAMPLE CASES

Fire brigade on-call duty during working hours

AREA OF LAW Employment contract law, Labour Act, Cantonal fire brigade law	CANTON Basel-Landschaft	NORMS CITED 14
DECISIONS CITED 5	COMPUTED ON 10.09.2026	AI MODEL global, after anonymisation

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INPUT

Facts

This is everything that was entered — anonymised, with the questions of the request.

We are a metalworking business in Pratteln with 41 employees. One of our fitters, 34, works for us at 90 percent; Friday afternoon is free. On the side, he is a member of the municipal fire brigade, where he is on call every few weeks, and this sometimes falls within our working hours. On Thursday, 3 September, he left at 09.20 and did not come back until 13.00. In the night before Wednesday, 9 September, he was on a call-out from 01.35 to 05.10 and was back at the machine with us at 07.00; the evening before, he had worked until 17.00. So far we have deducted the lost hours from his wages, because the fire brigade is voluntary after all. He receives pay from the municipality; we do not know how much. We have not regulated this anywhere: the employment contract says nothing about it, and we have no regulations or instruction. A second employee, 44, also takes part. Both live in Pratteln.

QUESTIONS

1. Do we have to let him go at all in an emergency, and do we have to pay for the time, or may we continue to deduct it?
2. Is this now a public office, secondary employment or something else, and what would we need to put in writing about it?
3. If he was on a call-out at night: does that interrupt the rest period, and from when may he work again in the morning?

CLARIFICATION

Follow-up questions from the pre-analysis

Before the analysis runs, LEXchat asks about what the facts leave out. Only what the text already stated was answered.

1 Is the fire brigade pay paid by the municipality?

Answer: The municipality pays an allowance; the amount is not known to the employer.

RESULT

First analysis

The result, unedited. Every cited norm and decision is linked and can be checked.

Summary of the situation

Under Art. 20 para. 2 FWG/BL, the fitter's fire brigade service is expressly to be treated as the exercise of a public office within the meaning of Art. 324a para. 1 OR; the wage deductions made so far for the hours lost due to call-outs are therefore — within the limits of the "limited period" under Art. 324a para. 2 OR — unlawful and must be repaid, and any waiver by the employee would be invalid under Art. 341 para. 1 OR in conjunction with Art. 362 para. 1 OR. By contrast, there is no claim against the metalworking business for on-call *compensation*, because the on-call service is not performed within the framework of this employment relationship (Art. 14 para. 1 ArGV 1) and, according to BGer 4A_94/2010, standby time spent outside the business does not count as working time in any event. In terms of working-time law, the daily rest period under Art. 15a ArG is formally observed in the night-time case described; health protection (Art. 328 para. 2 OR, Art. 6 ArG) remains a sensitive issue when the employee operates machinery after 3½ hours of night duty, which is why a written company rule is strongly recommended.

Analysis

Legal assessment

1. Classification of fire brigade service: public office, not secondary employment (question 2, first part)

Art. 324a para. 1 OR expressly lists, as grounds for being prevented from working "for reasons relating to his person", the "performance of statutory obligations or the exercise of a public office". The cantonal legislature has made the classification for fire brigade service itself: under Art. 20 para. 1 FWG/BL, members of the fire brigade who "are prevented from performing work because of fire brigade service" are entitled to continued payment of wages; Art. 20 para. 2 FWG/BL specifies that the claim against employers under private law is governed "by the provisions on the exercise of a public office (Article 324a paragraph 1 OR)". This settles the alternative raised by the business ("secondary employment") as regards the relationship with you: this is the exercise of a public office. Published administrative practice points in the same direction, according to which fire brigade functions with sovereign powers are to be classified as public offices (VPB 61-56, consid. 2 — [Web, not verified], retrieved 10 September 2026; verification recommended insofar as the assessment is to be based on it).

There is no secondary employment within the meaning of Art. 321a para. 3 OR: that provision prohibits paid work for third parties only "insofar as he thereby breaches his duty of loyalty, in particular by competing with the employer". Competition with a metalworking business through municipal fire brigade service is ruled out; the pay does not change this. The relationship with the municipality, by contrast, is a separate relationship governed by public law; the classification of the activity of volunteer firefighters vis-à-vis the municipality and the resulting

obligation to pay wages are a matter of cantonal law and must be assessed in the individual case (Obergericht A-1477-2025), although the municipality in any event owes the pay under Art. 21 FWG/BL. For your position, the only relevant point is that this is not a second employment relationship with you.

The objection that "the fire brigade is voluntary after all" does not hold. First, Art. 20 para. 1 FWG/BL links the entitlement, as a statutory requirement, to the status of "members of the fire brigade", not to a compulsory service obligation. Second, the exercise of a public office is by its nature assumed voluntarily and is nevertheless recognised by Art. 324a para. 1 OR as an inability to work through no fault of the employee; the criterion "through no fault of his own" refers to the occurrence of the inability, not to taking up the office. In addition, the canton of Basel-Landschaft has a fire service obligation, non-performance of which triggers a fire service exemption levy payable to the municipality under Art. 22 para. 1 FWG/BL; the details are regulated by the municipalities in their regulations (Art. 22 para. 2 FWG/BL).

The cantonal legislature systematically confirms this classification: under Art. 21 FWG/BL, the municipalities pay the members of their fire brigade a pay allowance, and under Art. 22 para. 1 FWG/BL, the municipalities levy a fire service exemption levy on persons subject to fire service who do not serve in a recognised fire brigade organisation. Fire brigade service in the canton of Basel-Landschaft is therefore precisely not a mere private leisure activity, but the performance of a public-law service obligation whose non-performance makes a person liable to pay a levy (Art. 22 para. 1 FWG/BL); the objection of "voluntariness" thus also loses its factual basis.

2. Obligation to release the employee in an emergency (question 1, first part)

Art. 20 para. 1 FWG/BL presupposes that the fire brigade member is "prevented from performing work because of fire brigade service"; the provision thus recognises that staying away from work is permissible. The right to issue instructions under Art. 321d para. 1 OR cannot be used to prohibit the performance of the public office whose exercise Art. 324a para. 1 OR and Art. 20 FWG/BL specifically presuppose; the enforceability under civil law of employer obligations under public law follows from Art. 342 para. 2 OR, with Art. 342 para. 1 let. b OR reserving the cantonal provisions on work. In practice: the fitter must be released for the call-out. Conversely, under Art. 321a para. 1 OR he owes consideration for your legitimate interests — in particular immediate notification of turning out and of his return and, to the extent reasonable for him, signing off from purely plannable fire brigade appointments (exercises, courses) outside working hours. Assessment: the boundary between the emergency (unavoidable) and plannable services (open to scheduling) depends on the individual case; for plannable, non-urgent assignments, cantonal practice has drawn a distinction from the concept of on-call service (Obergericht 601-2019-15: regularly recurring tasks do not, by their nature, correspond to on-call service).

3. Permissibility of the wage deduction (question 1, second part; work assignment 1)

The deduction is impermissible to the extent that the entitlement to continued payment of wages under Art. 324a OR extends:

- *Waiting period:* The employment relationship must have lasted more than three months or have been entered into for more than three months (Art. 324a para. 1 OR). According to your description, this is the case for the fitter and for the 44-year-old employee; to be formally verified.
- *Scope:* What is owed is "the wages attributable to that time" (Art. 324a para. 1 OR), i.e., based on the 90% workload, the scheduled hours actually lost — on 3 September from 09.20 to 13.00, i.e. 3 hours 40 minutes less the unpaid breaks falling within that period (Art. 15 paras. 1 and 2 ArG).

Conversely, the fire brigade call-out does not give rise to overtime: overtime within the meaning of Art. 321c para. 1 OR presupposes work beyond the agreed working time that is ordered by the employer or at least performed in the employer's interest — the night call-out of 9 September does not meet this requirement. If, on the other hand, the fitter is required to make up the lost hours, this is not an obligation to make up work, but additional work ordered by the employer which, if not compensated by time off, must be paid with a supplement of one quarter under Art. 321c paras. 2 and 3 OR.

- *Duration:* Continued payment of wages applies only "for a limited period"; Art. 324a para. 2 OR sets this at three weeks for the first year of service and thereafter at "an appropriate longer period ... depending on the duration of the employment relationship and the particular circumstances". With on-call duty "every few weeks", the quota is arithmetically not exhausted; a deduction would only be permissible once it has been exhausted. Art. 324a para. 2 OR quantifies only the first year of service; for subsequent years the "appropriate longer period" must be determined according to the duration of the employment relationship and the particular circumstances, which is why the annual ceiling must be determined specifically for each employee.
- *Mandatory nature:* Under Art. 362 para. 1 OR, Art. 324a para. 1 OR is relatively mandatory; deviating arrangements are only permissible by written agreement that is at least equivalent (Art. 324a para. 4 OR). Since nothing has been regulated in your business, the statutory rules apply. A waiver by the employee – even one tacitly accepted – is invalid under Art. 341 para. 1 OR during the employment relationship and for one month thereafter; the mere acceptance of reduced wages without formal objection therefore does not constitute a waiver. Accordingly, case law requires a written and sufficiently specific agreement for any deviation from the statutory rules on continued payment of wages; company regulations not incorporated into the employment contract are not sufficient (BGer 4A_98/2014).

The claim constitutes wages and is therefore due at the end of each month (Art. 323 para. 1 OR); since there is a fixed due date, default occurs without a reminder (Art. 102 para. 2 OR), and default interest amounts to 5% (Art. 104 para. 1 OR). The claim becomes time-barred after five years (Art. 128 no. 3 OR); since you do not state the year of the call-outs, the limitation position must be verified.

Crediting of the pay allowance: Art. 324a OR does not provide for crediting benefits from third parties; Art. 324 para. 2 OR (crediting of savings and substitute earnings) concerns default of acceptance and is not applicable. The fact that the fire brigade pay is not compensation for lost earnings but remuneration for service is supported by its treatment as tax-free pay (Art. 24 let. f bis DBG, Art. 7 para. 4 let. h bis StHG) and its exclusion from income subject to AHV contributions (Art. 6 para. 2 let. a AHVV). Crediting could at most be discussed if the municipality pays a daily allowance for loss of earnings in addition to the pay; in such cases, cantonal personnel law requires its own employees to assign this compensation to the employer (Art. 9a para. 3 of Ordinance SGS 153.17). This provision applies only to public-law employment by the canton, but it serves you as a model for an agreement under Art. 324a para. 4 OR. The fact that you do not know the amount of the pay is harmless: in response to the follow-up question, it was merely stated that the municipality pays an allowance whose amount is not known to you; as long as there is no crediting agreement, the amount is irrelevant for continued payment of wages in any event. Assessment: whether any daily allowance for loss of earnings can be credited without a contractual basis is an open question and cannot be conclusively answered on the basis of the provisions at hand.

The pay under Art. 21 FWG/BL is a payment by the municipality for service rendered, not a substitute for lost wages; Art. 21 FWG/BL contains neither a calculation based on loss of earnings nor any crediting against claims against third parties. Moreover, setting it off against the wage claim would have to be measured against Art. 323b para. 2 OR, which permits the set-off of counterclaims against the wage claim only to the extent that the wages are attachable.

4. No claim for on-call compensation against the business (work assignment 2)

On-call service within the meaning of Art. 14 para. 1 ArGV 1 presupposes that the employee is on standby "in addition to normal work for any work assignments" – meaning standby for the employer. The fire brigade on-call duty is not performed for you; the crediting rule of Art. 15 ArGV 1 and the rules on intervention time in Art. 8a ArGV 2 are not applicable to your employment relationship. Even applying the criteria of Federal Supreme Court practice, the result would be no different: on-call service performed outside the business does not count as working time if the person can perform it at home and leisure and social contacts remain possible; a short intervention period alone does not lead to equal treatment with on-call service on the premises (BGer 4A_94/2010, consid. 4.4). Whether remuneration covers on-call service is furthermore assessed according to the degree of burden, the actual frequency of interventions and the contractual agreement; low-burden on-call service may be covered by

the agreed wage (BGer 4A_523/2010, consid. 5.1 et seq.). Conversely: if the on-call service had to be performed *on the premises*, the entire standby time would be working time and, where the maximum working time is exceeded, would have to be compensated as excess working time with a supplement of at least 25% (BGer 4A_11/2016, consid. 4.1 and 5.1; Art. 15 para. 1 ArGV 1, Art. 13 para. 1 ArG) — this constellation does not apply here. Compensation for fire brigade service is governed by municipal law: under Art. 21 FWG/BL, the municipalities pay the members of their fire brigade a pay allowance; that the structure of the compensation follows personnel or corporate law and that a reference to separately issued pay rates suffices is confirmed by Obergericht LA250014, consid. 4.2 et seq. Result: there is no claim against you for on-call compensation; what is owed is solely the continued payment of wages for lost scheduled working time.

The special categories of Art. 8 ArGV 1 (staff of international organisations and public administrations of foreign states) are of no help here either; they do not cover municipal fire brigade service and thus confirm that the distinction is drawn solely via Art. 2 para. 1 let. a ArG in conjunction with Art. 3a ArG. Decisive for your employment relationship remains the crediting rule of Art. 15 paras. 1 and 2 ArGV 1, which concerns only standby "in addition to normal work" within the meaning of Art. 14 para. 1 ArGV 1.

5. Rest period and earliest start of work after a night call-out (question 3)

Your business (metalworking, 41 employees) is subject to the ArG; none of the exemption lists in Art. 2 and Art. 3 ArG applies, and the fitter does not perform a senior managerial function (Art. 3 let. d ArG). Conversely, the ArG does not apply to the municipal fire brigade as an administrative activity of a municipality: Art. 2 para. 1 let. a ArG excludes municipal administrations from the Act, and Art. 3a let. a ArG exhaustively reserves only health protection (Art. 6, 35 and 36a ArG) for them (cf. Obergericht LA250014, consid. 4.2). Responsibility under working-time law for the morning after therefore lies with you.

The reservation must be delimited precisely: Art. 2 para. 1 let. a ArG excludes federal, cantonal and municipal administrations from the Act "subject to Article 3a", and Art. 3a let. a ArG declares only the provisions on health protection (Art. 6, 35 and 36a ArG) applicable to these administrations. For the fire brigade relationship with the municipality, there are therefore no ArG obligations regarding working and rest time; responsibility for rest time in respect of work the morning after lies exclusively with your business.

Art. 15a para. 1 ArG requires a daily rest period of at least eleven consecutive hours; under Art. 15a para. 2 ArG, it may be reduced to eight hours once a week for adults, provided that an average of eleven hours is observed over two weeks. Calculation for the case described: end of work Tuesday 17.00, resumption Wednesday 07.00 = 14 hours. Since the fire brigade call-out is not working time for you, the requirements of Art. 15a ArG are formally met.

The weekly structure must also be examined: if the weekly working time of the 90% workload is spread over more than five days, a free half-day must be granted every week under Art. 21 para. 1 ArG; the free Friday afternoon normally meets this requirement. Under Art. 21 para. 2 ArG, the free half-days may only be granted with the employee's consent and consolidated for a maximum of four weeks — absences due to fire brigade service may therefore not be "offset" against the free half-day.

If the on-call rule of Art. 19 para. 3 ArGV 1 is applied by way of evaluative analogy — according to its wording, it applies only to on-call assignments under Art. 14 ArGV 1, i.e. to standby within one's own employment relationship — the following would result: between the end of work and the start of the call-out there were 8 hours 35 minutes, i.e. more than the four consecutive hours mentioned there; a full make-up of eleven hours would therefore not be required, and the remaining rest period of 2 hours 25 minutes from 05.10 would have to be granted, meaning the earliest start of work would be 07.35. The analogy is not legally secure and must be expressly identified as an assessment. (According to the wording of Art. 19 para. 3 ArGV 1, the rest period must be granted "for the remaining duration", and only if a minimum rest period of four consecutive hours is not reached must a full eleven hours be granted following the last assignment.)

Irrespective of this, health protection applies: under Art. 328 para. 2 OR and Art. 6 paras. 1 and 2 ArG, you must take the measures that experience has shown to be necessary and organise the workflow in such a way that health hazards and overexertion are avoided as far as possible. Anyone who is put at a machine at 07.00 after a night call-out from 01.35 to 05.10 is overtired; if you are aware of the night call-out, deployment at hazardous workstations must be postponed. Violations of health protection are punishable under Art. 59 para. 1 let. a ArG even in the case of negligence, and the cantonal authority may intervene under Art. 51 et seq. ArG. Answer to question 3 in practice: after night call-outs, a rest period of eleven hours from the end of the call-out must be ensured by instruction or — as a minimum option based on the evaluative standard of Art. 19 para. 3 ArGV 1 — the remaining rest period must be granted (in the case described, start of work at 07.35 at the earliest); the resulting lost time is in turn an inability to work caused by fire brigade service under Art. 324a para. 1 OR and must therefore be paid.

6. Required written arrangement (question 2, second part; work assignment 3)

An arrangement is not a prerequisite for the entitlement, but it is advisable for several reasons:

- An arrangement deviating from Art. 324a paras. 1–3 OR (e.g. assignment of a daily allowance for loss of earnings, lump-sum arrangement, insurance solution) is only permissible by written agreement and with at least equivalent protection (Art. 324a para. 4 OR); if made orally or unilaterally, it is void (Art. 362 para. 2 OR).
- If wages or weekly working time are changed as contractual elements subject to notification, this must be notified in writing under Art. 330b para. 1 let. d and let. e and para. 2 OR, the latter no later than one month after taking effect.
- An instruction under Art. 321d para. 1 OR can regulate notification, proof and recording obligations (time of turning out and return, call-out confirmation from the fire brigade), the handling of night call-outs and the treatment of plannable exercises; Art. 9a paras. 1 and 2 of Ordinance SGS 153.17 serves as a model, which requires written information about the service obligation when taking up employment and, in the event of failure to do so, excludes the use of working time — however, you cannot impose such a sanction under private law to the detriment of Art. 324a para. 1 OR.
- Recording obligations: Art. 46 ArG in conjunction with Art. 73 para. 1 let. c–e and para. 2 ArGV 1 require documentation of working, rest and break times and retention for at least five years. Missing records work against you procedurally, because the extent may then be estimated by analogy with Art. 42 para. 2 OR (BGer 4A_493/2019).
- Both employees concerned must be treated equally; Art. 8 BV does not bind you directly as a private employer, but unequal handling creates unnecessary potential for conflict.

Prospects of success

From your perspective (defending the deduction), the prospects are poor. The key argument against you is the combination of Art. 20 paras. 1 and 2 FWG/BL with Art. 324a para. 1 OR: the cantonal legislature itself assigned fire brigade service to the category of "public office", which invalidates the voluntariness objection you raised; Art. 362 para. 1 OR makes the provision relatively mandatory, Art. 341 para. 1 OR bars a waiver, and the enforceability of the cantonal provision follows from Art. 342 para. 2 OR. The remaining lines of defence are narrow: exhaustion of the "limited period" under Art. 324a para. 2 OR (unlikely with call-outs "every few weeks", but to be checked arithmetically), limitation under Art. 128 no. 3 OR for months far in the past, and the distinction between plannable fire brigade appointments and emergencies (supporting authority: Obergericht 601-2019-15). For the night call-outs outside scheduled working time, you owe no continued payment of wages, because no working time is lost; nor do they give rise to overtime under Art. 321c para. 1 OR, since they are neither in your interest nor ordered by you.

You have prospects of success where on-call compensation is claimed: BGer 4A_94/2010 (consid. 4.4) and BGer 4A_523/2010 (consid. 5.1 et seq.) support the argument that standby time spent at home is not working time requiring compensation; in addition, the standby is not performed for you (Art. 14 para. 1 ArGV 1). This line is

based here on Art. 14 and 15 ArGV 1 and the Federal Supreme Court decisions cited.

Burden of proof: under Art. 8 ZGB, the employee bears the burden of proof for the inability to work and the duration and extent of the lost hours; in practice, the risk shifts to you, because you are required to keep time records (Art. 46 ArG, Art. 73 ArGV 1) and uncertainties are estimated according to BGer 8C_800/2012 (consid. 6.2). Evidence consists of your time records, the call-out logs/confirmations of the municipal fire brigade and the pay statements.

Procedure and costs: for an amount in dispute of up to CHF 30 000, the simplified procedure applies (Art. 243 para. 1 ZPO), with the character of a social procedure; the back-payment amounts per employee are likely to be well below this threshold. The litigation risk is thus financially limited; the reputational and supervisory risk (report to the cantonal labour inspectorate, Art. 41 para. 1 and Art. 51 ArG) and the threat of penalties under Art. 59 para. 1 let. a ArG for deployment at machinery after night duty weigh more heavily. Recommendation: voluntary correction of the deductions rather than litigation.

Recommended next steps

1. **Prepare a recalculation:** Tabular list of all hours lost due to fire brigade service for both employees (date, time of turning out and return, scheduled hours lost, gross amount deducted), starting from the documented cases (3 September: 09.20–13.00 = 3 h 40 min less breaks; 9 September: call-out outside scheduled working time, no grounds for deduction, possibly lost time 07.00–07.35 from granting the remaining rest period). Result: gross back-payment amount per month, plus 5% default interest from the end of each month (Art. 323 para. 1, Art. 102 para. 2, Art. 104 para. 1 OR).
2. **Draft a letter of correction to both employees:** Acknowledgement of the claim under Art. 324a para. 1 OR in conjunction with Art. 20 FWG/BL, back-payment with interest, corrected pay statements (Art. 323b para. 1 OR), notice that no further deductions will be made in future; no waiver or settlement clause text, as invalid under Art. 341 para. 1 OR.
3. **Quota check under Art. 324a para. 2 OR:** Determine the years of service of both employees and compare the cumulative hours of absence per year of service with the relevant volume of continued wage payment; the result serves as the basis for determining from which point a deduction would be legally justifiable.
4. **Clarify the pay structure with the municipality:** Written enquiry to the fire brigade command/municipality as to whether, in addition to the pay under Art. 21 FWG/BL, compensation for loss of earnings is paid and to whom, and obtain the municipal fire brigade regulations under Art. 22 para. 2 FWG/BL; only the loss-of-earnings component is the subject of any assignment agreement (model: Art. 9a para. 3 of Ordinance SGS 153.17).
5. **Draft company regulations/an instruction on "Fire brigade and civil protection service"** covering: commitment to release employees for emergencies; notification obligations (immediate notification of turning out/return, call-out confirmation); recording in the time system as paid absence; treatment of plannable exercises and courses; rules on the start of work after night call-outs; any agreement under Art. 324a para. 4 OR (only in writing and only where equivalence is demonstrated); notification under Art. 330b para. 2 OR in the event of changes to contractual elements subject to notification.
6. **Rest period instruction for hazardous workstations:** Binding rule that after a night-time fire brigade call-out, work at machines may only be resumed after the rest period has been granted — as a minimum option based on the evaluative standard of Art. 19 para. 3 ArGV 1 (in the documented case: start of work at 07.35 at the earliest), preferably eleven hours from the end of the call-out to minimise risk under Art. 328 para. 2 OR and Art. 6 ArG; documentation of the measure within the meaning of Art. 73 para. 1 ArGV 1.
7. **Supplement the time recording:** Introduce the recording category "Absence fire brigade service (paid)", retention for five years (Art. 73 para. 2 ArGV 1), so that proof under Art. 46 ArG and the defence against estimates (BGer 8C_800/2012, consid. 6.2) are secured.

8. **Record the outcome of the review of on-call compensation:** Internal file note that the business has no obligation to pay on-call compensation (Art. 14 para. 1 and Art. 15 para. 2 ArGV 1; BGer 4A_94/2010, consid. 4.4; BGer 4A_523/2010, consid. 5.1 et seq.; Obergericht LA250014, consid. 4.2 et seq.), so that corresponding claims can be rejected on a documented basis.
9. **Escalation path:** If the employee refuses to be satisfied with the back-payment, or if on-call allowances are demanded: await the conciliation request, procedure under Art. 243 para. 1 ZPO; in parallel, clarify the limitation position under Art. 128 no. 3 OR for the earlier pay periods (verify the year of the call-outs).

References

Key decisions

Decision	Ratio decidendi	Significance for the mandate
BGer 4A_94/2010	On-call service performed outside the business does not count as working time if the person can perform it at home and leisure and social contacts remain possible there; a short intervention period alone does not lead to equal treatment (consid. 4.4).	Supports the rejection of a claim for on-call compensation; standby at home in Pratteln is not working time.
BGer 4A_523/2010	Whether contractual remuneration covers on-call service is assessed according to the degree of burden, the actual frequency of interventions and the contractual agreement; low-burden on-call service may be covered by the wage (consid. 5.1 et seq.).	Supports the argument that no additional remuneration is owed for standby "every few weeks".
BGer 4A_11/2016	On-call service to be performed on the premises is working time in full where the intervention time is short; where the maximum working time is exceeded, there is excess working time subject to a supplement (consid. 4.1, 5.1).	Distinguishes the constellation not present here and shows the risk if standby were ordered on the premises in future.
Obergericht LA250014	The ArG does not apply to employment relationships with a public-law corporation if the majority of employees are employed under public law; on-call compensation follows the personnel law rules, and a dynamic reference to pay rates suffices (consid. 4.2 et seq.).	Shows that compensation and structure of fire brigade on-call duty are a matter for the municipality and that the ArG obligations for the morning after lie with you.
BGer 8C_800/2012	Where records of the actual duration are missing, this justifies a comprehensible estimate by analogy with Art. 42 para. 2 OR; a waiver of wages is only to be assumed where there is a clear agreement, not where wages are merely accepted without objection (consid. 6.2, 7.1).	Evidentiary risk of missing records; invalidates a waiver argument based on the previous tolerance of the deductions.

Overview of key provisions

Article	Content	Doctrinal significance
Art. 324a OR	Where the employee is prevented from working through no fault of his own for reasons relating to his person — including performance of statutory obligations or exercise of a public office — the employer owes the wage for a limited period after more than three months of employment (para. 1), three weeks in the first year of service, thereafter an appropriately longer period (para. 2); deviating arrangements only in writing and at least equivalent (para. 4).	Central basis of the employee's claim and prohibitive provision for the wage deduction made; para. 2 provides the only line of defence (exhaustion of the quota), para. 4 the scope for arrangements.
Art. 20 FWG/BL	Fire brigade members who are prevented from performing work because of fire brigade service are entitled to continued payment of wages; vis-à-vis employers under private law in accordance with the provisions on the exercise of a public office (Art. 324a para. 1 OR).	Classification provision that invalidates the voluntariness objection and assigns fire brigade service to the elements of Art. 324a para. 1 OR; enforceable under civil law via Art. 342 para. 2 OR.

Article	Content	Doctrinal significance
Art. 15a ArG	Daily rest period of at least eleven consecutive hours; reduction to eight hours once a week with a two-week average of eleven hours.	Standard for the earliest start of work after the night call-out; formally observed (17.00–07.00 = 14 h), since the fire brigade call-out is not working time for you.
Art. 19 ArGV 1	On-call assignments under Art. 14 ArGV 1 may interrupt the daily rest period; the remaining rest period must be granted subsequently, and where there are fewer than four consecutive hours of rest, the full rest period of eleven hours.	Evaluative standard (not directly applicable, as there is no on-call service within one's own employment relationship) for granting the remaining rest period; in the documented case results in 2 h 25 min from 05.10, meaning start of work at 07.35.
Art. 341 OR	During the employment relationship and for one month thereafter, the employee cannot waive claims arising from mandatory provisions (para. 1); the limitation rules apply (para. 2).	Bars the objection that the employee accepted the deductions; makes the back-payment unavoidable to the extent that Art. 324a OR applies.
Art. 128 OR	Claims of employees arising from the employment relationship become time-barred after five years (no. 3).	Limits the retroactive back-payment obligation; to be checked for the earlier pay periods.
Art. 73 ArGV 1	Records must in particular show working time performed, rest days and compensatory rest days and breaks (para. 1 let. c–e) and must be kept for at least five years (para. 2).	Documentation obligation as a corrective to the burden of proof (cf. BGer 8C_800/2012, consid. 6.2) and basis for recording fire brigade absences in the business.
Art. 21 FWG/BL	The municipalities pay the members of their fire brigade a pay allowance.	The pay is a payment by the municipality for service rendered, not compensation for lost earnings; without a crediting agreement under Art. 324a para. 4 OR, it does not reduce the continued payment of wages.
Art. 22 FWG/BL	The municipalities levy a fire service exemption levy on persons subject to fire service who do not serve in a recognised fire brigade organisation; details and exemptions are governed by the municipal regulations.	Evidences the public-law service obligation behind fire brigade service and invalidates the objection of mere voluntariness.
Art. 2 ArG	Subject to Art. 3a, the Act does not apply to federal, cantonal and municipal administrations (para. 1 let. a) or to other listed businesses.	Distinguishes the two relationships: no ArG working and rest time rules apply to municipal fire brigade service, whereas they apply in full to your metalworking business.
Art. 3a ArG	The provisions on health protection (Art. 6, 35 and 36a ArG) nevertheless apply to federal, cantonal and municipal administrations and to other excluded groups of persons.	Exhaustive counter-exception: in the municipal call-out, only health protection remains relevant; rest period obligations fall solely on your business.
Art. 21 ArG	Where weekly working time is spread over more than five days, a free half-day must be granted each week; consolidation only with the employee's consent and for a maximum of four weeks.	The free Friday afternoon meets the requirement; absences due to fire brigade service may not be offset against the free half-day.
Art. 8 ArGV 1	Defines the staff of international organisations and public administrations of foreign states who are excluded from the ArG.	Shows that municipal fire brigade service is to be distinguished not via these special categories but via Art. 2 para. 1 let. a in conjunction with Art. 3a ArG.

Article	Content	Doctrinal significance
Art. 321c OR	Obligation to perform reasonable overtime (para. 1), compensation by time off by agreement (para. 2), otherwise wages with a supplement of at least one quarter (para. 3).	Fire brigade call-outs do not generate overtime; by contrast, ordered making-up of lost hours is additional work subject to a supplement.
Art. 323b OR	Payment of wages with a written pay statement (para. 1); set-off of counterclaims only to the extent attachable (para. 2).	Basis for the corrected pay statements and bar against a de facto set-off of the municipal pay against the wage claim.

LEXchat · Fire brigade on-call duty during working hours

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