

EXAMPLE CASES

Overtime and excess hours of a team leader

AREA OF LAW Employment contract law, Employee protection law	CANTON Zurich	NORMS CITED 18
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.

Client, 41, was Team Leader Finance at an industrial company in Wallisellen ZH from April 2019 until the end of August 2026. Most recent annual salary 132'000 (13×), contractual weekly working time 42 hours. The contract states: “Any overtime is compensated by the agreed salary.” She managed six employees on a functional basis, but did not decide on budget, hiring or dismissals and had no signing authority; since 2023, three days of home office per week. The company did not keep working time records for her function, there is no written waiver agreement, and there is no CLA. She kept her own Excel list: around 780 hours beyond the contractual working time, of which around 210 were also beyond 45 hours per week, with peaks each year from January to March. Her status emails to the CFO mention the workload several times; the additional work was never expressly ordered, but never objected to either. The employer refuses any compensation: the clause applies, she was a managerial employee, and the Excel list is a self-made document without evidentiary value.

QUESTIONS

1. Does the compensation clause apply — and to which part of the additional work?
2. Who has to prove what if the employer kept no time records at all?
3. What is time-barred, and what amount is owed?

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 there a written agreement by which the employee waived the keeping of working time records?

left open

RESULT

First analysis

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

Summary of the situation

The legal bases for the claim are Art. 321c para. 3 OR for the additional hours between 42 and 45 hours per week and Art. 13 para. 1 ArG in conjunction with Art. 12 para. 1 ArG for the 210 hours above the maximum weekly working time; the central legal questions are (i) the scope of the written compensation clause, (ii) the evidentiary consequences of the missing working time records and (iii) the limitation period under Art. 128 no. 3 OR. For pure overtime under Art. 321c para. 3 OR, the clause is in principle formally valid and effective (Art. 321c is not listed as mandatory in Art. 362 para. 1 OR), but it does not cover the mandatory statutory supplement for excess hours under the Employment Act (BGer 4A_259/2010; BGE 126 III 337) – lacking budget, staffing and signing authority, the client is not a senior manager under the narrow practice on Art. 3 let. d ArG / Art. 9 ArGV 1 (BGer 4A_258/2010). Prognosis: because of the 60-hour threshold in Art. 13 para. 1 ArG and the limitation period, the secured mandatory core is considerably smaller than the 780 hours claimed; the economic outcome depends on the question – assessed differently from canton to canton – whether a lump-sum compensation clause can stand at all where there are no time records and no autonomy over working time, and on whether the Excel list holds up as a basis for estimation by analogy with Art. 42 para. 2 OR.

Analysis

Legal assessment

1. Preliminary questions: applicable law, jurisdiction, procedure

The place of work is Wallisellen ZH, so Swiss law applies (Art. 121 para. 1 IPRG). Venue lies with the court at the employer's registered office or at the usual place of work (Art. 34 para. 1 ZPO); conciliation is a prerequisite (Art. 197 ZPO), and a unilateral waiver is not an option (Art. 199 para. 2 ZPO). Up to an amount in dispute of CHF 30'000, the simplified procedure applies (Art. 243 para. 1 ZPO), with the court's duty to ask questions and the inquisitorial principle (Art. 247 para. 1 and para. 2 let. b no. 2 ZPO), and no court costs are charged (Art. 114 let. c ZPO); above that, the ordinary procedure applies, with an advance on costs (Art. 98 para. 1 ZPO) and the principle of party presentation (Art. 55 para. 1 ZPO). The choice of the amount in dispute is therefore a deliberate cost decision. The specific composition of the court (labour court) and the level of fees in the ordinary procedure are governed by Zurich's law on court organisation and fees and must be calculated on the basis of the current fee schedule before the action is filed.

Before the merits are examined, the procedural requirements under Art. 59 para. 1 and para. 2 ZPO must be secured, in particular jurisdiction (let. b) and a legitimate interest (let. a). A mere declaratory claim concerning the breach of the record-keeping obligation lacks a legitimate interest within the meaning of Art. 59 para. 2 let. a ZPO,

because an action for performance is available; the breach of duty must therefore be pleaded as an evidentiary argument, not as a separate prayer for relief.

A joint waiver of conciliation would only be possible from an amount in dispute of CHF 100'000 (Art. 199 para. 1 ZPO); likewise, a direct action before the higher court as sole cantonal instance requires an amount in dispute of at least CHF 100'000 and the consent of the opposing party (Art. 8 paras. 1 and 2 ZPO). Both options are ruled out from the outset given the realistic size of the claim here.

In terms of contract type, this is an individual employment contract under Art. 319 para. 1 OR: performance of work in the employer's service in return for a time-based salary. The resulting duty to follow instructions (Art. 321d paras. 1 and 2 OR) is the starting point for establishing that the client precisely did not have autonomous control over her working time — a circumstance that carries weight both in interpreting the clause and regarding the record-keeping obligation.

2. Two levels: overtime (OR) and excess hours (ArG)

A distinction must be drawn between the additional hours between the contractual working time of 42 hours and the statutory maximum working time (overtime, Art. 321c OR) and the hours above that (excess hours, Arts. 12 et seq. ArG). According to her own records: around 570 hours of overtime and around 210 excess hours.

The applicability of the ArG is the first switch point. Art. 3 let. d ArG excludes employees exercising a senior managerial function; Art. 9 ArGV 1 requires far-reaching decision-making powers or decisive influence on decisions of great significance with a lasting effect on the structure, business performance and development of the enterprise. According to case law, this exception is to be interpreted narrowly; a mere management position, authority to give instructions or signing authority is not sufficient (BGer 4A_258/2010), and even a high annual salary does not on its own support the exclusion (BGer 4A_62/2013). The client managed six employees on a functional basis only, without authority over budget, hiring or dismissals and without signing authority; the ArG therefore applies. The relevant maximum working time for office staff as well as technical and other employees is 45 hours (Art. 9 para. 1 let. a ArG), subject to Art. 9 para. 5 ArG if she worked in the same part of the enterprise alongside employees in the 50-hour category — this point must be clarified on the facts, because it could eliminate the 210 hours entirely.

3. Question 1: Does the compensation clause apply — and to which part of the additional work?

Overtime (42–45 h): Art. 321c para. 3 OR grants the normal salary plus a supplement of at least one quarter only insofar as "nothing else has been agreed in writing". The contractual clause is in writing; Art. 321c OR is not included in the list in Art. 362 para. 1 OR and is therefore not mandatory. The clause is thus effective in principle and covers the approximately 570 hours of overtime, provided it is sufficiently clear and the additional work compensated does not exceed a normal level; it must not result in the obligation to pay wages under Art. 322 para. 1 OR lapsing entirely for a substantial part of the work performed (Art. 20 para. 2 OR). The fact that the client's working time was expressly agreed in the contract (42 hours) makes Art. 321c OR applicable to her, but does not remove the permissible contractual exclusion (cf. BGE 129 III 171 consid. 2.1: "The statutory rule of Art. 321c OR, however, also applies to managerial employees insofar as the amount of working time has been expressly agreed in the contract" [web, not verified; retrieved 10 September 2026]; verification recommended).

Excess hours (above 45 h): Here the clause does not apply insofar as the law excludes contracting out. A contractual compensation clause can exclude compensation for overtime, but does not cover mandatory claims for excess hours where their compensation or exclusion is excluded by law (BGer 4A_259/2010). Compensation for excess hours is governed by Art. 13 ArG in conjunction with Art. 12 ArG and is mandatory (BGE 126 III 337; likewise Obergericht AN230056: within the scope of the ArG, excess hours must be compensated as a mandatory matter). Compensation by time off would have required the client's consent (Art. 13 para. 2 ArG; for overtime Art. 321c para. 2 OR) — no such consent is apparent.

As a separate line of defence, the employer could refer to an official working time permit with minor deviations under Art. 28 ArG. Such a permit, however, presupposes extraordinary difficulties in complying with the rules and the consent of the majority of the employees concerned or of their employee representatives; according to the file, no such permit exists, which is why the objection should be pre-emptively countered with a request for production of the working time permits.

The relationship between the two regimes is governed by Art. 71 let. b and c ArG: the ArG leaves reserved provisions unaffected and permits deviations from the rules on working and rest periods only in favour of the employees. It follows that the public-law protection regarding excess hours limits contractual freedom under private law: where Art. 12 para. 2 let. a ArG limits excess hours to 170 hours per calendar year and Art. 13 ArG governs their compensation, an agreement cannot circumvent this regime to the client's detriment.

Caution — quantitative restriction: For office staff as well as technical and other employees, the 25% supplement under Art. 13 para. 1 ArG is only owed for excess hours **exceeding 60 hours per calendar year**. With around 210 excess hours over 89 months (an average of about 28 hours per year), this threshold is not reached in several years, even if concentrated in January to March. The mandatory claim to the supplement therefore exists only in those calendar years in which excess hours exceed 60 hours, and only for the surplus. As regards the **base pay** for the excess hours, the position taken here is that it cannot be contracted out: Art. 322 para. 1 OR requires payment for work performed, Art. 12 para. 2 let. a ArG limits permissible excess hours to 170 hours per calendar year and Art. 71 let. b ArG permits deviations from the working time rules only in favour of the employees; a clause that leaves statutorily limited excess hours entirely unpaid is to that extent partially void under Art. 20 para. 2 OR. The opposing position — that Art. 13 para. 1 ArG makes only the supplement mandatory, while base pay follows the non-mandatory Art. 321c para. 3 OR — is tenable in light of the wording in BGer 4A_259/2010 ("where their compensation or exclusion is excluded by law") and must be factored in as a risk. This question determines the order of magnitude of the claim and must be expressly treated as a point of dispute.

Second line of attack against the clause (Task 1): One line of cantonal practice holds lump-sum compensation clauses to be ineffective where the employee lacks autonomy over her working time and no time records are kept (Obergericht C-13647-2015: lump-sum clause ineffective where there is no decision-making power over working time and no time recording; Bezirksgericht C1-20-308: the clause applies only where there is a genuinely managerial function with decision-making powers, which a team leader without budget and staffing authority lacks; Obergericht AC-3208-2014 holds that a contractual exclusion clause for overtime can stand only under certain conditions and that the burden of proof lies with the employer where no time records are kept). By contrast, decisions hold that a lump-sum compensation clause does not release the employer from paying for proven overtime of which it was aware (Obergericht C-19077-2013); conversely, BGer 4A_348/2022 points out that the employee must allege and prove the factual prerequisites — in particular notification and prior authorisation of the additional work — and thus tends to work against the client. Here, this line is based on Art. 321c para. 3 OR in conjunction with Art. 322 para. 1 and Art. 20 para. 2 OR as well as on the cantonal decisions cited; it is supported in particular by Bezirksgericht C1-20-308, according to which the claim to payment or compensation for overtime exists irrespective of a management function, as long as there is no subsequent derogating written agreement and no actual executive function, and by BGer 4A_172/2012, according to which overtime under Art. 321c OR must be paid insofar as it is not compensated by time off. In addition, the interpretation of the clause under Art. 18 para. 1 OR should be examined: "Any overtime" can be understood as limited to a normal, non-excessive amount — with an average of around 9 additional hours per month over seven years, this argument can seriously be made, but it remains a matter of interpretive discretion.

Doctrinally, this is to be linked to the salary claim under Art. 322 para. 1 OR: the clause must not result in a substantial part of the work actually performed remaining entirely unpaid, since the salary is owed for the work performed. Where a lump-sum compensation covers additional work to an excessive extent, it is to that extent

defective in content and partially void under Art. 20 para. 2 OR, while the remainder of the contract stands; the legal consequence is therefore not the lapse of the contract but a return to the statutory compensation rule for the excessive part.

No effective subsequent waiver: Unreserved acceptance of salary over years can be interpreted as a waiver if the employer had no knowledge of the additional work and did not have to have such knowledge (BGE 129 III 171 consid. 2.2 [web, not verified; retrieved 10 September 2026]). Here, the repeated status emails to the CFO argue against a lack of knowledge. For the mandatory statutory claims, the protection against waiver under Art. 341 para. 1 OR also applies (during the term of the contract and for one month thereafter); an informal waiver of overtime already worked is ineffective according to BGE 124 III 469 and Obergericht C-13647-2015. Forfeiture due to late notification is to be assumed only in extraordinary circumstances; the duty to notify serves the employer's organisation, not control of the extent (BGE 129 III 171). After termination, the claim may be asserted at any time within the limitation period, subject to abuse of rights (BGE 129 III 171 consid. 2.2 [web, not verified; retrieved 10 September 2026]); an objection of abuse of rights nevertheless remains possible if the employee created corresponding reliance through her conduct during the term of the contract (BGer 4A_304/2021).

4. Question 2 and Task 3: Burden of proof and missing time records

The burden of proof follows Art. 8 ZGB: the client must prove that she performed additional work, that it was ordered or operationally necessary, and to what extent (BGE 129 III 171; BGer 4A_611/2012; BGer 4A_28/2018; BGer 4A_29/2023, according to which the employee must allege and prove the circumstances that permit an estimate of additional hours that can no longer be determined exactly). Equivalent to proof of a formal order is that the employer knows or ought to know of the additional work and does not intervene (expressly so Entscheidsuche GL_OG-2010-00043 consid. 3.2 [web, not verified; retrieved 10 September 2026]; to the same effect BVGer A-663/2017: tolerance over a longer period despite knowledge or the possibility of knowledge can amount to subsequent acknowledgement). If it is apparent to the employer that overtime is necessary, it can rely neither on late assertion nor on its own lack of control to exclude payment (BGer 4A_467/2011) — this is the central consideration against the employer's objection that nothing was ever ordered.

On the record-keeping obligation: since the ArG applies, the employer was obliged to keep records of the daily and weekly working time performed, including excess hours and their timing, and to retain them for at least five years (Art. 46 ArG in conjunction with Art. 73 para. 1 let. c and para. 2 ArGV 1; confirmed by the Canton of Zurich's information sheet on working and rest periods [web, not verified; retrieved 10 September 2026]). A waiver of time recording would only be permissible under the cumulative conditions of Art. 73a para. 1 ArGV 1 — a CLA basis, a high degree of autonomy, gross annual income above CHF 120'000 and a **written individual waiver agreement**. No CLA, no written agreement: the waiver is ineffective, and the income of CHF 132'000 alone is not sufficient. Nor was simplified recording under Art. 73b ArGV 1 agreed. There is therefore a breach of the public-law record-keeping obligation.

Clarification regarding the task: there is no "duty of proof" on the employer under civil procedure; the breach of duty takes effect in three ways. First, through the free assessment of evidence (Art. 157 ZPO): where the employer has no time records, estimating the extent is permissible, provided the additional work is proven in principle and specific circumstances allow a reliable estimate (BGer 4A_543/2011; estimation by analogy with Art. 42 para. 2 OR: BGer 4A_611/2012; BGer 4A_28/2018). Second, through counter-evidence: where there are uncertainties, an estimate can be made, and the employer must dispute it in a substantiated manner as part of its counter-evidence (Obergericht LA190036; likewise Obergericht 12-2016-207, where the employee's time recording data were accepted because there were no indications of manipulation). Third, through the duty to cooperate: the employer is obliged to produce documents (Art. 160 para. 1 let. b ZPO); if it refuses without justification, this is taken into account in the assessment of evidence (Art. 164 ZPO). A **reversal** of the burden of proof under Art. 8 ZGB does not, however, follow from the missing records according to the Federal Supreme Court's line; some cantonal decisions nevertheless assume it (Obergericht C-13647-2015; Bezirksgericht C1-20-308: burden of proof on the employer, as there were no time records), while others expressly deny a record-keeping obligation of the employer in civil

proceedings (Obergericht C-19077-2013; Obergericht C-2940-2017). This divergence is an open point of dispute and should be addressed offensively in the pleadings; Obergericht AC-3208-2014 can additionally be cited for the employer's burden of proof where no time records are kept.

Task 2 – Evidentiary value of the Excel list: It is admissible evidence as a document (Art. 168 para. 1 let. b ZPO), with a right to have it taken (Art. 152 para. 1 ZPO), and is subject to free assessment (Art. 157 ZPO). Its evidentiary value is, however, limited: one's own records without countersignature by the superior are in principle treated as party submissions (Obergericht HC---2024---46), a unilaterally prepared overtime list is not sufficient on its own (Obergericht C-2940-2017), and mere mentions of the workload in reports or emails do not replace an order where contractual obligations to order and document existed (Obergericht HC---2024---46). Conversely, a self-prepared list can be accepted if it is plausible and not refuted (Obergericht C-13647-2015). Practical consequence: the list is not suitable as full proof, but it is suitable as a **basis for estimation** within the meaning of Art. 42 para. 2 OR by analogy, provided it was kept contemporaneously and is supported by objective circumstantial evidence (email time stamps, calendar entries, VPN/login and system logs – with three home-office days per week the most important objective anchor –, badge data, closing calendars, witnesses from the team, status emails to the CFO). Mere average calculations are not sufficient if more precise bases were available (Obergericht HC---2020---938); if regular weekly additional work is not proven, the claim fails (Obergericht ZOR-2022-52). The list must therefore be submitted complete, consistent and broken down by day – an incomplete or procedurally vulnerable statement leads to dismissal for lack of evidence (BGer 4A_16/2022; BGer 8C_115/2016).

5. Question 3: Limitation and amount

Limitation: Claims of employees arising from the employment relationship become time-barred after five years (Art. 128 no. 3 OR); the limitation period begins when the claim falls due (Art. 130 para. 1 OR). For compensation for overtime and excess hours, the due date is disputed: according to the convincing view, the compensation falls due on an ongoing basis with the respective salary, so that Art. 339 para. 1 OR (all claims fall due on termination) covers only claims not yet due; a due date arising only at the end of the contract could be argued if there were a compensation agreement – there is none here. Both variants must be calculated:

- Variant A (ongoing due date, more likely): all additional hours that fell due more than five years before the act interrupting limitation under Art. 135 no. 2 OR (request for conciliation, action) are time-barred. If proceedings are initiated at the end of 2026, the years 2019, 2020 and most of 2021 are lost – given the peaks from January to March, this affects precisely the peak months of three years, an estimated one third of the total volume.
- Variant B (due date only on 31 August 2026): no limitation; the period would only expire in 2031.

A suspension of limitation under Art. 134 para. 1 OR must be examined, but does not apply here: the client did not live in the same household as the employer (Art. 134 para. 1 no. 4 OR) and the claim was enforceable in court at any time (Art. 134 para. 1 no. 6 OR). The only provision of practical relevance is Art. 134 para. 1 no. 8 OR: limitation is suspended for the duration of settlement negotiations or mediation proceedings, provided the parties agree to this **in writing** – before any out-of-court round of negotiations, a corresponding suspension agreement must therefore be concluded (Art. 134 para. 2 OR: the period resumes only after the end of the day on which the relationship ends).

Amount: The relevant figure is the normal salary including regular salary components not at the employer's discretion; the contractually guaranteed 13th monthly salary is included (to this effect BGer 4A_352/2010), while discretionary bonuses are disregarded (Obergericht AN230056). Since the CHF 132'000 comprises the 13 payments, 42 hours per week yield an annual target of 2'184 hours and an hourly rate of around CHF 60.45.

- Overtime (570 hours gross, around 375–400 after limitation): 0 if the clause is effective; if the clause is ineffective, normal salary plus 25% (Art. 321c para. 3 OR), i.e. around CHF 28'000–30'000.

- Excess hours (210 hours gross, around 135–150 after limitation): 25% supplement only on the part exceeding 60 hours per calendar year (Art. 13 para. 1 ArG) — to be calculated year by year and probably small; base pay around CHF 8'000–9'000, provided the compensation clause does not cover it (open point of dispute, see no. 3 above).
- To be examined in addition: Sunday and public holiday work during the closing peaks with a 50% supplement (Art. 19 para. 3, Art. 20a para. 1 ArG).
- Default interest of 5% (Art. 104 para. 1 OR) from the reminder or from the due date (Art. 102 OR), and for the items that fell due on termination from 1 September 2026 (Art. 339 para. 1 OR).

Realistic range of the amount that can be claimed: around CHF 3'000 to 40'000, with the main risk lying in the effectiveness of the clause.

There are no claims arising from the manner of termination: the employment relationship ended by ordinary termination at the end of August 2026, which is why damages for unjustified summary termination under Art. 337b paras. 1 and 2 OR are out of the question. Here, the termination has effect exclusively via Art. 339 para. 1 OR (due date) and Art. 341 para. 1 OR (end of the protection against waiver one month after termination).

Prospects of success

For the client. First, the classification as a senior manager is hardly tenable under the narrow practice on Art. 3 let. d ArG / Art. 9 ArGV 1: no authority over budget, hiring or dismissals, no signing authority (BGer 4A_258/2010; BGer 4A_62/2013). The employer's objection is weak on this point; it is moreover double-edged, because with it the employer would have to deny its own record-keeping obligation, whose breach would only fall away if the managerial function were affirmed (Art. 3 let. d ArG; for health protection, Art. 3a let. b ArG in conjunction with Art. 6 ArG would remain applicable in any case). Second, the clause is ineffective with respect to the mandatory supplement for excess hours (BGer 4A_259/2010; BGE 126 III 337), and Art. 322 para. 1 OR, Art. 12 para. 2 let. a ArG and Art. 71 let. b ArG argue against contracting out the base pay for excess hours. Third, the missing time records — with the waiver under Art. 73a para. 1 ArGV 1 being ineffective — support the estimate by analogy with Art. 42 para. 2 OR and the substantiation requirements for disputing it (BGer 4A_543/2011; Obergericht LA190036; Obergericht 12-2016-207). Fourth, an order can be replaced by knowledge and non-intervention: repeated status emails to the CFO, never objected to (BGer 4A_467/2011; BVGer A-663/2017).

Against the client. First, the burden of proof, which according to the Federal Supreme Court's line remains with her (BGE 129 III 171; BGer 4A_611/2012; BGer 4A_29/2023) — the missing records make proof easier, but do not replace it. Second, the limited evidentiary value of the Excel list as a self-made document (Obergericht HC--2024---46; Obergericht C-2940-2017); if proof in principle fails, the claim will be dismissed for lack of evidence (BGer 4A_16/2022; Obergericht ZOR-2022-52). Third — and economically most significant — the combination of the 60-hour threshold in Art. 13 para. 1 ArG and the limitation period under Art. 128 no. 3 OR: the undisputedly mandatory core could shrink to a few thousand francs. Fourth, the effectiveness of the clause for pure overtime, which is legally well founded under Art. 321c para. 3 OR in conjunction with Art. 362 para. 1 OR (Art. 321c not mentioned there); the opposing line (partial nullity for excessive additional work under Art. 20 para. 2 OR, obligation to pay wages under Art. 322 para. 1 OR) can be pursued, but requires proof of an extent that clearly exceeds the normal level. Fifth, a possible objection of abuse of rights because of seven years of unreserved acceptance of salary (BGer 4A_304/2021) — weak, but not without effect on the assessment of evidence.

Weighting. Partial success is likely; full success on 780 hours is unlikely. Tactically, the decisive factor is the amount in dispute: if the prayer for relief stays at a maximum of CHF 30'000, there are no court costs (Art. 114 let. c ZPO), the simplified procedure applies (Art. 243 para. 1 ZPO) together with the inquisitorial principle and the court's duty to ask questions (Art. 247 para. 1 and para. 2 let. b no. 2 ZPO), which helps noticeably where the evidence is precarious. The risk of having to pay party costs to the opposing side under Art. 106 paras. 1 and 2 ZPO remains in both constellations; in the case of mere partial success, costs are to be expected to be apportioned under Art. 106 para. 2 ZPO, with the possibility of mitigation under Art. 107 para. 1 let. a ZPO, because the amount

depends on the court's discretion. A higher amount in dispute does open up an appeal (Art. 308 para. 2 ZPO from CHF 10'000) and an appeal to the Federal Supreme Court (Art. 74 para. 1 let. a BGG, CHF 15'000 in employment law cases), but costs an advance and the inquisitorial principle.

Recommended next steps

1. **Secure the limitation period immediately.** A priority, because further hours are lost with every month: file a request for conciliation under Art. 197 ZPO and thereby interrupt limitation under Art. 135 no. 2 OR; alternatively and beforehand, seek an acknowledgement under Art. 135 no. 1 OR. Until proceedings are initiated, record with a date which cut-off date applies (five years back, Art. 128 no. 3 OR).
2. **Prepare a calculation table year by year** — per calendar year and week: hours worked, hours above 42 h, hours above 45 h, Sunday/public holiday hours, cumulative annual excess hours showing the 60-hour threshold under Art. 13 para. 1 ArG and the maximum of 170 hours under Art. 12 para. 2 let. a ArG. Hourly rate $132'000 / 2'184 = \text{CHF } 60.45$; result in three scenarios (clause fully effective / only supplement mandatory / clause ineffective) and each in limitation variants A and B.
3. **Make the evidentiary basis objective.** Before filing the action, obtain or secure: own sent-email logs with time stamps, Outlook calendar, VPN and system logins (central because of the three home-office days), badge/access data, monthly and annual closing calendars, status emails to the CFO in chronological order. List of witnesses: CFO, team members, auditors.
4. **Formulate a request for production** (Art. 160 para. 1 let. b ZPO) of access, VPN and system logs, closing plans, the personnel file and any internal time records, combined with the application that a refusal be assessed to the employer's detriment under Art. 164 ZPO.
5. **Draft the finding on time recording as a building block for the written submission:** a statement that the requirements of Art. 73a para. 1 ArGV 1 (CLA, autonomy, written individual agreement) and of Art. 73b ArGV 1 are undisputedly not met, which is why the obligation under Art. 46 ArG in conjunction with Art. 73 para. 1 let. c and para. 2 ArGV 1 existed and was breached — with the application in the prayer for relief that this be taken into account in the assessment of evidence under Art. 157 ZPO and in the estimate by analogy with Art. 42 para. 2 OR (BGer 4A_543/2011; Obergericht LA190036).
6. **Deliberately determine the prayer for relief and the amount in dispute:** recommendation to primarily assert a claim limited to a maximum of CHF 30'000 in order to take advantage of Art. 114 let. c, Art. 243 para. 1 and Art. 247 para. 2 let. b no. 2 ZPO; decision only once the table under no. 2 is available. Claim default interest of 5% from 1 September 2026 (Art. 104 para. 1, Art. 339 para. 1 OR).
7. **Letter of demand to the employer** setting a deadline (reminder within the meaning of Art. 102 para. 1 OR): presentation of the applicability of the ArG under Art. 3 let. d ArG and Art. 9 ArGV 1 with reference to BGer 4A_258/2010, of the ineffectiveness of the clause vis-à-vis Art. 13 ArG (BGer 4A_259/2010; BGE 126 III 337) and of the breach of the record-keeping obligation; demand for the release of personnel and access data; quantified claim according to scenario 2/3.
8. **Clarify the claim to Sunday/public holiday supplements** (Art. 19 para. 3, Art. 20a para. 1 ArG) and, if it can be substantiated, include it in the quantification; in parallel, clarify Art. 9 para. 5 ArG (deployment in a part of the enterprise with the 50-hour category), as this would eliminate the 210 excess hours.
9. **Settlement strategy:** in view of the threshold and limitation risks, a resolution in the conciliation proceedings is attractive; define a target range on the basis of the scenario calculation and offset the cost consequences under Art. 106 para. 1 ZPO. A settlement more than one month after termination is no longer barred by Art. 341 para. 1 OR. If settlement negotiations are conducted outside the conciliation proceedings, a written agreement on the suspension of limitation under Art. 134 para. 1 no. 8 OR must be concluded beforehand.
10. **Consider a report to the cantonal labour inspectorate** as an escalation option (enforcement of Art. 46 ArG and Art. 73 ArGV 1) — weigh the benefit and the risk for the settlement atmosphere with the client.

References

Key decisions

Decision	Ratio decidendi	Significance for the mandate
BGer 4A_259/2010	A contractual compensation clause can exclude compensation for overtime, but does not cover mandatory claims for excess hours where their compensation or exclusion is excluded by law.	Dividing line for Question 1: the clause affects the approx. 570 hours of overtime, not the mandatory core of the 210 excess hours.
BGer 4A_258/2010	The exception for employees exercising a senior managerial function is to be interpreted narrowly according to the decision-making powers actually exercised; a mere management position, authority to give instructions or signing authority is not sufficient.	Refutes the "managerial employee" objection; opens up Arts. 12 et seq. ArG and the record-keeping obligation under Art. 46 ArG.
BGE 126 III 337	Compensation for excess hours is mandatorily governed by Art. 13 ArG in conjunction with Art. 12 ArG; the claim is not an abuse of rights merely because it is asserted only later.	Supports the mandatory claim for excess hours and refutes the reproach of years of inaction.
BGer 4A_543/2011	Working hours and overtime may be estimated under Art. 42 para. 2 OR if the additional work is proven in principle and specific circumstances allow a reliable estimate of its extent.	Supports using the Excel list as a basis for estimation where there are no time records (Question 2, Task 2).
Obergericht LA190036	Where there are uncertainties in the working time records, the extent of excess hours can be estimated; the employer must respond in a substantiated manner as part of its counter-evidence.	Zurich practice: shifts the burden of substantiation in the counter-evidence to the employer that kept no records.

Overview of key provisions

Article	Content	Doctrinal significance
Art. 321c OR	Obligation to work reasonable overtime (para. 1), compensation by time off only with consent (para. 2), salary plus a supplement of at least one quarter, unless otherwise agreed in writing (para. 3).	Legal basis for the additional hours 42–45 h; para. 3 at the same time contains the opening on which the compensation clause relies.
Art. 13 ArG	Supplement of at least 25% for excess hours, but for office staff and other employees only for excess hours exceeding 60 hours per calendar year (para. 1); no supplement where time off is granted by agreement (para. 2).	Mandatory core of the claim, beyond the reach of the compensation clause — and, with the 60-hour threshold, the decisive quantitative limit.
Art. 3 ArG	Exceptions from the scope of application, including let. d for employees exercising a senior managerial function.	Preliminary question of the applicability of the ArG; to be answered in the negative here, which opens up protection regarding excess hours and the record-keeping obligation.
Art. 9 ArG	Maximum weekly working time of 45 hours for office staff, technical and other employees in industrial enterprises (para. 1 let. a), 50 hours for all others (let. b), alignment under para. 5.	Determines the threshold at which overtime becomes excess hours — and thus the size of the 210 hours.
Art. 73 ArGV 1	Content of the records to be kept, in particular daily and weekly working time performed including excess hours and their timing (para. 1 let. c), retention for at least five years (para. 2).	Yardstick of the breached record-keeping obligation; basis for assessing the evidence to the employer's detriment.
Art. 73a ArGV 1	Waiver of working time recording only with a CLA basis, a high degree of autonomy, gross annual income above CHF 120'000 and a written individual agreement (para. 1).	Rules out any justification for the missing records: no CLA, no written agreement.

Article	Content	Doctrinal significance
Art. 42 OR	Proof of damage by the claimant (para. 1); damage that cannot be proven in figures is estimated by the court (para. 2).	Easing of the burden of proof applied by analogy to the extent of additional work — the bridge between the Excel list and the judgment.
Art. 128 OR	Five-year limitation period, including for claims of employees arising from the employment relationship (no. 3).	Objection of the opposing party; with an ongoing due date (Art. 130 para. 1 OR) it cuts off the years 2019–2021.
Art. 319 OR	Definition of the individual employment contract: performance of work in the employer's service in return for a time-based or piece-rate salary (para. 1).	Basis for classification; integration into the employer's service supports the argument of lacking autonomy over working time.
Art. 321d OR	Employer's right to give instructions on the performance of work and conduct in the enterprise (para. 1), duty to follow them in good faith (para. 2).	Demonstrates the duty to follow instructions also in the home office — counter-argument to the objection of self-determined working time.
Art. 322 OR	The employer must pay the agreed, customary or normatively determined salary (para. 1).	Basis of the principle of remuneration: work performed must not remain entirely unpaid.
Art. 20 OR	Nullity of contracts with unlawful or immoral content (para. 1); partial nullity where individual parts are defective (para. 2).	Strongest line of attack against the lump-sum clause: partial nullity for the excessive part of the additional work.
Art. 134 OR	Non-commencement and suspension of limitation, including during settlement or mediation negotiations agreed in writing (para. 1 no. 8) and where assertion is objectively impossible (no. 6).	Governs the limitation cut-off date in Variant A; requires a written suspension agreement before out-of-court negotiations.
Art. 337b OR	Full liability for damages of the party acting in breach of contract in the case of summary termination (para. 1); discretionary decision in other cases (para. 2).	Delimitation: not applicable to ordinary termination at the end of August 2026 — the termination has effect only via the due date and protection against waiver.
Art. 71 ArG	Reservation of other provisions; the provisions on health protection and on working and rest periods may be deviated from only in favour of the employees (let. b).	Key provision for the relationship between ArG and OR: limits the possibility of contracting out under private law in the area of excess hours.
Art. 28 ArG	Official working time permits may exceptionally provide for minor deviations, in the event of extraordinary difficulties and with the consent of the majority of those affected.	Possible line of defence for the employer; ineffective without a permit and without majority consent.
Art. 8 ZPO	Direct action before the higher court as sole cantonal instance where the amount in dispute is CHF 100'000 or more and the opposing party consents.	Ruled out given the realistic size of the claim here — the ordinary sequence of instances remains.
Art. 59 ZPO	Procedural requirements, in particular a legitimate interest (para. 2 let. a) and jurisdiction (para. 2 let. b).	A separate declaratory claim regarding the breach of the record-keeping obligation fails for lack of interest; an action for performance must be chosen.

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