

**Legislative Council Panel on Manpower
(Meeting on 21 March 2002)**

Review on Rest Breaks

PURPOSE

This paper informs Members of the review on rest breaks conducted by the Labour Department (“LD”), the recommendations of the Labour Advisory Board (“LAB”) and the way forward as agreed by the LAB.

BACKGROUND

2. The issue of whether legislation should be enacted to provide for mandatory rest break for employees after a period of continuous work of five hours had been discussed at the Committee on Occupational Safety and Health (“COSHH”) of the LAB on a number of occasions. However, no consensus could be reached.

3. In order to collect quantitative data on employees’ rest pattern, the LD requested the Census and Statistics Department to conduct a survey on rest breaks of employees in early 2001 via the General Household Survey. The findings were presented to the COSHH for discussion in November 2001 but again different views were expressed. It was decided that the issue should be put to the LAB for further deliberations.

REVIEW ON REST BREAK

Major Findings of the Survey on Rest Breaks

4. According to the survey on rest breaks conducted by the Census and Statistics Department, out of those employees who worked over five hours a day, 2 219 800 employees (94.7%) had specified rest breaks while

124 800 employees (5.3%) did not (Table 1). It is pertinent to point out that **rest break** is defined as a continuous period within working hours **specified** verbally or in written form by an employer during which an employee could **have a meal or take a rest and abstain from working for the employer**. Although 5.3% of employees did not have specified rest breaks, the great majority of them were not deprived of rests during the work period.

Reasons for Not Having Specified Rest Breaks

5. As to why these 124 800 employees did not have specified rest breaks, 89 000 (71.3%) gave the reason of ‘need to stand-by for work at any time’ (Table 2). For example, a watchman for a single building may take meals at his work station. A salesperson taking his rest or meal at a retail shop during non-peak hours may still have to receive those customers who drop in. A tour guide has to take care of his clients while having meals or rest periods. It should be noted that out of these 124 800 employees, only 9 300 (7.5%) gave the reason of ‘heavy workload/insufficient manpower resources’ to account for their situation.

Industries and Occupations of Employees Not Having Specified Rest Breaks

6. Employees who do not have specified periods of rest breaks as defined in the survey are mostly employed in the industries of:-

- (a) retail;
- (b) transport, storage and communications;
- (c) repair, laundry, domestic services and miscellaneous personal services; and
- (d) real estate, legal services, accounting, advertising, data processing.

Please refer to Table 3 for details.

7. The occupations of these employees are specified at Table 4. They are mostly working as:-

- (a) sales and services elementary occupations;

- (b) personal and protective service workers;
- (c) salespersons and models; and
- (d) drivers and mobile machine operators.

For a detailed breakdown of their occupations, please refer to Table 5.

Views of COSH Members

8. COSH Members considered the above survey findings at a meeting held in November 2001 and expressed divergent views on whether there was a need to enact legislation on rest breaks.

9. In general, employer Members were of the view that as the great majority of employees were granted rest breaks, there was no need to introduce legislation in this area. They were concerned that the introduction of legislation would increase the operating costs of small businesses. This might cause them to close down and adversely affect the employment situation. Moreover, imposing legislative control on rest breaks might bring too much interference in the employers' management of their businesses. This would invariably reduce flexibility of the workforce in meeting the unique work requirements of individual industries, trades or occupations. They considered that the Administration should promote the awareness of the importance of taking appropriate rest among employers, employees and the self-employed through education and promotion.

10. However, employee Members tended to go for the legislative approach. They considered that operating costs should not be taken into consideration because taking a proper rest was the basic right and need of every employee. As an economy with considerably high per capita income, the Administration should enact legislation to protect employees who were not granted a specified period of rest period. If the problem of the lack of appropriate rest breaks for employees was put aside, ultimately society would have to bear the costs. The Administration should therefore legislate on the provision of rest breaks to protect those who were in need of such protection.

11. After detailed discussion, Members agreed that their views should be reflected to the LAB for further deliberations.

Motion Debate of the Legislative Council

12. On 30 January 2002, the Hon. LAU Chin-shek proposed a motion on “Rest Time for Employees” at the Legislative Council asking the Administration to enact legislation on rest breaks and to review legislation on rest days. The motion, as Members are aware, was voted down.

Recommendations of the LAB

13. The LAB considered this issue at the meeting on 27 February 2002 in detail. Employer Members expressed the view that even if legislation was introduced, it might not be able to cover employees who did not have specified rest breaks at present. Certain industries, trades or occupations, by reason of genuine operational needs, would need to be exempted. In effect, the industries, trades or occupations, which required exemption, would likely be those without rest breaks at present. On the other hand, employee Members considered that the matter should be kept under review and the need to legislate could be reconsidered if the situation so warranted. Meanwhile, a Guide should be prepared.

14. After deliberations, the LAB recommended the following measures:-

- (a) COSH should prepare a Guide on Rest Breaks;
- (b) LD should step up educational and promotional work on the granting of appropriate rest breaks; and
- (c) regular reviews on the issue be conducted.

THE WAY FORWARD AS AGREED BY THE LAB

15. The LD will act on the recommendations of the LAB in handling this matter. The COSH, which comprises employer and employee representatives, safety and health professionals, will prepare a Guide on the Provision of Rest Breaks.

16. To undertake this task, the LD will provide support to the COSH in every possible way. We will consult the COSH accordingly and work out

the timetable for compiling the Guide.

17. With a view to enhancing its degree of acceptance, the Guide must be drawn up taking into account the views of employers and employees. To achieve this, we will widely consult employers and employees of various industries and trades through different channels such as the tripartite committees, employer associations and employee unions. We will consider feedback from the parties concerned before finalizing the Guide. The Guide will be presented to the LAB for endorsement before it is promulgated.

18. When the Guide is ready, we will work together with employer associations and employee unions to publicize it widely through various channels and promotional activities.

Labour Department
March 2002

Table 1 Employees in the private sector with fixed contractual hours of work being more than 5 hours per working day classified by whether they had specified rest breaks during working hours

| | Yes | | No | | Total | |
|---|-----------------------|------|-----------------------|-----|-----------------------|-------|
| | No. of persons ('000) | % | No. of persons ('000) | % | No. of persons ('000) | % |
| Whether they had specified rest breaks during working hours | 2 219.8 | 94.7 | 124.8 | 5.3 | 2 344.6 | 100.0 |

Table 2 Employees in the private sector with fixed contractual hours of work being more than 5 hours per working day not having specified rest breaks during working hours classified by reason for not having specified meal breaks during working hours

| Reason for not having specified meal breaks during working hours | No. of persons ('000) | % |
|--|-----------------------|-------|
| Needed to stand-by for work at any time | 89.0 | 71.3 |
| Norm of company/trade | 17.6 | 14.1 |
| Heavy workload/insufficient manpower resources | 9.3 | 7.5 |
| Short working hours per day | 8.9 | 7.1 |
| Total | 124.8 | 100.0 |

Table 3 Employees in the private sector with fixed contractual hours of work being more than 5 hours per working day classified by industries and whether they had specified rest breaks during working hours

| Industry | Whether had specified rest breaks during working hours | | | | | |
|---|--|------|-----------------------|------|-----------------------|-------|
| | Yes | | No | | Total | |
| | No. of persons ('000) | % | No. of persons ('000) | % | No. of persons ('000) | % |
| Retail | 161.0 | 87.5 | 23.0 | 12.5 | 183.9* | 100.0 |
| Transport, storage and communications | 240.3 | 91.6 | 21.9 | 8.4 | 262.2 | 100.0 |
| Repair, laundry, domestic services, misc. personal services | 39.8 | 66.8 | 19.8 | 33.2 | 59.5* | 100.0 |
| Real estate, legal services, accounting, advertising, data processing, etc. | 224.7 | 92.7 | 17.6 | 7.3 | 242.3 | 100.0 |
| Education, medical, misc. social & related community services, etc. | 240.9 | 95.4 | 11.6 | 4.6 | 252.5 | 100.0 |
| Restaurants, hotels & boarding houses | 209.9 | 95.1 | 10.9 | 4.9 | 220.8 | 100.0 |
| Import and export | 302.0 | 99.0 | 3.1 | 1.0 | 305.1 | 100.0 |
| Banking, finance & investment companies, insurance | 154.1 | 98.2 | 2.9 | 1.8 | 157.0 | 100.0 |
| Food, beverage, wearing apparel, leather, footwear, textiles, etc. | 105.5 | 97.9 | 2.2 | 2.1 | 107.7 | 100.0 |
| Metal, office machinery, electronic parts & components, transport equipment, etc. | 107.0 | 98.2 | 1.9 | 1.8 | 109.0* | 100.0 |
| Construction | 217.9 | 99.2 | 1.7 | 0.8 | 219.6 | 100.0 |
| Others | 216.7 | 96.4 | 8.2 | 3.6 | 225.0* | 100.0 |
| Overall | 2 219.8 | 94.7 | 124.8 | 5.3 | 2 344.6 | 100.0 |

* Figures do not add up to total due to rounding up.

Table 4 Employees in the private sector with fixed contractual hours of work being more than 5 hours per working day classified by occupations and whether they had specified rest breaks during working hours

| Occupation | Whether had specified rest breaks during working hours | | | | | |
|--|--|------|-----------------------|------|-----------------------|-------|
| | Yes | | No | | Total | |
| | No. of persons ('000) | % | No. of persons ('000) | % | No. of persons ('000) | % |
| Sales & services elementary occupations | 261.3 | 89.0 | 32.2 | 11.0 | 293.5 | 100.0 |
| Personal and protective services workers | 175.4 | 88.9 | 22.0 | 11.1 | 197.4 | 100.0 |
| Salespersons and models | 97.4 | 82.5 | 20.6 | 17.5 | 118.0 | 100.0 |
| Drivers & mobile machine operators | 91.7 | 82.9 | 19.0 | 17.1 | 110.7 | 100.0 |
| Teaching professionals and associate professionals | 76.9 | 93.0 | 5.8 | 7.0 | 82.7 | 100.0 |
| Customer services clerks | 64.2 | 93.0 | 4.8 | 7.0 | 69.1* | 100.0 |
| Legal, accounting, business & related professionals and associate professionals | 276.8 | 98.3 | 4.7 | 1.7 | 281.4* | 100.0 |
| Industrial plant operators, stationary machine operators & assemblers | 69.5 | 95.9 | 3.0 | 4.1 | 72.5 | 100.0 |
| Craft and related workers, etc. | 194.2 | 98.7 | 2.5 | 1.3 | 196.8* | 100.0 |
| Managers and administrators | 171.2 | 99.0 | 1.8 | 1.0 | 173.0 | 100.0 |
| Physical, mathematical & engineering science professionals and associate professionals | 158.7 | 98.9 | 1.7 | 1.1 | 160.4 | 100.0 |
| Office clerks | 427.0 | 99.7 | 1.5 | 0.3 | 428.4* | 100.0 |
| Others | 155.5 | 96.8 | 5.2 | 3.2 | 160.7 | 100.0 |
| Overall | 2 219.8 | 94.7 | 124.8 | 5.3 | 2 344.6 | 100.0 |

* Figures do not add up to total due to rounding up.

Table 5 Breakdown of Occupations

Sales and services elementary occupations

street hawkers, gardeners, cleaners, messengers, security guards, transport labourers, shoes cleaners, ushers, meter readers, door-to-door salespersons, etc.

Personal and protective services workers

air hostesses, travel guides, cooks, waiters, baby-sitters, child care workers, hairdressers, beauticians, fortune-tellers, private tutors, ground attendants, room boys, etc.

Salespersons and models

Wholesales and retail salesmen, shop assistants, sales girls, demonstrators in department stores, petrol service station attendants, fashion models, etc.

Drivers and mobile machine operators

railway engine and motor vehicle drivers, agricultural, earthmoving, lifting and other mobile materials handling equipment operators, seamen, etc.

Teaching professionals and associate professionals

principals, teachers, educational administrators, special education teachers, skill and craft teachers, technical and workshop instructors, tutors in tutorial organizations, etc.

Customer services clerks

bank tellers, receptionists, telephone switchboard operators, travel agency clerks, cashiers, etc.

Legal, accounting, business and related professionals and associate professionals

lawyers, accountants, auditors, business consultants, bookkeepers, etc.

Industrial plant operators, stationary machine operators and assemblers

mining and mineral-processing, metal-processing, wood-processing plant operators, chemical, rubber, plastic, wood, printing, textile products machine operators, etc.

Craft and related workers, etc.

Stone cutters, blasters, bricklayers, levelers, scaffolders, bar and steel benders, metal moulders, blacksmiths, electrical fitters, goldsmiths, glass painters, potters, printing workers, etc.

Managers and administrators

corporate managers, functional managers, IT/computer managers, small business managers, etc.

Physical, mathematical and engineering science professionals and associate professionals

physicists, mathematicians, architects, engineers, statistical assistants, engineering technicians, etc.

Office clerks

typists, accounting clerks, filing clerks, data entry operators, word processing operators, etc.