



LEGISLATIVE COUNCILLOR (MEDICAL) Dr. Hon LEUNG Ka-lau
立法會議員 (醫學界) 梁家騷醫生

致：

研究標準工時相關事宜小組委員會主席

潘兆平議員

法定標準工時法案範本

本人就訂立法定標準工時，曾草擬法案範本，並得法律草擬專員確認為符合香港法例的一般格式。該範本為彈性地訂立標準工時，提出了簡明的規定方法。

本人已於2月1日研究標準工時相關事宜小組委員會會議上，向各委員傳閱，並要求小組委員會適時討論，順頌台安。

梁家騷謹啟

二零一六年三月二十三日

附件一：《標準工作時數條例草案》(中文本)

附件二：《標準工作時數條例草案》(英文本)

立法會CB(2)813/15-16(01)號文件

《標準工作時數條例草案》

根據《香港特別行政區立法會議事規則》
第 51(2) 條簽發的證明書

本人認為《標準工作時數條例草案》符合議事規則第 50 條的規定
及香港法例的一般格式。

文偉彥

法律草擬專員

2010 年 11 月 4 日

《標準工作時數條例草案》

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本條例草案

旨在

為某些僱員訂定標準工作時數。

由立法會制定。

第 1 部

導言

1. 簡稱

本條例可引稱為《標準工作時數條例》。

2. 釋義

在本條例中—

工作時數 (hours worked) 的涵義與《最低工資條例》(2010 年第 15 號) 中該詞的涵義相同；

工資 (wages) 的涵義與《僱傭條例》(第 57 章) 中該詞的涵義相同；

工資期 (wage period) 的涵義與《僱傭條例》(第 57 章) 中該詞的涵義相同；

年假 (annual leave) 的涵義與《僱傭條例》(第 57 章) 中該詞的涵義相同；

家庭傭工 (domestic worker) 的涵義與《最低工資條例》(2010 年第 15 號) 中該詞的涵義相同；

病假日 (sickness day)的涵義與《僱傭條例》(第 57 章)中該詞的涵義相同；

假日 (holiday)的涵義與《僱傭條例》(第 57 章)中該詞的涵義相同；

產假 (maternity leave)的涵義與《僱傭條例》(第 57 章)中該詞的涵義相同；

參照期 (reference period) — 見第 3 條；

僱員 (employee)指根據僱傭合約受聘為僱員的人，但不包括第 4(2)、(3)或(4)條涵蓋的人；

僱傭合約 (contract of employment)的涵義與《僱傭條例》(第 57 章)中該詞的涵義相同。

3. 參照期

- (1) 除第(2)及(3)款另有規定外，僱員的參照期為其受僱期間每一連續的 4 個月。
- (2) 就已完成或終止的僱傭合約而言，如該合約先前涵蓋最少一段參照期，則始於倒數第二段參照期完結之時並終於該合約完成或終止當日的期間，即屬最後的參照期。
- (3) 就已完成或終止的僱傭合約而言，如該合約先前並無涵蓋最少一段參照期，則始於該合約開始之時並終於該合約完成或終止當日的期間，即屬最後的參照期。

4. 本條例的適用範圍

- (1) 除本條另有規定外，本條例適用於每名僱員、其僱主及該僱員據以受聘的僱傭合約。
- (2) 凡因為《僱傭條例》(第 57 章)第 4(2)條，以致該條例不適用於某人，則本條例亦不適用於該人；而本條亦不適用於按根

據《學徒制度條例》(第 47 章)註冊的學徒訓練合約受聘的人。

- (3) 某人如受僱為某住戶的家庭傭工，或在關乎某住戶的情況下受僱為家庭傭工，並免費居於該住戶，則本條例不適用於該人。
- (4) 本條例不適用於行政管理人員及任何其他有自主權決定工作時數的人。

第 2 部

標準工作時數

5. 標準每周工作時數

- (1) 除第 6 條另有規定外，以一段參照期內的平均計算，僱主不得要求僱員工作(包括超時工作)多於每 7 天 48 小時。
- (2) 僱員在一段參照期內每 7 天的平均工作時數須按照以下公式計算 —

$$\frac{A}{B - [C \times (7/6)]} \times 7$$

而在公式中 —

- A 代表在該參照期內僱員工作的總時數；
- B 代表在該參照期內的日數；
- C 代表不被計算的日子的數目。

- (3) 在第(2)款中 —

不被計算的日子 (excluded days)由以下日子組成 —

- (a) 年假的任何時間；
- (b) 假日的任何時間；
- (c) 病假日的任何時間；及
- (d) 產假的任何時間。

6. 工作多於標準工作時數的協議

- (1) 僱員可自行提出請求並在其僱主同意下，為該僱主工作多於標準工作時數。

- (2) 僱員可應其僱主的請求，為該僱主工作多於標準工作時數。
- (3) 為實施第(1)及(2)款，僱主須首先得到僱員以書面同意工作多於標準工作時數，而該協議 —
 - (a) 可關乎一段特定時期或無限期適用；及
 - (b) 除條款另有規定外，須可由僱員以書面給予不少於 7 日通知而終止。
- (4) 若協議為實施第(3)款而規定協議在一定期間的通知後終止，該期間不得超過 3 個月。

7. 根據僱傭合約獲付超時工作薪酬的權利

- (1) 如僱員為其僱主在一段參照期內工作多於標準工作時數而沒有根據第 6(3)條訂立的協議，則他的僱傭合約，須就所有目的而言視為規定僱員有權就該參照期獲得超時工作薪酬，而款額須按照以下公式計算 —

$$(D - 48) \times E \times F \times 1.5$$

而在公式中 —

- D 代表根據第 5(2)條計算在該參照期內僱員每 7 天的平均工作時數；
 - E 代表在該參照期內的星期數目；及
 - F 代表在該參照期內僱員的每小時工資額。
- (2) 在第(1)款中，僱員在該參照期的每小時工資額，為該僱員在該參照期內的工資的款額(不包括為實施本條而支付的超時工作薪酬)，除以該參照期內的周數乘以 48 之數，或按僱傭合約規定，以較高者為準。
 - (3) 在不局限第(1)款的原則下，除《僱傭條例》(第 57 章)第 2(2)條另有規定外，該款提述的目的包括 —

- (b) 根據《破產欠薪保障條例》(第 380 章)，計算須以特惠款項方式支付的任何款額；
 - (c) 根據《強制性公積金計劃條例》(第 485 章)，計算須向公積金計劃作出的任何強制性供款的款額；及
 - (d) 為《僱員補償條例》(第 282 章)或《職業性失聰(補償)條例》(第 469 章)的目的，計算僱員的每月收入或每月入息。
- (4) 為免生疑問及在不局限第(1)款的原則下，僱員根據第(1)款有權獲得的額外報酬的款額，屬根據《僱傭條例》(第 57 章)須支付予僱員的工資的一部分，如僱主欠付該款額，可按處理欠付該工資的任何其他部分的相同方式，予以處理。
- (5) 本條受第 10 條(過渡性條文)規限。

8. 不可藉合約摒除本條例

僱傭合約(不論是在本條生效當日、之前或之後訂立者)的任何條文，如看來是終絕或減少本條例賦予僱員的任何權利、利益或保障的，即屬無效。

9. 僱傭保障

如僱員曾於緊接被解僱前的 12 個月 —

- (a) 曾經拒絕(或打算拒絕)服從由僱主施加(或打算施加)的違反本條例的條件；
- (b) 曾經拒絕(或打算拒絕)放棄本條例所賦予的權利；或
- (c) 曾經不能簽署、進入，或同意修改或延續一項為實施本條例而與僱主所作的協議，

則該僱員須視為《僱傭條例》(第 57 章)中在沒有正當理由的情況下遭解僱，除非該項解僱獲證明是基於該條例第 32K 條所指的正当理由。

10. 過渡性條文

就某僱員而言，如標準每周工作時數、超時工作薪酬比率及參照期時間的生效日期，是在他的某參照期開始後，則該等條文只在下個參照期開始當日起適用於該僱員。

摘要說明

本條例草案旨在為某些僱員訂定標準工作時數，賦權僱員可就工作多於標準工時獲支付超時工作薪酬，藉以規管僱員用於工作上的時數。此外，除本條例草案另有明文規定外，本條例草案並不影響《僱傭條例》(第 57 章)的實施；而超時工作薪酬的支付，可根據該條例，按處理欠付工資的任何其他部分的相同方式，予以強制執行。

第 1 部 — 導言

2. 草案第 1 條訂定本條例草案(如經制定)的簡稱。
3. 草案第 2 及 3 條載有為本條例草案的釋義所需的定義。
4. 草案第 4 條關乎本條例草案的適用範圍。本條例草案適用於所有僱員(草案第 4(2)、(3)及(4)條指明的類別除外)。家庭傭工如免費居於其受僱工作的住戶，即獲豁免。行政管理人員及有自主權決定工作時數的人亦屬獲豁免類別之一。

第 2 部 — 標準工作時數

5. 草案第 5 條賦權僱員在任何參照期內工作不多於標準工作時數，並列出如何計算僱員的工作時數。
6. 草案第 6 條為工作多於標準工作時數的協議制定條文。
7. 草案第 7 條賦權僱員，就(在沒有根據草案第 6 條訂立協議的情況下)工作多於標準工作時數獲支付超時工作薪酬，並列出如何計算超時工作薪酬。該條亦具效力在有需要時修改僱傭合約，以訂明須支付超時工作薪酬，藉以確保僱員就工作多於標準工作時數獲支薪。該條清楚述明在根據《僱傭條例》(第 57 章)、《破產欠薪保障條例》(第 380 章)、《強制性公積金計劃條例》(第 485 章)、《僱員補償條例》(第 282 章)及《職業性失聰(補償)條例》(第 469

章)計算權利及法律責任時，經修改的僱傭合約均屬適用。因此，如僱員根據該等條例獲得的款額，少於計及(為實施本條例草案而支付的)超時工作薪酬後所得之款額，僱員有權獲得少收的款額，而有關強制執行行動(包括檢控)，可根據該等條例提出。

8. 草案第 8 條阻止僱傭合約的雙方藉合約摒除本條例草案(如經制定)的條文。
9. 草案第 9 條為保障因曾拒絕放棄本條例草案賦予的權利而遭解僱的僱員制定條文。在該情況下，該僱員須視為《僱傭條例》(第 57 章)中在沒有正當理由的情況下遭解僱，除非該項解僱獲證明是基於該條例第 32K 條所指的正当理由。
10. 草案第 10 條載有過渡性條文，以處理在某參照期開始後標準每周工作時數、超時工作薪酬比率及參照期長度生效的情況。

LC Paper No. CB(2)813/15-16(01)

STANDARD WORKING HOURS BILL

**CERTIFICATE UNDER RULE 51(2) OF THE RULES OF PROCEDURE
OF THE LEGISLATIVE COUNCIL OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION**

I am of the opinion that the Standard Working Hours Bill conforms to the requirements of Rule 50 and the general form of Hong Kong legislation.



Law Draftsman

4 November 2010

Standard Working Hours Bill

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A BILL

To

Provide for standard working hours for certain employees.

Enacted by the Legislative Council.

Part 1

Preliminary

1. **Short title**
This Ordinance may be cited as the Standard Working Hours Ordinance.
2. **Interpretation**
In this Ordinance—
annual leave (年假) has the same meaning as in the Employment Ordinance (Cap. 57);
contract of employment (僱傭合約) has the same meaning as in the Employment Ordinance (Cap. 57);
domestic worker (家庭傭工) has the same meaning as in the Minimum Wage Ordinance (15 of 2010);
employee (僱員) means a person engaged as an employee under a contract of employment other than a person covered by section 4(2), (3) or (4);

holiday (假日) has the same meaning as in the Employment Ordinance (Cap. 57);

hours worked (工作時數) has the same meaning as in the Minimum Wage Ordinance (15 of 2010);

maternity leave (產假) has the same meaning as in the Employment Ordinance (Cap. 57);

reference period (參照期)—see section 3;

sickness day (病假日) has the same meaning as in the Employment Ordinance (Cap. 57);

wage period (工資期) has the same meaning as in the Employment Ordinance (Cap. 57);

wages (工資) has the same meaning as in the Employment Ordinance (Cap. 57).

3. Reference period

- (1) Subject to subsections (2) and (3), the reference periods of an employee are each successive period of 4 months during his or her course of employment.
- (2) For a completed or terminated contract of employment that has had at least one previous reference period, the final reference period is the period commencing at the end of the penultimate reference period and ending on the day of completion or termination of the contract.
- (3) For a completed or terminated contract of employment that has not had at least one previous reference period, the final reference period is the period commencing at the beginning of the contract and ending on the day of completion or termination of the contract.

4. Application of Ordinance

- (1) Subject to this section, this Ordinance applies to every employee, his or her employer and the contract of employment under which he or she is engaged.
- (2) This Ordinance does not apply to a person to whom the Employment Ordinance (Cap. 57) does not apply because of section 4(2) of that Ordinance or who is engaged under a contract of apprenticeship registered under the Apprenticeship Ordinance (Cap. 47).
- (3) This Ordinance does not apply to a person who is employed as a domestic worker in, or in connection with, a household and who dwells in that household free of charge.
- (4) This Ordinance does not apply to a managing executive or any other person with autonomous decision-taking powers.

Part 2**Standard Working Hours****5. Standard weekly working hours**

- (1) Subject to section 6, an employer must not require an employee to work, including overtime, more than 48 hours for each 7 days, calculated as an average for the reference period.
- (2) An employee's average working hours for each 7 days during a reference period is to be determined according to the formula—

$$\frac{A}{B - [C \times (7/6)]} \times 7$$

where—

- A represents the aggregate number of hours worked by the employee in the reference period;
- B represents the number of days in the reference period;
- C represents the number of excluded days in the reference period.

- (3) In subsection (2)—

excluded days (不被計算的日子) means days comprised in—

- (a) any period of annual leave;
- (b) any period of holiday;
- (c) any period of sickness day; and
- (d) any period of maternity leave.

6. Agreement to work more than standard working hours

- (1) An employee may, at his or her own request and if the employer agrees, work for the employer more than the standard working hours.
- (2) An employee may, at the request of his or her employer, work for his or her employer more than the standard working hours.
- (3) For the purposes of subsections (1) and (2), an employer must first obtain the employee's agreement in writing to work more than the standard working hours, and that agreement—
 - (a) may either relate to a specified period or apply indefinitely; and
 - (b) subject to any provision in the agreement for a different period of notice, is to be terminable by the employee by giving not less than 7 days' notice to his or her employer in writing.
- (4) Where an agreement for the purposes of subsection (3) makes provision for the termination of the agreement after a period of notice, the notice period provided for must not exceed 3 months.

7. Entitlement to overtime pay under contract of employment

- (1) If an employee works for the employer more than the standard working hours in a reference period without the agreement under section 6(3), the contract of employment of the employee must be taken to provide for all purposes that the employee is entitled to overtime pay in respect of that period of an amount to be determined according to the formula—

$$(D - 48) \times E \times F \times 1.5$$

where—

- D represents the employee's average working hours for each 7 days for the reference period mentioned in section 5(2);

- E represents the number of weeks in the reference period; and
- F represents the amount of the hourly wage rate of the employee for the reference period.
- (2) In subsection (1), the hourly wage rate of the employee for the reference period is derived by dividing the amount of wages payable to the employee (excluding overtime pay for the purposes of this section) for the reference period by the number of weeks in the reference period multiplied by 48, or provided by the contract of employment, whichever is the higher.
- (3) Without limiting subsection (1), the purposes referred to in that subsection include calculating, subject to section 2(2) of the Employment Ordinance (Cap. 57)—
- the amount of any wages or of any other sum payable under the Employment Ordinance (Cap. 57);
 - any amount payable by way of an ex gratia payment under the Protection of Wages on Insolvency Ordinance (Cap. 380);
 - the amount of any mandatory contribution required to be paid to a provident fund scheme under the Mandatory Provident Fund Schemes Ordinance (Cap. 485); and
 - the monthly earnings of the employee for the purposes of the Employees' Compensation Ordinance (Cap. 282) or the Occupational Deafness (Compensation) Ordinance (Cap. 469).
- (4) To avoid doubt and without limiting subsection (1), the amount of any overtime pay to which an employee is entitled under subsection (1) forms part of the wages payable to the employee under the Employment Ordinance (Cap. 57) and a failure to pay it may be dealt with in the same way as a failure to pay any other portion of those wages.
- (5) This section is subject to section 10 (transitional provisions).

8. No contracting out

A provision of a contract of employment (whether the contract was entered into before, on or after the commencement of this section) that purports to extinguish or reduce any right, benefit or protection conferred on the employee by this Ordinance is void.

9. Employment protection

Where an employee—

- has refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of this Ordinance;
- has refused (or proposed to refuse) to forgo a right conferred on him or her by this Ordinance; or
- has failed to sign, or to enter into, or to agree to vary or extend, an agreement with the employer for the purposes of this Ordinance,

within a period of 12 months immediately preceding his or her dismissal by the employer, the employee is to be taken to be dismissed by the employer without a valid reason for the purposes of the Employment Ordinance (Cap. 57) unless a valid reason is shown for that dismissal within the meaning of section 32K of that Ordinance.

10. Transitional provisions

If the effective date of standard weekly working hours, overtime pay rate, or length of reference period is a date after the beginning of a reference period of an employee, such provisions are to apply to the employee on and from the beginning of the next reference period.

Explanatory Memorandum

The object of this Bill is to provide for standard working hours for certain employees to regulate the numbers of hours employees spend at work, by entitling employees to overtime pay for working more than the standard working hours. Further, except as expressly provided by it, the Bill does not affect the operation of the Employment Ordinance (Cap. 57) but payment of the overtime pay may be enforced under that Ordinance in the same way as any other portion of unpaid wages.

Part 1—Preliminary

2. Clause 1 provides for the short title of the Bill (when enacted).
3. Clauses 2 and 3 contain definitions that are necessary for the interpretation of the Bill.
4. Clause 4 deals with the application of the Bill. The Bill applies to all employees except the categories specified in clause 4(2), (3) and (4). Domestic workers who dwell free of charge in their employing household are exempt. Managing executives or other persons with autonomous decision-taking powers are also among the exempted categories.

Part 2—Standard Working Hours

5. Clause 5 gives employees an entitlement of working no more than the standard working hours in any reference period. The clause sets out how the hours worked by the employees are calculated.
6. Clause 6 provides for the agreement to work more than standard working hours.

7. Clause 7 gives employees an entitlement of overtime pay for working more than the standard working hours without the agreement under clause 6. The clause sets out how the overtime pay is calculated. The clause also has the effect of modifying contracts of employment so as to provide for overtime pay if necessary to ensure that employees are paid for working more than the standard working hours. The clause makes it clear that the modified contract of employment applies when calculating entitlements and liabilities under the Employment Ordinance (Cap. 57), the Protection of Wages on Insolvency Ordinance (Cap. 380), the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Employees' Compensation Ordinance (Cap. 282) and the Occupational Deafness (Compensation) Ordinance (Cap. 469). Employees therefore are entitled to any shortfall of payment under those Ordinances arising when the overtime pay for the purposes of the Bill is taken into account and enforcement action (including prosecution) may be brought under those Ordinances relating to any such shortfall.
8. Clause 8 prevents the parties to a contract of employment contracting out of the provisions of the Bill (when enacted).
9. Clause 9 provides for protection for employees who have refused to forgo a right conferred on him or her by the Bill. In such circumstances, the employee is to be taken to be dismissed without valid reason for the purposes of the Employment Ordinance (Cap. 57) unless a valid reason is shown for that dismissal within the meaning of section 32K of that Ordinance.
10. Clause 10 contains transitional provisions to cover situations where the standard weekly working hours, overtime pay rate, or length of reference period is in effect after the beginning of a reference period.