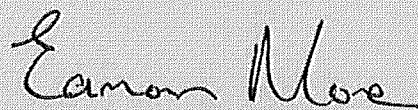


STANDARD WORKING HOURS BILL

**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

Contents

Clause		Page
Part 1		
Preliminary		
1.	Short title.....	1
2.	Interpretation.....	1
3.	Reference period.....	2
4.	Application of Ordinance.....	3
Part 2		
Standard Working Hours		
5.	Standard weekly working hours	4
6.	Agreement to work more than standard working hours.....	5
7.	Entitlement to overtime pay under contract of employment	5
8.	No contracting out.....	7
9.	Employment protection.....	7
10.	Transitional provisions.....	7

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.