



Labour Department (Headquarters)

勞工處（總處）

Your reference 來函編號：

Our reference 本處檔案編號： LD CR 1/814 Pt. 100

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29 May 2013

Miss Betty Ma
Clerk to the Legislative Council
Panel on Manpower
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Miss Ma,

Standby Duties of Employees

I refer to the Hon. Tang Ka-piu's letter of 20 March 2013 to the Chairman of Legislative Council Panel on Manpower, expressing concern over employees' standby arrangement. The Administration's response is provided below.

Under the Employment Ordinance (EO), employers should arrange eligible employees to take leave as provided for in the Ordinance, including rest days, statutory holidays and annual leave etc. The EO stipulates that if an employer requires an employee to work on a statutory holiday, an alternative holiday should be arranged within 60 days before or after the statutory holiday. If the employer and the employee agree, the employee may also take any day within 30 days before or after the statutory or alternative holiday as a substituted holiday.

The EO also provides that an employee employed under a continuous contract is entitled to not less than one rest day in every period of seven days. A rest day is defined as a continuous period of not less than 24 hours during which an employee is entitled to abstain from working for his employer. Except in the event of a breakdown of machinery or plant or in any other unforeseen emergency, an employer must not require an employee to work on a rest day. For any rest day on which the employee is required to work for the abovementioned reasons, the employer should provide some other rest day. If an employer requests an employee to work on a rest day, the employee may, at his own choice, decide whether to accede to the request. Relevant arrangement should be made based on the employee's wishes and the agreement between the employer and the employee.

The Minimum Wage Ordinance (MWO) sets a wage floor for compensating employees for work done. According to the MWO, if an employee performing standby duty is in attendance at a place of employment in accordance with the contract of employment or with the agreement or at the direction of the employer, such standby time is part of the hours worked for computing statutory minimum wage. Should any standby time be agreed by the employer and the employee as hours worked by the employee, such standby time should also be included in computing statutory minimum wage. If the employer and the employee have different understanding on whether certain time is hours worked or not, they should clarify between themselves as soon as possible to forestall dispute.

Subject to the requirements under the EO, the MWO and other legislation, employers and employees are free to negotiate and agree on their employment terms including standby arrangements. We note that standby duty is arranged by employers in some industries having regard to their individual business circumstances. Standby arrangements and requirements under different employment contracts vary and the frequency of employees being actually called out to work also differs. As there could be quite a lot of variations in standby arrangements for different industries and occupations, it would be more appropriate for employers and employees to mutually agree on the compensation arrangement by themselves.

The Labour Department has all along been advising employers and employees to draw up mutually agreed employment terms according to their needs through consultation and dialogue. If there is any agreement on the standby remuneration/compensation arrangement by both parties, the employer must comply with the contractual or agreed terms. If and when employers and employees have dispute over their standby arrangements or related employment matters, the Labour Department stands ready to provide its conciliation service to assist both parties in resolving their differences through direct dialogue.

Yours sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, characteristic of the signature of Charles Hui.

(Charles HUI)
for Commissioner for Labour