

For information on
19 June 2018

Legislative Council Panel on Manpower

Working Hours Policy: Way Forward

Purpose

This paper briefs Members on the way forward of the working hours policy.

Background

2. The last-term Government endorsed in June 2017 the report and recommendations of the Standard Working Hours Committee (SWHC) as a general framework for guiding the future formulation of the working hours policy and adopted the following implementation framework to take forward SWHC's recommendations:

- (i) to adopt a wage line of monthly wages not exceeding \$11,000 for defining the lower-income grassroots employees to whom mandatory written employment contracts with terms on working hours and overtime compensation arrangements shall be legally applicable (to be referred to as the “contractual working hours” legislation);
- (ii) to adopt the same wage line as in (i) above for legally defining the lower-income grassroots employees who shall be entitled to statutory overtime compensation by way of overtime pay at a rate no less than the rate of the agreed wages¹ or the equivalent time-off in lieu (to be referred to as the “mandatory overtime compensation” legislation);
- (iii) to exclude from the above two legislative proposals persons to whom the Employment Ordinance (Chapter 57) (EO) and

¹ It refers to the wage rate calculated based on the agreed wages. “Agreed wages” means wages as defined under the Employment Ordinance (Chapter 57) but excludes overtime pay.

the Minimum Wage Ordinance (Chapter 608) (MWO) do not apply, for example, government employees (including civil servants and non-civil service contract staff) who are not currently bound by EO and MWO will be exempted;

- (iv) to make use of the Labour Advisory Board (LAB) as a platform for employer and employee representatives to thrash out the implementation arrangements and review the effectiveness of the legislative proposals two years after implementation;
- (v) to draw up 11 sector-specific working hours guidelines through the industry-based tripartite committees of the Labour Department (LD), setting out suggested working hours arrangements, overtime compensation arrangements and good working hours management measures for employers' reference and adoption; and
- (vi) to introduce supportive measures to enhance public understanding of the working hours policy and make preparation as per the request of LAB for monitoring the effectiveness of SWHC's recommendations.

Views of the Community

3. At the meeting of this Panel held on 20 June 2017, many Panel Members expressed strong reservations about the legislative proposals as stipulated in paragraph 2 above. They were concerned that the proposed “contractual working hours” legislation could not provide adequate safeguards to employees against long working hours but rather would rationalise the problem given that most employees lacked bargaining power in negotiating for contractual terms and conditions of employment with their employers. They maintained that legislating for standard working hours (SWH) was the only way to resolve the problems of long working hours and uncompensated overtime work faced by employees. Among the few Panel Members supporting the proposed “contractual working hours” legislation, they suggested that the Government should raise the proposed wage line (\$11,000 per month) for defining the lower-income employees to be covered by the legislation. As for the proposal of formulating sector-specific working hours guidelines for the 11 designated sectors, Panel Members did not offer any views.

4. Similar views were received from the employee members of LAB and trade unions that they strongly objected to the “contractual working hours” legislation and would not accept it as a substitute to the SWH legislation, though the LAB employer members considered the proposals would mark an important step forward in the working hours policy. In sum, views are divergent in the community.

Way Forward of the Working Hours Policy

5. In the absence of broad-based support, the Government has decided not to pursue for the time being the two legislative proposals on “contractual working hours” and “mandatory overtime compensation”, and to focus efforts on formulating the 11 sector-specific working hours guidelines and assessing the effectiveness of the guidelines through household surveys on working hours situation.

(a) Sector-specific Working Hours Guidelines

6. LD has kick-started the engagement of its industry-based tripartite committees to discuss the formulation of sector-specific working hours guidelines for employers’ reference and adoption, with a view to improving employees’ working hours arrangements. Apart from the nine existing tripartite committees², two new ones on cleaning services and elderly homes (which are sectors with relatively long working hours) will be set up. The proposed sector-specific working hours guidelines seek to set out:

- (i) the good working hours management measures including the suggested working hours standards for selected occupations of the respective sectors, drawing-up of rules on working hours and overtime compensation methods taking into account the characteristics of different sectors, means to ensure adequate communication with the staff, setting-up of supervising mechanisms to ensure that overtime only takes place when it is necessary and should not go beyond a reasonable level, good record-keeping on working hours and overtime to avoid disputes, etc.;
- (ii) the definition of agreed working hours and overtime, the sector-specific work pattern and treatment under special

² The nine existing industry-based tripartite committees are: catering, cement and concrete, construction, hotel and tourism, logistics, printing, property management, retail and theatre.

circumstances (such as mandatory training, stand-by duty, performance of duty outside Hong Kong, on duty under inclement weather conditions, etc.); and

- (iii) the suggested sector-specific overtime calculation methods and compensation arrangements (such as the compensation rate of overtime pay or time-off in lieu, payment arrangement of overtime pay, accumulation and granting arrangement of time-off in lieu, etc.).

7. Depending on the progress of discussions by the tripartite committees, LD plans to release the 11 sector-specific working hours guidelines progressively between the first quarter of 2019 and the first half of 2020 and to devise publicity plans accordingly to promote and encourage employers' adoption. The sector-specific working hours guidelines could provide useful benchmarks for employers to follow, whilst allowing certain flexibility for each sector to improve the working hours arrangements taking account of their own operational characteristics, sector-specific job types and working hours patterns, thereby helping to address the concerns over the impracticability of a "one-size-fits-all" SWH regime that pays no regard to the varied circumstances of different trades and occupations. LD would monitor the implementation and effectiveness of the sector-specific working hours guidelines through, inter alia, regular working hours surveys as set out below.

(b) Household Survey on Working Hours Situation

8. SWHC conducted the first-ever territory-wide comprehensive working hours survey in 2014 to collect working hours data and opinions on working hours arrangements and working hours policy. SWHC made reference to the key results and observations of the survey in formulating its recommendations on the working hours policy direction. One of SWHC's recommendations as endorsed by the last-term Government was that the Government should regularly conduct household surveys on working hours situation after the implementation of the legislative proposals with a view to keeping track of the working hours situation, reviewing the effectiveness of the measures, and considering appropriate follow-up to further improve the working hours policy.

9. Although the Government has decided to put on hold for the time being the "contractual working hours" and "mandatory overtime compensation" legislative proposals, we would still conduct a new round

of household survey on working hours situation to monitor the working hours trend of employees in general and capture detailed data on specific sectors, particularly the 11 sectors as identified by SWHC for formulating the sector-specific working hours guidelines, to facilitate monitoring of the effectiveness of the guidelines upon implementation. The survey results would also assist LD in formulating more targeted education and publicity activities to promote family-friendly employment practices. We plan to commission a consultancy firm to conduct the new round of household survey on working hours situation in the first half of 2019 so as to gauge the working hours situation for future assessments of the effectiveness of the guidelines before the latter's full implementation by mid-2020. We also plan to conduct similar territory-wide working hours surveys regularly at, say, five-year intervals to collect the necessary working hours data for policy analysis and planning.

(c) Other Supportive Measures

10. The Government will also explore the feasibility of putting in place better practices to improve the working hours arrangements of employees. Among them, LD plans to introduce the following supportive and publicity measures to promote the culture of reasonable working hours arrangements, enhance the transparency of the terms of employment as well as improve the communication between employers and employees in respect of working hours:

- (i) to require or encourage employers to disclose more information on working hours arrangements when placing job vacancies through LD to enhance transparency and prompt employers to provide appropriate working hours arrangements for employees; and
- (ii) to launch large-scale education and publicity activities to promote family-friendly employment practices relating to working hours arrangements.

(d) Stocktaking and Assessment

11. The Government will conduct a stock-take and assessment of the effectiveness of the measures above and further explore feasible ways for improving the working hours policy three years after the release of all the 11 sector-specific working hours guidelines (i.e. around 2023 assuming that all the sector-specific working hours guidelines would be published by 2020). This would allow sufficient time for the relevant sectors to make necessary adjustments to their working hours arrangements, and for

the community to further deliberate on the working hours policy with regard to the effectiveness of the sector-specific working hours guidelines and other supportive measures.

Views of LAB

12. LAB was briefed on 23 May 2018 on the way forward of the working hours policy. Employer members in general did not take exception to the proposed way forward. Some of the employee members were disappointed at the lack of SWH legislation and expressed concern over the effectiveness of the sector-specific working hours guidelines.

13. Members are invited to note the content of this paper.

Labour and Welfare Bureau
Labour Department
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