

立法會

Legislative Council

LC Paper No. CB(2)968/19-20(06)

Ref : CB2/PL/MP

Panel on Manpower

Updated background brief prepared by the Legislative Council Secretariat for the meeting on 19 May 2020

Standard working hours

Purpose

This paper summarizes the major concerns and views expressed by members at the Panel on Manpower ("the Panel") and its Subcommittee on Issues Relating to Standard Working Hours on the subject of standard working hours ("SWH") since the Fifth Legislative Council ("LegCo").

Background

2. In the former Chief Executive ("CE")'s 2010-2011 Policy Address, it was stated that the Government would embark on a policy study on SWH so as to lay a solid and objective foundation for the public discussion on the issue. The Labour Department ("LD") was assigned the task and released the Report of the Policy Study on Standard Working Hours in late November 2012.

3. The Government announced in April 2013 the formation of the Standard Working Hours Committee ("SWHC"), which was tasked to follow up on the Government's policy study on SWH, promote understanding of this subject and related issues, and advise CE on the working hours situation in Hong Kong including whether a statutory SWH regime or any other alternatives should be introduced.

4. According to the Administration, SWHC has since the establishment completed a number of tasks, which included a territory-wide working hours survey and the first-stage consultation in 2014, and a three-month public consultation exercise on the policy directions for working hours from April to June 2016 ("the second-stage consultation"). SWHC submitted its report in January 2017, and the Government endorsed the report in June 2017.

Past discussions by Members

Concerns over legislating for SWH

5. Some members took a strong view that the Administration should focus its work on addressing the phenomenon of long working hours by legislative means. Acknowledging the various complicated and difficult issues to be dealt with relating to the introduction of a working hours policy, including the policy design and the parameters involved, some members held the view that consideration should be given to establishing an SWH regime in phases.

6. Some members, however, pointed out that employers expressed stronger reservations towards the introduction of SWH in Hong Kong than the introduction of statutory minimum wage. Apart from the potential increase in the wage bill, employers were particularly concerned about the need and flexibility to maintain adequate manpower to accomplish urgent and important tasks if working hours limits were set. These members considered that the Administration should fully address the concerns of the employers and deliberate relevant issues thoroughly before taking forward the matter.

7. Some members called on the Administration to consider amending the Employment Ordinance (Cap. 57) ("EO") to the effect that the number of contractual working hours and overtime pay rates should be spelt out expressly in the employment contracts. These members pointed out that most employers objected to implementation of a uniform working hours standard and considered that different working hours arrangements were already in place in response to the work nature and requirements of different sectors or occupations.

8. Members were assured that the Administration was mindful of the complexity of the working time regime which involved a wide range of complex issues with widespread and far-reaching implications for the overall labour market, manpower demand, employment relations, work culture, family life, employees' health at work, business environment, economic development and business competitiveness. The Administration recognized fully the need to examine the subject of SWH in-depth before deciding on the way forward. SWHC would study and discuss the various issues of concern thoroughly and objectively in the deliberation of the policy direction.

Work of SWHC

9. Some members took the view that there was no need for SWHC to conduct the second-stage consultation on the future directions of a working hours policy. Instead, the consultation should collect views on how to legislate for SWH, including the number of weekly working hours and overtime pay rates. These members also cast doubt about the effectiveness of the "big

frame"¹ under exploration by SWHC in addressing the long working hours situation, especially for those employees who did not have bargaining power on the employment terms and conditions put forward by employers.

10. According to the Administration, EO did not oblige employers and employees to sign written employment contracts, nor to specify employees' working hours arrangements. The "big frame" should be a step forward to mandatorily require employers and employees in general to enter into written employment contracts, specifying clearly such terms relating to working hours, for instance, the number of working hours, overtime work arrangements and modes of overtime compensation. SWHC was of the view that the "big frame" would help protect employees from entering into unreasonable employment terms and conditions.

11. Some members expressed support for exploring the "small frame"² by SWHC on the premise of the "big frame". Given the controversy of the subject of SWH, they considered that the working hours issue should more appropriately be first addressed by requiring employers and employees to enter into written employment contracts with clear terms relating to working hours and overtime pay rates so as to further protect grassroots employees with lower income, lower skills and less bargaining power. In these members' view, the Administration should fully address the concerns of the employers and deliberate relevant issues thoroughly before taking forward the matter.

12. Some members expressed grave concern that the six employee representatives of the Labour Advisory Board, who were SWHC's ex-officio members, had walked out of the SWHC meeting on 27 November 2015 and ceased to participate in the work of SWHC. These members shared the concern of these employee representatives that the adoption of the "big frame" approach by SWHC had backtracked on the agreement to conduct future discussion on the basis of legislating for working hours of employees as made at the SWHC meeting on 18 March 2015. Members were concerned how the Administration would take forward the subject of formulating a working hours policy in the absence of the employee representatives on SWHC.

13. At the policy briefing cum meeting of the Panel on 23 January 2017, members were advised that apart from examining the relevant information

¹ SWHC had deduced several principles and suggestions on working hours policy directions, including (a) an in-principle agreement to explore a legislative approach to mandate written employment contracts specifying working hours arrangements of employees in general ("big frame" as referred to by SWHC) and (b) exploring, on the premise of the "big frame", whether there was a need for other suitable measures to further protect grassroots employees with lower income, lower skills and less bargaining power ("small frame" as referred to by SWHC).

² See footnote 1 above.

collected from the two rounds of extensive public consultation, SWHC had taken into account the Consultation Report on Legislating for Standard Working hours submitted by the labour sector to CE. Members noted that SWHC had submitted its report to the Government on 27 January 2017, setting out recommendations on the working hours policy direction.

Recommendations of SWHC

14. Members were concerned about how the Administration would take forward SWHC's recommendations on the working hours policy direction. The Administration briefed the Panel at its meeting in June 2017 on the working hours policy framework and the proposed measures. The Panel also received views from deputations at the meeting.

15. Members noted that SWHC recommended, among others, that a legislative approach should be adopted to mandate employers to enter into written employment contracts with lower-income grassroots employees, which would include terms on working hours and overtime compensation arrangements. SWHC had left it to the Government to define the scope of the lower-income grassroots employees. Members were advised that the Administration fully accepted SHWC's recommendations and proposed that the wage line of lower-income grassroots employees be set at monthly wages of \$11,000, with the overtime compensation be paid at a rate no less than the rate of the agreed wages or the equivalent time-off in lieu.

16. Members expressed diverse views on the Administration's proposal to legislate for written employment contracts with specification of working hours and overtime compensation terms for the lower-income grassroots employees. Some members expressed strong dissatisfaction and disappointment at the Administration's decision of not to pursue legislating for SWH. They considered that the Administration's proposal could hardly address the problem of long working hours and uncompensated overtime work generally faced by employees in various trades and industries. Moreover, the number of employees to be covered under the Administration's proposal was too small if the wage line was set at monthly wages of \$11,000. These members took a strong view that it was necessary to legislate for SWH (with a working hours standard of 44 hours per week and overtime pay rate of 1:1.5) to safeguard the rights of employees.

17. Some other members, however, considered that the Administration's proposal was a practical first step to take forward the working hours policy in Hong Kong, which had given due regard to the affordability of enterprises and the need to protect the rights of grassroots employees. These members stressed that they opposed an across-the-board working hours regulation or SWH legislation, which in their view, would undermine the flexibility of

operation and increase the manpower cost of enterprises, particularly the small-to-medium ones.

Sector-specific working hours guidelines

18. At its meeting in June 2018, the Panel was briefed on the Administration's way forward of the working hours policy. Many members expressed disappointment at the Administration's decision of not to pursue the two legislative proposals on contractual working hours and mandatory overtime compensation, as recommended by SWHC, but to formulate 11 sector-specific working hours guidelines ("the guidelines") for employers' reference only. These members cast doubt about the effectiveness of the non-binding guidelines in addressing the labour sector's concern over working hours and overtime compensation arrangements. There was also a concern that the formulation of the guidelines would formalize the long working hours situation and render it unnecessary to legislate for SWH. These members reiterated their call for legislating for SWH.

19. Some other members, however, welcomed the formulation of the guidelines. They held a strong view that given the diversified job types, it was difficult to introduce SWH legislation across-the-board for various trades and industries. To provide flexibility in working hours arrangements, these members called on the Administration to consult the relevant industry stakeholders when drawing up the guidelines.

20. Members were advised that in the absence of broad-based support for the legislative proposals on contractual working hours and mandatory overtime compensation, the Administration decided to focus efforts on formulating the guidelines. As recommended by SWHC, the Administration would, through the industry-based tripartite committees³ of LD, engage the stakeholders in the 11 sectors to discuss the formulation of the guidelines with suggested working hours standards, overtime compensation methods and good working hours management measures. Among the selected occupations of the 11 designated sectors, most of them were grassroots job types with relatively long working hours and the employees concerned did not have much bargaining power in negotiating with their employers in respect of the employment terms and working conditions. The guidelines would provide useful reference for employers to follow and improve the working hours arrangements.

³ Currently, LD runs nine industry-based tripartite committees (covering catering, construction, theatre, logistics, property management, printing, hotel and tourism, cement and concrete, and retail sectors) comprising representatives from employers, employees and the Government to promote tripartite dialogue and collaboration at the industry level. Two new tripartite committees would be set up to draw up the guidelines for cleaning services and elderly homes sectors where long working hours are relatively more common.

21. Concern was raised over the imbalanced representation of employers and employees in the industry-based tripartite committees which was not conducive to achieving a consensus on the formulation of the guidelines. On whether the Administration would review the composition of the tripartite committees, members were advised that the tripartite committees comprised representatives from employers, employees as well as the Government. Serving as platforms for in-depth discussion on measures/policies to address industry-specific issues on labour relations, the tripartite committees had been running smoothly in forging consensus on important employment issues.

Review of working hours policy

22. Some members were concerned about the timetable for conducting a review of the working hours policy and the effectiveness of the guidelines. The Administration advised that it would commission a consultancy firm to conduct a 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 sector-specific working hours guidelines before the latter's full implementation by mid-2020. Members were assured that the Administration would assess the effectiveness of the guidelines and further explore feasible ways for improving the working hours policy three years after the release of all the guidelines.

23. The Administration will brief the Panel on the latest development of formulation of sector-specific working hours guidelines at the meeting on 19 May 2020.

Relevant papers

24. A list of the relevant papers on LegCo website is in the **Appendix**.

Relevant papers on the standard working hours

Committee	Date of meeting	Paper
Subcommittee to Study Issues Relating to Standard Working Hours	1.2.2016 (Item I)	Agenda Minutes
	15.3.2016 (Item I)	Agenda Minutes
	16.5.2016 (Item I)	Agenda Minutes
		Report (LC Paper No. CB(2)1657/15-16)
Establishment Subcommittee	6.6.2016 (Item 6)	Agenda Minutes
	8.6.2016 (Item 1)	Agenda Minutes
Finance Committee	8.7.2016 (Item 3)	Agenda Minutes
	11.7.2016 (Item 3)	Agenda Minutes
Panel on Manpower	15.12.2011 (Item IV)	Agenda Minutes
	18.12.2012 (Item III)	Agenda Minutes
	31.7.2013 (Item IV)	Agenda Minutes
	20.5.2014 (Item IV)	Agenda Minutes

Committee	Date of meeting	Paper
	17.3.2015 (Item V)	Agenda Minutes
	15.12.2015 (Item IV)	Agenda Minutes
	23.1.2017 (Item III)	Agenda Minutes
	20.6.2017 (Item V)	Agenda Minutes
	19.6.2018 (Item IV)	Agenda Minutes
	8.11.2019 (Item I)	Agenda Minutes
Council meeting	23.6.2010	Motion on "Legislating for 'standard working hours'"
	1.12.2010	Official Record of Proceedings (Question 3)
	15.2.2012	Motion on "That this Council notes the Report of the delegation of the Panel on Manpower to study the experience in the implementation of standard working hours in the Republic of Korea"
	17.10.2012	Motion on "Legislating for the regulation of working hours"
	3.6.2015	Motion on "Enacting legislation on standard working hours"
	31.5.2017	Official Record of Proceedings (Question 5)

Committee	Date of meeting	Paper
	29.5.2019	<u>Official Record of Proceedings (Question 1)</u>

Council Business Division 2
Legislative Council Secretariat
15 May 2020