

TRIPARTITE GUIDELINES ON FLEXIBLE WORK SCHEDULES

1 Introduction

- 1.1 With rapidly changing market demands and volatile business cycles, companies would need to have greater flexibility in scheduling their working hours to optimise their manpower resources. A more flexible work pattern would help companies to enhance productivity and competitiveness in a globalised economy.

2 Legal Provisions on Payment for Overtime, Rest Day and Public Holiday Work

- 2.1 The Employment Act stipulates the following higher differential rates that an employer is required to pay **in cash** to an employee for work performed in excess of his contractual working hours: -
- 1.5 times the hourly rate of pay for overtime work;
 - 2 days' salary for work done on a rest day at the employer's request; and
 - An extra day's salary for work on a public holiday.

These rates of payments are meant to compensate workers for the extra hours worked beyond their normal contractual working hours. The additional costs would also encourage companies to properly schedule their working hours so as to ensure minimum disruption to workers.

- 2.2 While the current legal provisions governing the payment for overtime and work on rest days and public holidays have worked well for most companies, companies which face uneven and seasonal fluctuations in demand due to their nature of operations or seasonal or business cycles, have encountered rigidities and difficulties scheduling their working hours to optimise their manpower resources, and this has hindered productivity improvement. During periods of high demand or peak seasons, companies have no difficulty paying the higher rates for overtime and rest day work. However, when demand is low due to poor

market conditions, companies are burdened with excess manpower and are unable to reduce their wage costs through rescheduling of the working hours of the excess manpower. This results in inefficiency and may compel companies to retrench the excess employees during the lull periods only to re-hire new ones when business picks up. To these employers, this would result in the loss of employees with valuable experience and skills. To the employees, this would mean less job security and greater risk of retrenchment. Faced with unpredictable business fluctuation, companies, which face such market conditions, should be allowed to deviate from these provisions of the law so that they can implement flexible work schedules. Implementing such schedules will help achieve cost effectiveness and enhance job security, and these will benefit both the company and employees.

- 2.3 Given the volatile business conditions, the Economic Review Committee (ERC) had recommended that companies should be given exemptions from the statutory provisions on overtime, rest day and public holiday work so that they could adopt flexible work schedules. Exemptions should however be given on the condition that safeguards are put in place and that the benefits and productivity gains derived from the more efficient use of manpower resources would be shared with the employees.
- 2.4 The ERC also recommended that a Tripartite Workgroup be set up to assess the various applications of flexible work schedules and the need to empower the Commissioner for Labour to exempt companies from the statutory provisions in the Employment Act on working hours and the higher rates of overtime work and work on rest days and on public holidays. The Government accepted the recommendations.

3 Amendment to the Employment Act

- 3.1 To allow deviation from the provisions of the Employment Act on overtime work and work on rest days and public holidays, Section 41A of the Employment Act has been amended to allow the Commissioner to exempt companies from these statutory provisions.
- 3.2 With the amendments to the Employment Act effective from 1 October 2004, an employer, on the approval of the Commissioner for Labour, is allowed to compute the average weekly working hours over a longer period beyond the current 1 to 3 weeks cycle. The Commissioner may also exempt companies from cash payments and/or at a rate different from those prescribed for overtime, rest day or public holiday work, if the situation warrants such an exemption.

4 Concerns of employees and unions

- 4.1 Employees' primary concerns associated with flexible work schedules are the loss in overtime income and possible abuse by employers to avoid paying the differential rates for overtime, rest day and public holiday work. Also, without the differential rates, employers would have no incentive to use their manpower resources efficiently and to avoid deploying their workers to work excessive hours. The flexibility accorded to companies to maximise working time to meet fluctuating demands could potentially disadvantage the lower income employees who may be deprived of their overtime earnings as the weekly working hours are averaged out over a longer period. The impact on take home pay could be significant for employees who perform substantial overtime work and whose overtime pay constitutes a large proportion of the total monthly income. Another implication is that employees who have earned overtime income can only receive such payments after the quarterly, 6 monthly or even yearly working hours have been fulfilled as the case may be.

5 Flexible Work Schedules also benefit Employees

- 5.1 On the other hand, while employees could face possible loss of overtime pay, they are assured of a stable monthly income and greater job security. With the flexible work schemes, companies can optimise its manpower resources to enhance their competitiveness and also avoid or minimise retrenchment of its excess employees during a downturn.

6 Tripartite Guidelines on the Implementation of Flexible Work Schedules

- 6.1 To ensure that the implementation of flexible work schemes is not abused and will benefit both employers and employees, the Tripartite Workgroup was set up to formulate a set of guidelines to help companies formulate appropriate flexible work schedule schemes. The guidelines are as follows: -

6.2 Qualifying Conditions for Applications

6.2.1) Rationale for Implementing Flexible Work Schedule

There must be a compelling need for the company to operate flexibly to cope with uneven and fluctuating business cycles to optimise its manpower resources for the benefit of the company and its employees. The company concerned must be able to support its proposal by providing information relating to its businesses, products or services that are seasonal or fluctuating in nature and hence requires flexible work schedule to better meet its demands.

6.2.2) Income Stability

Companies should ensure that the incomes of their employees are stable in that they will continue to receive their monthly basic salary during the lull periods when they work less than the contractual hours.

6.2.3) Occupational Safety and Health

Companies applying for the exemption should have a good track record in respect of safety and health. They should ensure that the safety and health of the employees is not compromised and that the employees would not be subjected

to hazardous work environment and conditions as a result of implementing the flexible work schedule schemes. Regular inspections may be carried out by Ministry of Manpower (MOM) to verify the level of compliance of safety and health legislations and other measures taken to bring about a safe and healthy environment. In line with this objective, companies are required to observe the maximum 12 hours daily working limit and monthly 72 hours overtime limit, except in special circumstances where the Commissioner is satisfied that these limits may be exceeded.

6.2.4) Gain Sharing or Incentives for Employees

The company should put in place a profit sharing or incentive scheme to share gains derived from the efficient use of manpower and productivity improvement as a result of implementing the flexible work schedule with their employees. Such incentive payments could be made to employees who participate in the scheme on a monthly, quarterly or less frequent interval basis.

6.2.5) Consent from Unions and Affected Employees

Under the tripartite guidelines, companies should first seek the union's consent or in the case of non-unionised companies, the consent from the majority (i.e. 50% + 1) of the employees affected by the proposed scheme. The scheme should be clearly explained and communicated to the affected employees. After an exemption has been granted, MOM may, at any time deem fit, interview employees to get feedback on how the flexible work schedules have worked.

6.2.6) Regular Review and Renewal of Exemptions

Exemption should only be granted for a specific duration of not more than 2 years in the first instance and on the condition that the company concerned will carry out regular reviews on a 6-monthly or yearly basis to ensure that the scheme can continue to achieve its objective. The company needs to seek renewal upon the expiry of the exemption but the subsequent period of exemption could be longer if the scheme has worked well. Companies which

failed to comply with the *stipulated* conditions may have their exemptions revoked.

7 Application Procedure

- 7.1 Annex A lists the details that a company needs to furnish to the Commissioner in its application for the exemption under Section 41(A).

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Annex A**Application for Exemption to Implement Flexible Work Schedule**

A company which intends to implement a flexible work scheme must obtain the approval of the Commissioner for Labour for exemption from the relevant provisions of the Employment Act: Sections 37(2) or (3), 38(4), 40(4) and 42(4).

The application, to be made in writing to the Commissioner, must be submitted at least 2 months before the date of implementation and include the following information:

i) Particulars of Company

Submission should include name of the company, registration number of company with Accounting and Corporate Regulatory Authority (ACRA), registered and operating address, contact number, person in charge of the application/scheme

ii) Nature of company's business

Application should also include information pertaining to the business activities of the company

iii) The reason(s) for application

Company should explain the need for exemption and be able to support its proposal by providing information relating to its operations, products and services that are seasonal or fluctuating in nature and thus requires flexible work schedules

iv) The date of implementation

The commencement date of the scheme should be indicated in the application

v) Name of union (if unionized)

vi) Number and name list of employees affected by the scheme

vii) Nature of work of affected employees

Company should in its application provide the job designation, department and job description of the employees who would be affected by the scheme

viii) Written agreement/consent

The application should include written agreement/consent from the union(s) or affected employees (in the case of non-unionised companies) to support the flexible work scheme. The agreement/consent should indicate that the scheme has been clearly explained and communicated to the affected employees. It should be signed by both parties and should comprise the following: -

1. Monthly salary, average overtime earnings over a period of time (e.g. 6 months or 1 year), payment date and payment details (salary period)
2. Contractual working hours and days per week, specifying any rest period or any period which the worker is not required to work under certain circumstances
3. Monthly/2-monthly/Quarterly Roster
4. Annual Leave Entitlement
5. The required working hours, both maximum and minimum
6. Procedures for notifying the employees and supervisors in urgent situations
7. The required notice period for termination of employment and formula in calculating the salary in lieu of notice
8. Incentive Package
9. Opt out procedures/form

ix) Detailed proposal of scheme

Company, in its application, should include information such as the percentage of overtime cost over its total manpower cost, the date where payment for overtime work would be made to the employees (i.e. payment for overtime work could be computed beyond 3 weeks but not more than 13 weeks), etc.