

**For meeting on
15 August 2013**

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Family Council

Policy Study on Standard Working Hours

PURPOSE

This paper briefs Members on the findings of the policy study on standard working hours (SWH) and the major work areas of the Standard Working Hours Committee (SWHC).

BACKGROUND

2. Acknowledging the different concerns in the community over the working hours situation in Hong Kong, the former Chief Executive announced in his 2010-11 and 2011-12 Policy Addresses that the Government would embark on a policy study on SWH so as to lay a solid and objective foundation for public discussion on the issue. The Labour Department (LD) completed the study and released the “Report of the Policy Study on Standard Working Hours” (the Report) in November 2012.

STUDY FINDINGS

3. The policy study encompasses three main areas, including: the systems and experience of other places in regulating working hours; the latest working hours situation of employees in various sectors of Hong Kong; and a static economic assessment of the possible impact of introducing SWH in Hong Kong. The Report discusses the subject comprehensively and objectively and identifies the key issues that need to be further examined in depth by employees, employers, the Government and the community at large before deciding on the way forward.

Experience in Other Places

4. Working hours regulation has a long history which could be traced back to the industrial revolution in the 18th to 19th century. While many countries have introduced some forms of statutory working hours limits, their working hours regimes vary greatly in the essential components, such as working hours limit, overtime limit, overtime pay, exemptions, flexibility arrangements and rest period.

5. In conducting the study, LD examined the working hours regimes of 12 selected places in view of their relative similarities to Hong Kong in the level of economic development, or social and cultural background¹. In the process, some issues crucial to the design and implementation of a working hours regime have been identified, namely –

- (a) **Definition of “working hours”:** Among the 12 economies studied, six have defined “working hours”, which generally comprises the element of “the time during which the employee is at the disposal of the employer”. Eight legislate for daily rest breaks to be taken during the working day, but most do not stipulate rest breaks or meal breaks as working hours. In the EU, “on-call” time amounts to working time when an employee is required to stay in his place of work during that “on-call” time.
- (b) **Objectives of working hours policy:** Working hours policy may serve different policy objectives, including: (i) occupational safety and health; (ii) job creation and sharing; (iii) better work-life balance; and (iv) fair compensation for overtime. The adoption of different objectives will eventually lead to very different regime designs.
- (c) **“Standard working hours” vs “maximum working hours”:** For those regimes which adopt standard daily limits, the 8-hour day is most common (e.g. Singapore, Korea, Japan, the

¹ These places include Singapore, the Republic of Korea (Korea), Japan, the Mainland, Macao, Taiwan, Australia, the European Union (EU) as a whole, with particular reference to the United Kingdom (UK) and Belgium, the United States (US) and Canada.

Mainland, Macao, Taiwan and Canada). In terms of weekly limits, while a 40-hour week is prevalent (e.g. Korea, Japan, the Mainland, Canada and the US), the number of such weekly limits could also vary significantly from 38 hours (e.g. Australia), 44 hours (e.g. Singapore) to 48 hours (e.g. Macao). To prevent long working hours, the EU adopts a maximum weekly limit of 48 hours. Many other regimes introduce a cap on weekly overtime hours (e.g. 12 hours in Korea) and/or monthly overtime hours (e.g. 36 hours in the Mainland, 45 hours in Japan, 46 hours in Taiwan and 72 hours in Singapore). The standard hours limits together with overtime limits constitute the absolute maximum working hours limits of these economies.

- (d) **Exemptions:** Exemptions from working hours limits are found in all the 12 economies under study, and are vital for the effective provision of essential public or emergency service, certain occupations or industries, etc. Certain jobs or occupations such as “managerial, supervisory or professional work”, government employees, domestic workers, surveillance or intermittent work are commonly exempted from the working hours regimes of the economies covered by the study. In fact, the most common form of exemption is by occupation or job responsibility.

- (e) **Flexibility arrangements:** Flexibility arrangements are devised to allow for variations in daily and weekly hours of work. Some regimes adopt a simple reference period across the board to allow working hours to be averaged over a certain period of time (e.g. Singapore). Some regimes have designed various working hours systems to cater for the specific needs of certain industries or occupations (e.g. Korea). In some regimes, employees are allowed to opt-out generally from the working hours limit so that they can work longer hours if they so wish (e.g. the UK).

The experience in other places covered by the study shows that the implementation of SWH carries significant implications for the labour market and economy, in particular on small and medium enterprises (SMEs).

The wide variations among different regimes underline the fact that while their experience provides a useful reference in the discussion of Hong Kong's working hours policy, the best way forward for Hong Kong must be decided with full regard to our unique social and economic circumstances.

Working Hours Situation and Impact Assessments on Labour Cost and Employee's Income

6. Based on a technical combination of the datasets of the General Household Survey and the Annual Earnings and Hours Survey conducted by the Census and Statistics Department (C&SD), the average and median weekly total working hours for all employees in Hong Kong in 2011² were estimated at 47.0 and 46.6 hours respectively whilst those for full-time employees were slightly longer, at 49.0 and 48.0 respectively. Most employees worked more than 40 hours a week, and nearly a quarter had to perform overtime work. Among them, about half had their overtime work compensated.

7. The study finds that lower-skilled, less-educated workers in higher age groups in the labour-intensive service sectors tend to have longer contractual hours, but their overtime work is often paid. On the other hand, higher-skilled workers in general have shorter contractual hours, but many work uncompensated overtime and thus their total working hours are considerably prolonged. The study identifies six long-working-hours sectors with a much higher proportion of employees having long working hours, i.e. average estimated weekly working hours at 54.6 hours for full-time employees of the six long-working-hours sectors, which is longer than the median weekly total working hours for all employees in Hong Kong (i.e. 46.6 hours as mentioned in paragraph 6 above). These six long-working-hours sectors are: retail; estate management and security; restaurants; land transport; elderly homes; as well as laundry and dry cleaning services.

8. The possible reasons behind the phenomenon of relatively long working hours in Hong Kong have been explored from a macroeconomic perspective. It is suggested that long working hours of employees in Hong

² The statistics were collected from the Annual Earnings and Hours Survey and General Household Survey in May – June 2011 and August – October 2011 respectively.

Kong are not only related to the economy's structural transformation, but also its open and flexible labour market structure. While working long hours may affect employees' health in general and constrain the time that they can spend with their families, such flexibility has the effect of facilitating flexible cyclical adjustments of the labour market in effectively absorbing economic shocks.

9. Since many employees in Hong Kong are already working relatively long hours, a large number of employers can potentially be affected by the imposition of SWH. Employers might adopt different strategies to offset higher labour costs, such as restructuring employment (e.g. through reduced working hours, splitting full-time posts, cutting fringe benefits); shifting the increased costs to consumers by raising product/service prices; and/or reducing profit. The actual responses would depend on the design and parameters of the policy, as well as the prevailing economic and labour market conditions, which are currently unknown.

10. The Economic Analysis and Business Facilitation Unit (EABFU), in collaboration with LD and C&SD, has conducted a static cost impact assessment based on three policy parameters using a broad-brush approach³, including weekly SWH threshold; statutory minimum overtime pay rate and criteria for exempting employees from the SWH regime. With an SWH threshold of 40 hours per week and without any exemption, the number of affected employees is estimated to be 2 378 900 (excluding government employees and live-in domestic helpers), representing a hefty 91.1% of full-time employees. If the weekly threshold is increased to 44 or 48 hours, 1 858 500 (71.2%) or 1 320 200 (50.6%) employees would be affected respectively. However, if higher-skilled employees⁴ are exempted, the

³ Given factors such as data limitations and uncertainties of the eventual policy design and parameters of SWH, a relatively simple, "broad-brush" approach has been adopted for the purpose of this study. The assessment is purely static, without taking into account the dynamic responses of different variables. The assumptions adopted, e.g. the cost impact is fully borne by employers without adjustment to the production processes and/or output prices, have limitations as the cost effect would be shifted through adjustment in reality, but under the current dataset in hand and the approach adopted such effect cannot be readily assessed. Similarly, assessments for irregular working hours and employment benefits which could affect working hours patterns are also not available. All these will affect the cost impact estimates, and larger errors of estimation are hence expected.

⁴ Higher-skilled employees include managers and administrators; professionals; and associate professionals.

numbers in question would be reduced substantially to 957 100 for the threshold of 48 hours, and 1 430 800 for 40 hours, representing 36.7% and 54.8% of full-time employees respectively. Even so, the number of employees involved would still be significant.

11. It is estimated that the additional wage bill to employers, without any exemption, could range from \$8.0 billion per annum (1.7% of total wage bill in 2011) if the weekly threshold is 48 hours and overtime rate is 1.0, to \$55.2 billion (11.4%) if the weekly threshold is 40 hours and overtime rate is 1.5, depending on the policy parameters adopted⁵. If the weekly threshold is set at 54 hours without any exemption, the estimated cost impact will range from \$3.1 billion (for overtime pay rate at 1.0), \$5.8 billion (at 1.25) to \$8.6 billion (at 1.5). If higher-skilled employees are exempted from the SWH regime, the estimated cost impact would be significantly reduced⁶.

12. The above assessment suggests that the cost impact of SWH implementation can vary significantly even under combinations of only three policy parameters, which to some extent illustrates the complexity of the issue. There will be greater uncertainties when other factors are brought into play. For instance, if employers are allowed to compensate part or all of the overtime hours by time-off or holidays, or allowed to average out working hours over a longer period (say 6 months) in the calculation of weekly working hours, the estimated cost impact would be lower, in particular for sectors with distinct seasonal patterns, such as retail and catering. In gist, the number of affected employees and the increase in the total wage bill could vary significantly, depending on the policy design and

⁵ Estimated cost impact on SMEs specifically would range from \$2.8 billion (1.4%) to \$21.4 billion (10.8%).

⁶ If the weekly threshold is set at 40 hours, without any exemptions, the additional wage bill to employers could range from \$17.3 billion (for overtime pay rate at 1.0), \$36.1 billion (at 1.25) to \$55.2 billion (at 1.5). The corresponding figures when higher-skilled employees are exempted are \$1.9 billion (for overtime pay rate at 1.0), \$11.1 billion (at 1.25) and \$20.5 billion (at 1.5). If the weekly threshold is set at 44 hours, without any exemptions, the additional wage bill to employers could range from \$13.0 billion (for overtime pay rate at 1.0), \$24.4 billion (at 1.25) to \$36.0 billion (at 1.5). The corresponding figures when higher-skilled employees are exempted are \$1.6 billion (for overtime pay rate at 1.0), \$7.8 billion (at 1.25) and \$14.1 billion (at 1.5). If the weekly threshold is set at 48 hours, without any exemptions, the additional wage bill to employers could range from \$8.0 billion (for overtime pay rate at 1.0), \$14.5 billion (at 1.25) to \$21.2 billion (at 1.5). The corresponding figures when higher-skilled employees are exempted are \$1.1 billion (for overtime pay rate at 1.0), \$5.0 billion (at 1.25) and \$9.0 billion (at 1.5).

employers' reaction under the prevailing economic and labour market situations⁷.

13. An assessment of increase in the employment earnings of affected employees under various scenarios shows that the average increase would range from 3.7% to 13.0% depending on the SWH threshold and statutory minimum overtime pay rate. It must be emphasised that such static assessment assumes no change in overall employment, hourly wage, and working time, which would rarely be the case in reality. As already noted in paragraph 9 above, employers may adopt various strategies to alleviate the higher wage pressure induced by the SWH policy. The actual impact of SWH implementation on their income is still far from being certain. Given the nuances of policy design, dynamic interaction between employers and employees, and inconclusive effect on business costs and labour incomes, SWH policy warrants serious public deliberation and thorough consideration of its possible social and economic implications in the short and long term.

Issues to be Considered

14. The subject of SWH is highly complex and controversial. It involves a myriad of interrelated social and economic issues which are far more complicated than those in deliberating the introduction of statutory minimum wage (SMW). It also impacts on a much wider spectrum of employees. Legislating for SWH would have far-reaching consequences on society, the economy, competitiveness and employment. It will bring substantial changes to the existing labour relations, labour market, work culture and business environment. It is therefore imperative that the community should deliberate these issues thoroughly before coming to a view on this important subject.

15. Before the introduction of SWH in Hong Kong is seriously contemplated, the following important subjects and relevant issues must be discussed thoroughly and objectively, not only among employee and employer groups, but also by the community at large –

⁷ On the assumption that the weekly threshold be increased to 54 hours, without any exemption, the number of employees to be affected will be about 721 200 and the estimated cost impact will range from \$3.1 billion (for overtime pay rate at 1.0), \$5.8 billion (at 1.25) to \$8.6 billion (at 1.5).

- (a) **Objectives of working hours policy:** Working hours policy may achieve a number of policy objectives including: (i) occupational safety and health; (ii) job creation and sharing; (iii) work-life balance; and (iv) fair compensation for overtime, etc. The adoption of different objectives will involve different policy considerations and result in different regime designs. Since no single regime will fully meet all the objectives, it is important for the community to reach a consensus on the ultimate objective of SWH should it be mandated in Hong Kong.
- (b) **Labour flexibility and Hong Kong's competitiveness:** Should SWH be contemplated, we need to recognise the essential mitigating role played by the exemptions and flexibility arrangements in other SWH regimes, and consider in a pragmatic manner how they should function in Hong Kong's context. The community needs to give serious thoughts to whether and how the implementation of SWH could impact on Hong Kong's labour flexibility and business environment, and whether this may stifle business development and weaken Hong Kong's competitiveness as a global business centre, and impede the economic adjustment process particularly given the current linked exchange rate regime.
- (c) **Possible proliferation of part-time and casual workers:** As a liberal labour market, Hong Kong has a relatively low proportion of part-time and casual workers. Experience in other places shows that SWH may eventually bring about fragmentation of work and underemployment, if employees have to involuntarily work fewer hours owing to ensuing adjustments in the labour market structure with an increase in part-time or casual jobs. The community has to assess whether such a development is desirable, and consider how the possible increase of part-time and casual workers would further affect working hours, employment and business operations.

- (d) **Impact on businesses in general and SMEs in particular:** The total compliance cost incurred by compliance with various labour-related legislation on businesses should be considered at the same time when evaluating the overall affordability of employers should an SWH policy be adopted. Since a majority of our enterprises are SMEs which are crucial to our economy, full discussion and consultation is required to ascertain how far SMEs in different trades and with different operational needs can cope with statutory working hours requirements, on top of SMW and other statutory labour benefit obligations.
- (e) **Modus operandi of different industries:** It is challenging to devise simple SWH measures to adequately cater for the multifarious needs of different industries and sectors as well as jobs and occupations. Should SWH be introduced, the community would need to consider whether the regime should have universal application, or apply only to certain industries and/or occupations with particularly long working hours, etc. Also, we should consider the need for other general flexibility arrangements to be incorporated into the regime and the level of flexibility that is considered appropriate.
- (f) **Is legislation the best way forward?:** Long working hours is an issue to be addressed. However, a statutory SWH regime should not be regarded as a panacea for solving all long working hours related problems. We need to consider the most appropriate and effective form of working hours policy that fits Hong Kong's unique socio-economic circumstances on the one hand, and balances the interests of employers and employees as well as broader social concerns (e.g. work-life balance) on the other. The community needs to reach a consensus as to whether establishing a comprehensive SWH regime by legislative means is in the overall interest of Hong Kong.

SETTING UP OF SWHC

16. To follow up on the Report, the Chief Executive in April 2013 established SWHC and appointed Dr Leong Che-hung as the Chairperson of the Committee. There are 23 other members drawn from the labour and business sectors, academia, the community and the Government. Among the members, 12 are serving members of the Labour Advisory Board (LAB) who sit on the Committee in an ex-officio capacity by virtue of their position on LAB. Of the remaining 11 members, one each comes from the labour sector and the business field, and three each come from academia, the community and the Government.

17. Taking into consideration its terms of reference⁸, SWHC at its meeting on 24 July 2013 discussed and endorsed its workplan which focuses on four major areas, namely: (i) enhancing public understanding on working hours issues; (ii) collection of relevant information, including more comprehensive working hours statistics and further research into the working hours regimes of other places; (iii) adoption of an evidence-based approach for discussion on the basis of “a basket of factors” for a working hours regime; and (iv) launching public engagement and building consensus.

18. SWHC has also agreed to form two working groups on “Working Hours Consultation” and “Working Hours Study”. The “Working Hours Consultation Group” will explore and formulate the arrangements and modes of public consultation, while the “Working Hours Study Group” will work on working hours surveys and identification of “a basket of factors”. Apart from the enterprise and macroeconomic levels, we will also look into community level factors such as social harmony, labour relations, as well as family life and quality of life, occupational safety and health, with a view to giving a more comprehensive and systematic analysis of the pros and cons of different working hours policies. Recommendations of the working

⁸ The SWHC has a term of three years. Its terms of reference include: (i) to follow up on the Government’s policy study on SWH and conduct further in-depth studies, as necessary, on the key issues identified therein; (ii) to promote understanding of SWH and related issues including, among others, the employees’ overtime work conditions and arrangements; to engage the public in informed discussion on the relevant issues; and to gauge the views of stakeholding groups; and (iii) to report to the Chief Executive and advise on the working hours situation in Hong Kong, including whether a statutory SWH regime or any other alternatives should be considered.

groups are expected to be reported to the Committee by the end of 2014 for further consideration and discussion.

THE WAY FORWARD

19. SWHC is taking forward its work in accordance with its terms of reference and workplan, with a view to promoting an informed and in-depth discussion of the community on working hours issues, building public consensus on this complex and sensitive issue, and identifying policy options that suit the circumstances and future development of Hong Kong.

Labour Department
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