

Overtime ¹

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“Overtime” means time in excess of the number of hours constituting a normal working day or a normal working week. Generally, eight hours is considered a normal working day. It is interesting to investigate in to the history of the working day. Many of you may not know that the normal working day for many workers a one point of time was sixteen hours. There was no distinction made for women or children. There was a long and bloody struggle for many years before the eight hour day was declared. It is also pertinent to bear in mind that, although the eight hour day is universally applied today, this right was not won by the workers of all the countries on the same day or same time.

In **Britain**, the **eight-hour day movement** also known as the **short-time movement**, had its origins in the Industrial Revolution, where industrial production in large factories transformed working life. The use of child labour was common in factories and especially in the mining industry. The working day could range from 10 to 16 hours for six days a week irrespective of male or female workers.

Robert Owen² had raised the demand for a ten-hour day in 1810, and instituted it in his socialist enterprise at New Lanark. By 1817 he had formulated the goal of the *eight-hour day* and coined the slogan **Eight hours labour, Eight hours recreation, Eight hours rest**. Women and children in England were granted the ten-hour day in 1847.

French workers won the 12-hour day after the February revolution of 1848. A shorter working day and improved working conditions were part of the

¹ This paper was submitted at the “THE 2014 NATIONAL LABOUR LAW SYMPOSIUM – THAKING LABOUR LAWS TO A NEW REALM: ACHIEVING FLEXIBILITY WITH EQUITY.”

² http://en.wikipedia.org/wiki/Robert_Owen

general protests and agitation for Chartist reforms and the early organization of trade unions.

Karl Marx considered working hours to be of vital importance to the workers health, saying in *Das Kapital*³ "By extending the working day, therefore, capitalist production not only produces a deterioration of human labour power by robbing it of its normal moral and physical conditions of development and activity, but also produces the premature exhaustion and death of this labour power itself.

The International Workingmen's Association⁴ took up the demand for an eight-hour day at its convention in **Geneva** in August 1866, declaring *The legal limitation of the working day is a preliminary condition without which all further attempts at improvements and emancipation of the working class must prove abortive, and The Congress proposes eight hours as the legal limit of the working day.*

In **New Zealand and Australia**, although there were initial successes in achieving an eight-hour day for skilled workers in the 1840s and 1850s, most employed people had to wait to the early and mid twentieth century for the condition to be widely achieved through the industrialized world through legislative action.

International Workers' Day is the commemoration of the May 1, 1886 Haymarket affair in Chicago. On May 1, 1886, Albert Parsons, head of the Chicago Knights of Labour, with his wife Lucy Parsons and two children, led 80,000 people down Michigan Avenue, Chicago, in what is regarded as the first modern May Day Parade, in support of the eight-hour day. In the next few days they were joined nationwide by 350,000 workers who went on strike at 1,200 factories, including 70,000 in Chicago, 45,000 in New York, 32,000 in

³ critical analysis of political economy, meant to reveal the contradictions of the [capitalist mode of production](#), how it was the precursor of the socialist mode of production, and of the [class struggle](#) rooted in the capitalist social relations of production. The first of three volumes of *Das Kapital*, *Kritik der politischen Ökonomie* (Capital: Critique of Political Economy) was published on 14 September 1867, dedicated to [Wilhelm Wolff](#), and was the sole volume published in Marx's lifetime.

⁴ (IWA, 1864–1876), often called the **First International**, was an international organization which aimed at uniting a variety of different [left-wing socialist](#), [communist](#) and [anarchist](#) political groups and [trade union](#) organizations that were based on the [working class](#) and [class struggle](#). It was founded in 1864 in a workmen's meeting held in Saint Martin's Hall, London. Its first congress was held in [Geneva](#).

Cincinnati, and additional thousands in other cities. Some workers gained shorter hours (eight or nine) with no reduction in pay; others accepted pay cuts with the reduction in hours.⁵The police were trying to disperse a public assembly during a general strike for the eight-hour workday, when an unidentified person threw a bomb at the police. The police responded by firing on the workers, killing four demonstrators. "Reliable witnesses testified that all the pistol flashes came from the center of the street, where the police were standing, and none from the crowd. Moreover, initial newspaper reports made no mention of firing by civilians. A telegraph pole at the scene was filled with bullet holes, all coming from the direction of the police. In 1889, the first congress of the Second International, meeting in Paris for the centennial of the French Revolution and the Exposition Universelle, following a proposal by Raymond Lavigne, called for international demonstrations on the 1890 anniversary of the Chicago protests. May Day was formally recognized as an annual event at the International's second congress in 1891⁶.

Contract of Employment

The working of reasonable overtime is an implied term of contract of employment.⁷ In *Delmage Forsyth and Company (Shipping) Ltd v Pinnawala*⁸ the services of the Respondent (typist employed by the appellant) were terminated for refusal to perform reasonable overtime. The Respondent, a female employee of the appellant from 05. 07. 85 to June 1990, was never required to do overtime. All the other employees did overtime, on week days and weekends. One of the female employees who used to do overtime was on maternity leave and the management requested the respondent to do reasonable overtime. The respondent sought exemption which was refused. The management issued a letter of warning informing that a further refusal to do reasonable overtime may amount to misconduct of which the management will be compelled to take disciplinary action. Notwithstanding the warning, she refused to do overtime stating the personal problems faced by her. In the letter of termination, the management informed her that while they appreciated her personal problems, the refusal to

⁵ http://en.wikipedia.org/wiki/Eight-hour_day

⁶ http://en.wikipedia.org/wiki/International_Workers%27_Day

⁷ Abesekera, W. E. M. ; *Industrial Law and Adjudication* , Vol. III & IV , p 1631, Colombo 1970.

⁸ SC Appeal 13/95, SCM 08-05-95

work reasonable overtime, which was essential to the efficient functioning of the company, could not be condoned; nor were they able to make an exception in her case to permit her to work on terms which were favourable to her.

The Supreme Court upheld the contention of the appellant that the employer has a right to demand an employee to do reasonable overtime.

STATUTORY PROVISIONS RELATING TO OVERTIME IN SRI LANKA

Wages Board Ordinance

The Wages Board Ordinance Number 27 of 1941 has defined over time in Section 64 (the interpretations section) as follows:

“overtime” means time in excess of the number of hours constituting a normal working day or a normal working week.

“Trade” has been defined by Section 64 as:

“trade” includes any industry, business, undertaking, occupation, profession or calling carried out, performed or exercised by an employer or worker and any branch of or any function or process in, any trade, but does not include any industry, business or undertaking which is carried out mainly for the purpose of giving industrial training to juvenile offenders, orphans or to persons who are destitute, dumb deaf or blind.

The above definitions are found in Part III of the Wages Board Ordinance. The definition covers all trades except the establishments covered by the Shop and Office Act No 19 of 1954, which came into force on a later date.

It is interesting to note that Part I of the Wages Boards Ordinance, which applies to all trades only deals with provisions relating to payment of wages, maintaining of wage records, granting of full Moon Poya holidays, recovering of arrears of unpaid wages and penalties. There As there are no provisions on working hours or on the overtime work in Part I, the workers covered by this part are not entitled for overtime under this Ordinance. The Female workers are in any event covered by the provisions of the Factories Ordinance No 45 of 1942. It may be argued that the employees of trades other than particular trades covered by Wages Board Decisions, are governed by the contract of employment or collective agreements.

The Part II of the Wages Boards Ordinance refers to the establishment of Wages Boards to particular trades. In terms of Section 24 of the said ordinance specifies that any wages board may, in respect to the trade for which it is established determine, the normal working day, normal working week, weekly holidays and overtime rate etc.

The Section 41 of the Wages Boards Ordinance requires the employer of a workers in any trade for which a Wages Board is established to maintain a register with the number of hours of overtime performed by each worker separately. Thus, the “wages” includes any remuneration in respect of overtime work. Thus, the payment in respect of overtime also has the same status as the normal remuneration in the face of Law.

It is important to note that up to date 32 Wages Boards have been established and 25 of them have taken decisions on the rate of overtime payable to workers.⁹

Shop and Office Employees (Regulation of Employment and Remuneration) Act No 19 of 1954

The Minister may by Order declare that the provisions of Part I shall apply to shops or to offices in such area or areas as may be prescribed in the Order or to all shops or to all officers in Sri Lanka. The working conditions stipulated by the Act apply to almost all the shops and offices with few exceptions as follows:

Shop has been defined by **Section 68** (interpretations section) as follows:

“shop” means any premises in which any retail or wholesale business is carried on and includes any residential hotel and any place where the business of sale of articles of food or drinks or the business of barber or any other prescribed trade or business is carried on.

Office has been defined by **Section 68** as follows:

⁹ Jagathweera Y; An Analysis of Overtime with Emphasis to the Limitations of its Applicability; Sri Lanka Labour Gazette; Vol 61, , Number 3 , July- September 2010.

“office” means any establishment maintained for the purpose of the transaction of the business of any bank, broker, insurance company, shipping company, joint stock or other company, estate agent, advertising agent, commission agent, or forwarding or indenting agent, or for the practice of profession of any accountant, and includes;

- a. the office or clerical department of any shop, factory, estate, mine, hotel, club or other place of entertainment or of any other industrial, business or of commercial undertaking (including the business of transporting persons or goods for fee or reward and any undertaking for the publication of newspapers, books or other literature) and*
- b. such other institution or establishments as may be declared by regulations to be office for the purpose of this Act, whether or not they are maintained for the purpose of any profession, trade or business or for the purpose of profit.*

From time to time various types of trades and businesses were declared as shops and offices by the regulations.

In terms of **Section 69**, any business carried on by any undertaking in connection with funerals, any bazaar that does not continue more than one month which is conducted for a charitable purpose and every person who is a member of the tutorial staff of any establishment maintained for an educational purpose are exempted from the provisions of this Act.

Overtime has been defined by **Section 03 (1)** of the Act as follows:

...the normal period during which any person may be employed in or about the business of any shop or office-

- a. on any one day shall not exceed eight hours, and;*
- b. in any week shall not exceed forty five hours.*

The period referred to in this section shall not include any interval allowed for rest or for meal under the provisions of the Act or any interruption permitted by any regulation referred to in subsection (3)

The regulation No 07, (by *Gazette Number 10, 899 of 2.3.1956 and Gazette Number 12, 553 of 21.07. 1961*) stipulates that:

6. The period during which a person may be employed overtime in or about a business of any shop or office shall not exceed an aggregate of twelve hours in any one week.

7. No person shall be employed overtime in or about the business of any shop or office unless he is paid separately for such overtime work in respect of each hour at a rate not less than one and one half times the hourly rate of his ordinary remuneration. The remuneration payable for any part of an hour of overtime work done by him shall be determined in the proportion that part bears to the hour.

[Relevant Regulations are attached]

Moreover, every person who is employed in a shop or office as a travelling inspector, travelling agent, travelling salesman, canvasser or any other similar capacity has been exempted from the provisions of the maximum hour of work so the overtime regulations are not applicable to those categories.

The Factories Ordinance No 45 of 1942.

Part IV of the Factories Ordinance deals with the employment of women and young persons in factories, specifically, with regard to working hours and holidays.

Every woman and young person employed in a factory the following conditions have to be fulfilled according to **Section 67 of the Ordinance** states as follows:

- a. the total hours worked, exclusive of intervals allowed for meals and rest, shall neither exceed nine in any day nor exceed forty eight in any week.*
- b. The period of employment in the case of young persons who have not attained the age of sixteen shall not exceed twelve hours in any day and shall neither begin earlier than six o' clock in the morning nor end later than six o' clock in the evening; and in the case of young persons who have not attained the age of*

eighteen the period of employment shall not end- later than eight o' clock in the evening, and on not than one day in the week, one o' clock in the afternoon.

- c. A woman or a young person shall not be employed continuously for a spell of more than four and a half hours without the interval of at least half an hour for a meal or rest. However, in respect of regular day time workers one such interval shall be allowed to commence between the hours of eleven o' clock in the morning and one o'clock in the afternoon, and that an interval of less than ten minutes is allowed in the course of a spell, the spell may be increased to five hours.*

In terms of **Section 68** of the Ordinance, the pressure of work of any industry may be met with by utilizing overtime work of women and young persons who have attained the age of 16 years. The overtime employment of such women shall not exceed in aggregate of sixty hours in any calendar month and of young person shall not exceed an aggregate of forty five hours in any calendar month.

The total hours worked by women and young person exclusive of intervals allowed for meals and rest shall not exceed sixty hours in any week.

There are several safe guards imposed on employment of women and young persons. The period of employment in any day for the women and young persons shall not exceed 12 hours in any day and the working hours of young persons shall not be outside the hours specified in the Ordinance.

Importantly, an employer shall not engage in overtime a pregnant woman, a nursing mother for a period of one year after child birth, a woman who delivered a stillborn child for a period of three months from such stillbirth.

Employment of Women, Young Persons and Children Act No 47 of 1956.

This Act is only applicable to women and male and female workers under the age of 18 and above the age of 14 years.

Part I of the Act refers to night work in industrial undertakings and a number of restrictions have been imposed on night work of women, young persons and children.

Section 2 (1) is as follows:

...No person shall employ at any time during the night, a person under the age of eighteen years in a public or private owned industrial undertaking or in a branch thereof.

But in an emergency situation persons who has reached 16 years but under 18 years may be employed. However, such an occurrence must be reported to the Commissioner within seven days of its occurrence.

Section 34 (interpretations section) of the act defines “Industrial undertakings” with respect of women being employed at night as follows:

- i. *undertakings engaged in working mines or quarries or in other works for the extraction of minerals from the earth.*
- ii. *Undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted, for sale, broken up, demolished or in which materials are transported.*
- iii. *Undertakings engaged in ship building or in the generation, transformation or transmission of electricity or motive power of any kind.*
- iv. *Undertakings engaged in building and civil engineering work or in constructional repair, maintenance, alteration or demolition work.*

By the regulations, the provisions of **Part I** have been declared not applicable to several categories of undertakings, which are family undertakings (wherein only parents and their children or wards are employed).

The word “Night” has been defined by **Section 34** as follows:

with reference to the employment of women, as at least eleven consecutive hours including the period between 10 pm and 5 am.

Section 2 A of the Act is as follows:

1. *Every woman employed in an industrial undertaking shall be permitted to work throughout the night.*
2. *Employment of a woman at night shall be subject to the following conditions:*
 - a. *no women shall compelled to work at night against her will.*
 - b. *written sanction of the Commissioner of Labour should be obtained by every occupier of a factory prior to the employment by him, of to work after 10 pm. on any day.*
 - c. *no woman who has been employed during the hours of 6 am and 6pm shall be employed after 10pm on any day.*
 - d. *every woman who works at night shall be in receipt of a payment of not less than one and half times the normal payment received by her.*
 - e. *there shall be appointed female wardens to see the welfare of women workers, who work at night;*
 - f. *Every women worker working at night shall be provided with rest rooms and refreshments by the employer;*
 - g. *no women shall be employed more than ten days on night work during any one month.*

As stipulated by **Section 2B** these provisions shall not apply to the following categories of employees :

- a. *to women holding responsible position of a managerial or technical character.*
- b. *to women employed in health and welfare services who are not ordinarily engaged in manual work.*
- c. *to an industrial undertaking in which only members of the same family are employed.*

In addition to the above restrictions on nights work mentioned above several other restrictions have also been imposed by this Act on employment of young persons and children in various trades.

Excessive Overtime and Its Implications on Some

Industries and Professions

The Aviation Industry

The Effects of Fatigue on Performance and Safety

“Aviation accidents are still extremely rare, but when they have occurred, figures show that 80% are a result of human error, with pilot fatigue accounting for 15-20% of human error in fatal accidents.

Fatigue leads to slower reaction times and impaired concentration and decision making. There's also the danger of falling asleep. A survey by the British Airline Pilots' Association (BALPA) of 500 of its members showed 43% had involuntarily fallen asleep in the cockpit, and of those, 31% said that when they woke up the other pilot was also asleep.

'Like being drunk'

Prof Torbjorn Akerstedt, a sleep expert based at Karolinska University in Sweden, said that most people are able to stay alert for 16 hours during the daytime, but that reduces at night.

It has been established scientifically that the impairments a pilot experiences landing a plane at 05:00 in the morning are the equivalent of having a blood alcohol level of 0.08%, which is the same as the UK's drink-driving limit and over the legal limit in many other countries.

David Learmount of Flight Global believes that "allowing pilots to get dangerously fatigued is like legalising pilots flying when they are drunk".

How lack of sleep affects health

Just last year, 16 passengers on an Air Canada flight were injured as a result of pilot fatigue. The co-pilot woke disorientated from a nap and, believing that the plane was going to collide with another aircraft, put the jet into a dive, sending passengers sprawling in the cabin. What the pilot thought was another plane was actually the planet Venus.”¹⁰

¹⁰ Pilot fatigue 'one of the biggest threats to air safety', By Keith Moore, BBC News

EU vote on flight time rules leaves pilots in dismay

The proposal on flight time limitations harmonises flight and rest rules at EU level, reducing the maximum flight duty time at night from 11.45 hours to 11, the maximum number of flying hours per year from 1,300 to 1,000 and the maximum duty time (airport standby + flight) to 16 hours, instead of the 26 or even 28 currently applying in certain member states.

But critics say these measures are insufficient and disregard scientific recommendations to limit flight duty to 10 hours maximum. The 16 hours duty time has been deemed excessive by doctors and sleep experts. Beyond this limit, they argue that a third pilot should be present, as is the case in the United States.¹¹

Locomotive Drivers

“Indian Railways has finally woken up to the miseries of locomotive pilots, who are being subjected to long night shifts and inhuman duty hours, but stopped short of taking concrete steps in making amendment in rulebook.

Though the Railway Board agreed to adopt a slew of measures to give relief to the drivers at a meeting after TOI highlighted the issue, its letter to zonal managers termed the pilots' demands for better working conditions as "good suggestions".

In the meeting, senior rail officials suggested that crew roster must not factor more than two-three continuous night duties. Also, efforts should be made to ensure that the driver is not made to work for more than six hours between 10pm and 6am.

Besides, loco pilots will get a calendar day rest instead of existing 22/30 hours of breather, which will help them to fulfill family and social obligations.

<http://www.bbc.com/news/health-19837178>

¹¹ Aviation Safety Network, Europe adopts new Flight Time Limitations (FTL) regulations
<http://news.aviation-safety.net/2013/10/09/europe-adopts-new-flight-time-limitations-ftl-regulations/>

Now, there is no upper limit in the rulebook on the number of night duties to be done by the engine crew. And, there are several drivers, who are doing 15 consecutive night shifts. The weekly rest provisions are vague since it stipulates giving drivers a 30-hour rest four times or 22-hour rest five times in a calendar month. Intriguingly, the provisions are silent on the gap between the two rests.

The minutes of the meeting says, "Long hours of crew should be minimized by providing relief. Railway should make arrangements for hiring road vehicles to ensure the above."

It suggested that the state of mind of a driver needs to be checked if there has been an accident or the person is joining work after a long period of absence. If any doubt arises, the driver's name should not figure in the duty roster for superfast trains.

It was also suggested to make the drivers' cabin in the engine air conditioned and soundproof and their seats in the engine be made more comfortable along with back rest and subsidized meal be provided.

Faced with a severe staff shortage, coupled with the fact that most trains run during night, railways is being forced to put most of its drivers on night duty for long periods. "This is the reason why railways don't want to amend rulebook," aid union leader, adding that there is 20% vacancy of the 82,000 sanctioned posts for loco drivers."¹²

Investigation committee had recorded statements on Thursday (17) from the Kosgama station master and another employee while statements were also due to be recorded from the express train chief guard and the assistant driver

The engine driver, who declined to report for duty to operate an express train, after complaining about a sleepless night he had to spend in the driver's rest room

¹² The Times of India, Rail board empathizes with overworked locomotive drivers, <http://timesofindia.indiatimes.com/india/Rail-board-empathizes-with-overworked-locomotive-drivers/articleshow/14348507.cms>

due to being allegedly bitten by bugs in the mattress, was interdicted with immediate effect, a senior railway department official said yesterday (18).

Health Sector

Compassion Fatigue in Health Professionals

Compassion Fatigue has been described as the “cost of caring” for others in emotional and physical pain. One of the major contributors to compassion fatigue is overwork. It is characterized by deep physical and emotional exhaustion and a pronounced change in the helper’s ability to feel empathy for their patients, their loved ones and their co-workers. It is marked by increased cynicism at work, a loss of enjoyment or career, and eventually can transform into depression, secondary traumatic stress and stress-related illnesses. The most insidious aspect of compassion fatigue is that it attacks the very core of what brought these employees into this work: empathy and compassion for others.¹³

Reducing Compassion Fatigue

There are many simple and effective strategies that helpers can implement to protect themselves from compassion fatigue. First, by openly discussing and recognizing compassion fatigue in the workplace, helpers can normalise this problem for one another. They can also work towards developing a supportive work environment that will encourage proper debriefing, regular breaks, mental health days, peer support, assessing and changing workloads, improved access to further professional development and regular check-in times where staff can safely discuss the impact of the work on their personal and professional lives. Research has shown that working part time, or only seeing clients or patients part time and doing other activities the rest of the workday can be a very effective method to prevent compassion fatigue.¹⁴

¹³ Compassion fatigue solutions and professional help, http://home.cogeco.ca/~cmc/q_and_a.pdf

¹⁴ Running on Empty: Compassion Fatigue in Health Professionals, www.compassionfatigue.org/pages/RunningOnEmpty.pdf

Karōshi - which can be translated literally from Japanese as "death from overwork"

“Karōshi” is occupational sudden death. Although this category has a significant count, Japan is one of the few countries that reports it in the statistics as a separate category.[citation needed] The major medical causes of karōshi deaths are heart attack and stroke due to stress.

The first case of karōshi was reported in 1969 with the death from a stroke of a 29-year-old male worker in the shipping department of Japan's largest newspaper company.

“A recent measurement found that a Japanese worker has approximately two hours overtime a day on average. It is common for the overtime to go unpaid.

Many will be prepared to work unpaid overtime to an extreme extent particularly as their young co-workers will often quit when a job is too strenuous. In some cases it has been proven that firms were aware of the poor health of an employee.

Since this was legally recognised as a cause of death in the 1980s, the number of cases submitted to the government for the designation has soared; so has the number of court cases that result when the government refuses an application. In 1988 only about 4% of applications were successful. By 2005 that share had risen to 40%. If a death is judged karoshi, surviving family members may receive compensation of around \$20,000 a year from the government and sometimes up to \$1m from the company in damages. For deaths not designated karoshi the family gets next to nothing.¹⁵

Now a recent court ruling has put companies under pressure to change their ways. On November 30th the Nagoya District Court accepted Hiroko Uchino's claim that her husband, Kenichi, a third-generation Toyota employee, was a victim of karoshi when he died in 2002 at the age of 30. He collapsed at 4am at work, having put in more than 80 hours of overtime each month for six months before

¹⁵ Economist, Jobs for life, Japanese employees are working themselves to death, Dec 19th 2007 <http://www.economist.com/node/10329261>

his death. “The moment when I am happiest is when I can sleep,” Mr Uchino told his wife the week of his death. He left two children, aged one and three.

Karōshi- in China

“Despite having the some of the world’s best-kept records on the subject, however, death from overwork is far from unique to Japan. Instances of it have been known to occur the world over, not least in China, which now reportedly leads the world in work exhaustion-related deaths.

It is estimated that some 600,000 people die from work-related stress and its effects every year in China.

This number comes as no surprise to those familiar with the anti-suicide nets in infamous Chinese labour mills such as Foxconn. Long hours, rough conditions, low pay and poor future prospects have been a recipe for work stress-induced suicide at facilities across the country.

While such figures remain alarmingly high, they account for a relatively small percentage of the total number of karōshi victims in China. Perhaps surprisingly, manual laborers have largely proved resilient to poor work conditions and strenuous physical demands. It’s the so-called “mental labor” jobs, such as those in the advertising field, that have been the primary contributor to dangerously high levels of work-related stress.

These kinds of jobs can be found at all socioeconomic levels, with a slightly disproportionate representation by the middle class. IT employees have shown some of the highest levels of work-related stress with 98.8 percent reporting the negative influence of their job on personal health.

Such health risks include insomnia, listlessness, weight gain and long recovery times for small illnesses such as the common cold. Long-term exposure to these conditions can lead to obesity, diabetes and high blood pressure, which in turn can cause heart disease and stroke – the primary killer of karōshi victims in China.

As China marches its way toward unparalleled economic prominence on the world stage, many issues will stand in its way, including environmental concerns,

political corruption and domestic insurgency. Now add an increasingly beleaguered workforce. As in Japan, it is an issue the government cannot afford to ignore.”¹⁶

The Executives and Staff officers

It is important to note that, in terms of Shop and Office Employees (Regulation of Employment and Remuneration) Act No 19 of 1954¹⁷, the provisions relating to maximum hours of work are not applicable to any persons holding an executive or a managerial position in a public institution who are in receipt of a consolidated salary not less than Rs. 6720.00 per annum. Where any question as to whether any person holds an executive or managerial position, such question shall be decided by the Commissioner and his decision shall be final and conclusive.

In this subsection, Public Institution shall have the same meaning as in Sec 24 of the Finance Act No. 38 of 1971. As per the said Finance Act, “public institution” means any Corporation, Board, or other body established by or under written law, other than the Companies Ordinance, with capital wholly or partly provided by the Government by way of a loan, grant or other form.

Therefore the employees who fall into that category are not entitled for overtime. Intention of the parliament is not clear in introducing the said provision in 1975. If this means that an executive, by nature of the duties attached to the said managerial or staff grade require round the clock supervision and therefore would be unreasonable by the employer to require the employer to pay overtime.

¹⁶ The Diplomat, Working to Death in China, A look at the nation with the highest instance of death from overwork in the world. <http://thediplomat.com/2014/03/working-to-death-in-china/>

¹⁷ Section 3(5)

The main question that arises is then as to why such provisions were not extended to private sector.

The question often asked is whether the persons in managerial positions and staff grade in the private sector are entitled to overtime and whether a contract of employment could override a statutory provision and in any event curtail a statutory right?

In the light of the above issues, it is interesting to see the attitude of the Labour Department which is reflected in its circular bearing No. 420.

File No. T. 42/ 1 (4) (Sub).

“Departmental Circular No, 420
To all DCLL/ACLL/LOO

Application of provisions of the Shop and Office Employees Act to officers of Staff rank.

This circular is to clarify the policy of the Labour Department in regard to the enforcement of the provisions of the shop and Office Employees' Act in respect of employees or staff grades.

2. The present position in regard to this matter is dealt in para 74 of the Departmental circular No. 128, However, it has been decided to adopt the following procedure in respect of complaints made to the Department by employees of staff rank regarding non- compliance with the provisions of the Shop and Office Employees Act :-

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- (i) Complaints made by employees of staff rank in respect of any infringement of the S2 OE Act will be acted upon by the department, excepting in the case of non- payment of overtime ;
 - (ii) In the case of complaints regarding non- payment of overtime by officers of staff rank, the department will not intervene ;
 - (iii) If any question arises as to whether any employees is, or is not, or staff rank, It will be decided by the Department having regard to an employee's salary, designation and duties performed.

You should therefore, in future act accordingly in respect of complaints received from employees of staff rank.

Sgd/ N. L. Abeywira
Commissioner of Labour”

It is not clear whether this circular is only applicable to employees of Public institutions or whether it is applicable to any private sector employee.

ILO Conventions Relating Working Time

The elaboration and adoption of international standards governing hours of work has been given high priority by the International Labour Organization since its creation in 1919.

The instrument that was adopted, the Hours of Work (Industry) Convention, 1919 (No. 1), embodied the combination of the two principles referred to in the Treaty of Versailles with respect to all industrial workers. 18 Convention No. 1 applies to persons employed in any public or private industrial undertaking or in any branch thereof, other than an undertaking in which only members of the same family are employed.¹⁸ The Convention limits hours of work to eight a day and 48 a week in industrial undertakings in general,¹⁹ and to 56 hours in cases of

¹⁸ Article 2 of Convention No. 1. The term “industrial undertaking” itself is defined in Article 1, paragraph 1, of the Convention

¹⁹ Article 2 of Convention No. 1

processes which are required by reason of their nature to be carried on continuously by a succession of shifts.²⁰ It also provides for the possibility of averaging hours of work over a period of time,²¹ as well as for permanent and temporary exceptions to the general standard.²² The Convention calls for regulations to be made after consultation with the organizations of employers and workers concerned to fix the maximum of additional hours in each instance, and specifies that the rate of pay for overtime shall not be less than one and one-quarter times the regular rate. Thus, from the conceptual point of view, Convention No. 1 prescribes a general rule (an eight-hour working day and 48-hour working week) and authorizes a limited number of specific exceptions.

The fundamental idea behind Convention No. 1 is that the combination of standards of the eight-hour day or 48-hour week contemplated by the Treaty of Versailles is to be embodied in national legislation in the form of a legal limitation of hours of work, which would be laid down by the legislature and enforced by the executive departments of the Government.

It was not intended to be merely a “standard” or “basic” week upon which normal hours would be calculated and which would determine the point at which overtime pay at increased rates was to begin. Such a standard would have left the number of hours of work unlimited, except in so far as agreed upon between the employers and workers. It would therefore have failed to provide protection against undue fatigue, or ensure reasonable leisure and opportunities for recreation and social life, which were the objective of the relevant provisions of the Treaty of Versailles.

While Convention No. 1 only covers industrial workers, the Hours of Work (Commerce and Offices) Convention (No. 30), adopted at the 14th Session of the International Labour Conference in 1930, applies the same principles of the 48-hour working week and the eight-hour working day to persons employed in the commerce and offices sectors.²³ Convention No. 30 applies to persons employed in commercial or trading establishments, including postal, telegraph and telephone services, in the establishments and administrative services in which the

²⁰ Article 4 of Convention No. 1.

²¹ Article 2, paragraph (c), of Convention No. 1.

²² Article 6, paragraph 1, of Convention No. 1.

²³ Article 3 of Convention No. 30.

persons employed are mainly engaged in office work, and in mixed commercial and industrial establishments, unless they are deemed to be industrial establishments. The Convention limits the hours of work of the persons to whom it applies to 48 hours a week and eight hours a day. It allows a certain flexibility in the arrangement of weekly hours of work, provided that the hours worked in a day do not exceed ten hours. It authorizes, under certain conditions, an increase in the hours worked in the day for the purpose of making up hours of work which have been lost in case of a general interruption of work due to local holidays, or accidents, or force majeure,²⁴ a matter which is not dealt with in Convention No. 1. Under Convention No. 30, in exceptional cases, regulations made by public authority may permit hours of work to be distributed over a period longer than the week, provided that the average hours of work a week over the number of weeks in the period do not exceed 48 and that hours of work in any day do not exceed ten hours. The Convention also provides for the possibility of making permanent and temporary exceptions to the general standard.

The objective of Convention No. 30 is to extend the hours of work standards prescribed by Convention No. 1 to all those persons not covered by Convention No. 1, with the exception of those employed in agriculture, maritime or inland navigation, fisheries and domestic service.²⁵ It was felt that the decisions taken at Washington for the benefit of industrial workers should be followed up and completed by decisions in the same form for the benefit of salaried employees, so that they also benefited from international guarantees for their protection which would have placed them on a footing of equality with their co-workers in industry. The standard-setting activities of the ILO in the area of hours of work did not come to an end with the adoption of Convention No. 30. In total, between 1919 and 2004, 16 Conventions and 11 Recommendations have been adopted dealing with the hours of work issues, in addition to those Conventions and Recommendations dealing with related matters, such as weekly rest²⁶, holidays with pay,²⁷ the organization of working time²⁸ and night work,²⁹ notably the

²⁴ Article 5, paragraph 1, of Convention No. 30

²⁵ League of Nations: International Labour Conference, Fourteenth Session, Vol. 1 (Geneva, ILO, 1930), p. 406

²⁶ the Weekly Rest (Industry) Convention, 1921 (No. 14); and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).

²⁷ See, e.g., the Holidays with Pay Convention, 1936 (No. 52); the Holidays with Pay (Sea) Convention, 1936 (No. 54); the Paid Vacations (Seafarers) Convention, 1946 (No. 72); the Paid Vacations (Seafarers) Convention

Weekly Rest (Industry) Convention, 1921 (No. 14), the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), and the Holidays with Pay Convention (Revised), 1970 (No. 132).

The Forty-Hour Week Convention, 1935 (No. 47) provides that each Member of the ILO which ratifies it, declares its approval of the principle of a 40-hour week applied in such a manner that the standard of living is not reduced in consequence; and the taking or facilitating of such measures as may be judged appropriate to secure this end; and undertakes to apply this principle to classes of employment in accordance with the detailed provision to be prescribed by such separate Conventions as are ratified by that Member.

Convention No. 14 provides that the whole of the staff employed in any industrial undertaking, public or private, or in any branch thereof shall, in principle, enjoy in every period of seven days a period of rest comprising at least 24 consecutive hours.³⁰ Similarly, under Convention No. 106, all persons to whom it applies shall, in principle, be entitled to an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days.³¹ Finally, under Convention No. 132, every person to whom this Convention applies shall be entitled to an annual paid holiday of a specified minimum length.³² Each Member which ratifies this Convention shall specify the length of the holiday in a declaration appended to its ratification,³³ but this holidays shall in no case be less than three working weeks for one year of service.³⁴

(Revised), 1949 (No. 91); the Holidays with Pay (Agriculture) Convention, 1952 (No. 101); the Holidays with Pay Convention (Revised), 1970 (No. 132); and the Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)

²⁸ The Part-Time Work Convention, 1994 (No. 175)

²⁹ See, e.g., the Night Work (Women) Convention, 1919 (No. 4); the Night Work of Young Persons (Industry) Convention, 1919 (No. 6); the Night Work (Bakeries) Convention, 1925 (No. 20); the Night Work (Women) Convention (Revised), 1934 (No. 41); the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79); the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948; the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90); and the Night Work Convention, 1990 (No. 171).

³⁰ Article 2, paragraph 1, of Convention No. 14.

³¹ 42 Article 6, paragraph 1, of Convention No. 106.

³² 43 Article 3, paragraph 1, of Convention No. 132.

³³ Article 3, paragraph 2, of Convention No. 132

³⁴ Article 3, paragraph 3, of Convention No. 132

New trends in the area of working time have also been analysed in a ILO publication *Working time and workers' preferences in industrialized countries: Finding the balance*.³⁵ This publication examines the changing nature of working time in industrialized countries and concludes that finding the balance between business requirements and workers' needs will require working time policies along five dimensions: promoting health and safety; helping workers to better meet their family responsibilities; encouraging gender equality; advancing productivity; and facilitating worker choice and influence over their working hours.³⁶

³⁵ 9 *Working time and workers' preferences in industrialized countries* (Jon S. Messenger, ed., Routledge, 2004).

³⁶ 90 *Working time and workers' preferences in industrialized countries*, pp. 195-211.