

J. Y. Interpretation No.494 (November 18, 1999) *

ISSUE: The Labor Standards Act provides that the minimum standard regarding an increase of overtime pay specified by Article 24 of the said Act is applicable to the types of business specified in Article 3 of the said Act. Is the said standard applicable as well to supervisory, intermittent or other special types of jobs not within the categories of the aforesaid Article 24?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; Articles 3, 24 and 84-1 of the Labor Standards Act (勞動基準法第三條、第二十四條、第八十四條之一) ; Article 50-2 of the Enforcement Rules of the Labor Standards Act (勞動基準法施行細則第五十條之二) .

KEYWORDS:

labor (勞工) , standard of working condition (勞動條件) .**

HOLDING: For protecting the workers' rights and interests, to strengthen the labor-management relationship and promote social and economic development, the Labor Standards Act was

解釋文：國家為保障勞工權益，加強勞雇關係，促進社會與經濟發展，而制定勞動基準法，規定勞工勞動條件之最低標準，並依同法第三條規定適用於同條第一項各款所列之行業。事

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thereby enacted by the State to provide minimum standards of labor conditions applicable to the industries listed in Article 3 of the Labor Standards Act. Although the business entity may, subject to the character of business and style of labor, separately enter into agreement with the workers in respect of the standards of working conditions, the conditions agreed to in such agreement should in no event provide less than the minimum standards set out by the Labor Standards Act. After the implementation of the Labor Standards Act, the provision relating to the overtime wage payment of the industries applicable to the Labor Standards Act shall thereupon apply to Article 24 of the same Act to implement thoroughly the intent of the law to protect the workers' rights and interests. Article 84-1 of the Act, relating to supervisory, intermittent or other special types of jobs, which should not be subject to the restriction of the above law in relation to working hours, national holidays and regular days off, was enacted as a supplement to the Act on December 27, 1996, and is not applicable to the matters incurred before

業單位依其事業性質以及勞動態樣，固得與勞工另訂定勞動條件，但不得低於勞動基準法所定之最低標準。關於延長工作時間之加給，自勞動基準法施行後，凡屬於該法適用之各業自有該法第二十四條規定之適用，俾貫徹法律保護勞工權益之意旨。至監視性、間歇性或其他性質特殊工作，不受上開法律有關工作時間、例假、休假等規定之限制，係中華民國八十五年十二月二十七日該法第八十四條之一所增訂，對其生效日期前之事項，並無適用餘地。

the effective date of that Article.

REASONING: Based on the intent of the Constitution to protect the people's rights of existence and work, and to promote the workers' livelihood, the Labor Standards Act was thereby enacted. For purposes of protecting workers' rights and interests, strengthening the labor-management relationship and to promote social and economic development, the Labor Standards Act provides the minimum standards of working conditions in relation to the wages, working hours, time off, leave of absence, retirement and compensation for occupational accidents applicable to the industries listed in Article 3, Paragraph 1, of the Labor Standards Act. Furthermore, in order to implement thoroughly the intent of the law to protect the workers' rights and interests, a supplement was added to Article 3, Paragraph 3, on December 27, 1996, to ensure that the law would be applied to all kinds of employee-employer relations, at least before the end of 1998, except for certain cases where the application is especially difficult.

解釋理由書：勞動基準法依據憲法維護人民生存權、工作權及改善勞工生活之意旨，以保障勞工權益，加強勞雇關係，促進社會與經濟發展為目的，而規定關於工資、工作時間、休息、休假、退休、職業災害補償等勞工勞動條件之最低標準，並依同法第三條規定適用於同條第一項各款所列之行業；且於八十五年十二月二十七日修正之第三條條文中增列第三項，規定於八十七年底以前，除確有窒礙難行者外，適用於一切勞雇關係，確保所有勞工皆得受本法之保障，以貫徹法律保護勞工權益之意旨。

Although the business entity should apply to the Labor Standards Act subject to the character of the business, but the styles of labor of various businesses are extremely different. To the workers engaged in supervisory jobs, supervision is their principal duty and to be deployed at a fixed place. The degree of tenseness of their bodies and spirits is normally lower than regular workers'. To the workers engaged in intermittent jobs, the way to proceed their work is normally that the waiting hours are longer than the working hours. To the business with those characters, although the business entity may separately enter into agreement with the workers in respect of the standards of working conditions, the conditions agreed to should in no event provide less than the minimum standards set out by the Labor Standards Act. According Article 84-1 of the Act, which was added to the Act on December 27, 1996, irrespective of whether the worker is engaged in supervisory, intermitted or other special types of jobs, such work should be approved and announced by the relevant central competent authority; and the written agreement

事業單位固應依其事業性質適用勞動基準法，但各業之勞動態樣甚為分殊，其中從事監視性性質之工作者，原則上於一定之場所就一定之配置，以監視為其本來之業務，其身體與精神之緊張程度通常較低；從事間歇性性質之工作者，其進行之方式，等待時間較工作時間為長，就該等性質之工作，雖得與勞工另訂定勞動條件，惟不得低於勞動基準法所定之最低標準。就是否屬於監視性、間歇性或其他性質特殊之工作者，依八十五年十二月二十七日增訂之第八十四條之一規定，應經中央主管機關核定公告；雇主依同條規定與勞工所訂立之勞動條件書面約定，關於工作時間等事項，亦應報請當地主管機關核備，並非雇主單方或勞雇雙方所得以決定；且依八十六年六月十二日新修正之同法施行細則第五十條之二規定，其內容應包括職稱、工作項目、工作權責或工作性質、工作時間、例假、休假、女性夜間工作等有關事項。惟關於延長工作時間之加給，自勞動基準法施行後，凡屬於該法適用之各業自有該法第二十四條規定之適用。至監視性、間歇性或其他性質特殊工作，不受上開法律有關工作時間、例假、休假等規定之限制，係前述該法第八十四條之一所增訂，對

as to the working conditions in respect of the working hours, etc., should be made between the employer and workers in accordance with that Article. It should not merely be mutually agreed upon by the employer and workers, but should also be reported to and approved by the relevant local competent authority. Furthermore, according to Article 50-2 of the Enforcement Rules of the Labor Standards Act as amended on July 12, 1997, the description of the working conditions should include the position, item, responsibility or character, working hours, national holidays, regular days off, female workers' night shift, etc. After the implementation of the Labor Standards Act, the provision relating to the overtime wage payment to the industries applicable to the Labor Standards Act should apply to Article 24 of the Labor Standards Act. Article 84-1 of the Act, relating to supervisory, intermittent or other special types of jobs, which should not be subject to the restriction of the above law in relation to working hours, national holidays and regular days off, was enacted as a supplement to the Act as aforesaid, and is not applicable to

其生效日期前之事項，並無適用餘地。
又工作時間或休息時間之計算，為按各行業之性質，依有關法令認定事實之問題，不在本件解釋範圍，併此敘明。

the matters incurred before the effective date of that Article. Furthermore, the calculation of working hours and rest is a matter of fact which shall be decided by the related ordinance or regulations subject to the character of various businesses is beyond the scope of this Interpretation.