

LCQ5: Compensating employees for online "invisible overtime"

Following is a question by the Hon Kingsley Wong and a written reply by the Secretary for Labour and Welfare, Mr Chris Sun, in the Legislative Council today (May 8):

Question:

It is learnt that online working is increasingly common as a new mode of working, and many employees have even been asked to work during non-office hours (e.g. attending meetings and replying to emails/messages) using communication tools. On the other hand, the Supreme People's Court, the Ministry of Human Resources and Social Security, and the All-China Federation of Trade Unions jointly published typical cases involving disputes over non-payment of wages early this year. It has been reported that the Court ruled that the online work performed by the employee concerned during non-office hours was overtime work on the grounds that the employee had "performed substantial work" and that the work in question was "obvious occupation of rest time", and exercised discretion in determining the overtime compensation for the employee's online "invisible overtime", taking into account factors such as the frequency and duration of the employee's overtime work, and the employee's wage standards and work contents. In this connection, will the Government inform this Council:

(1) whether it has conducted studies on (i) the adoption of online working as a new mode of working in various local trades and industries, and (ii) the form of compensation offered by employers to employees who perform online invisible overtime work; if so, of the details; if not, the reasons for that;

(2) whether it will consider improving the labour legislation to establish a definition for online invisible overtime and the criteria for calculating the relevant compensation; if so, of the details; if not, the reasons for that; and

(3) as many civil servants have relayed that they are often asked to perform online invisible overtime work during non-office hours without receiving any compensation, whether the Government will set an example as a good employer and take the lead in counting invisible overtime involving the performance of substantial work and obvious occupation of rest time as official overtime, and in granting time off in lieu or an overtime allowance to the civil servants concerned; if so, of the details; if not, the reasons for that?

Reply:

President,

All along, the Government has been reviewing the labour legislation from

time to time to progressively improve employees' rights and benefits, taking into account the interests of employees and the affordability of employers. In consultation with the Civil Service Bureau (CSB), our consolidated reply to the Member's question is as follows:

(1) and (2) The Employment Ordinance (EO) stipulates that an employer must, before an employment begins, inform the employee of the conditions of employment including wages, wage period and length of notice required to terminate the contract, etc. Pursuant to the Minimum Wage Ordinance (MWO), the hours worked for computing the minimum wage include the time when the employee is in attendance at a place of employment in accordance with the contract of employment or with the agreement or at the direction of the employer, and a place of employment means any place at which the employee is in attendance for the purpose of doing work or receiving training in accordance with the contract of employment or with the agreement or at the direction of the employer.

On the premise of not contravening the EO and MWO, employers and employees may draw up the terms and conditions of employment including working hours and compensation arrangements for overtime work.

The modes of operation of various industries and enterprises, the job nature and responsibilities of employees as well as the terms set out in employment contracts and the like may bring about different requirements or agreements on employees' online work outside normal working hours. The Labour Department (LD) encourages employers to adopt good human resource management practices through different channels including the human resources managers' clubs and the industry-based tripartite committees. The good practices include advising employers to draw up reasonable and fair terms in employment contracts, and reminding them to fully consult and agree with their employees on working hours, compensation arrangements for overtime work, when working remotely using telecommunications equipment like internet and telephone.

The LD will continue to discuss relevant subjects at the human resources managers' clubs and the industry-based tripartite committees, and keep in view of the development and experience of other places in the handling of online work of employees outside normal working hours, and promote good employment practices to safeguard the rights and benefits of employees.

(3) The CSB expresses that according to the Civil Service Regulations, overtime work is work undertaken over and beyond a civil servant's conditioned hours. Under the prevailing policy, overtime work may be undertaken only when it is unavoidable and should be kept to the minimum. Overtime should normally be compensated by time off in lieu. Where this is, or is likely to be, impracticable within one month of the date on which overtime is worked, overtime allowance may be paid to eligible officers. The bureaux and departments will, within the confines of the prevailing policy, make appropriate arrangement and compensation for civil servants' overtime work.