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# The New Amendment to the Taiwan Labor Standard Act

On January 10, 2018, the Legislative Yuan, ROC, Taiwan passed an amendment of the Labor Standard Act (LSA). The amendment provides flexibility to the employer regarding four areas of employment law, including overtime, shifts, annual leaves and fixed off-days. The amendment went into effect on March 1, 2018. The Ministry of Labor then made several administrative rules to further illustrate application of the new LSA. This article summarizes the key points of the amendment, as well as looks at the important administrative rules of relevant issues.



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## Overtime

Regarding the regulation of work overtime, the employer can now raise the monthly maximum overtime under certain conditions. The amendment of Paragraph 2 of Article 32 of the LSA allows a business to raise the monthly maximum overtime from the original limit of 46 hours for an employee to 54 hours, upon obtaining the consent of the labor union or consent through a meeting between the employer and employee. The total overtime hours for three months remains no more than 138 hours. This relaxation of the restriction on maximum overtime hours should be communicated to the local competent authority for recording if the business has more than 30 employees.

In addition, overtime hours and payment for attendance on a rest day are now calculated on the basis of actual work time. The old LSA favored the employee in overtime hours and payment for attendance on a rest day. According to the old rules, the employee's attending hours of work on a rest day were measured in a way that any hours less than four hours were calculated as four hours; any hours more than four hours but less than eight hours were calculated as eight hours; and any hours more than eight hours but less than 12 hours were calculated as 12 hours. The amendment of Article 24 of the LSA removed the provision of the old Paragraph 3, stating that the employee's attendance on a rest day should be measured by the actual time of work on that day, which is also the new way applicable to the summation of overtime hours under Paragraph 2 of Article 32 of the LSA.



According to Article 32-1 of the LSA, when an employer extends the work in accordance with Paragraphs 1 and 2 of Article 32, the employer shall calculate the hours of compensatory leave based on the hours of work performed, as the employee chooses to take compensatory leave with the consent of the employer. However, whether the compensatory leave paid by the employer should be included in the average salary calculation remained a question. The Ministry of Labor on June 21, 2018, issued Lao-Dong-Tiou 2 Zi No. 1070130882 letter, stating that the average salary is calculated by the total amount of salary paid in the six months prior to the calculating-base day, divided by the days of work subject to Paragraph 1 of Article 32-1 of the LSA. As a result, whether the compensatory leave paid by the employer should be included in the average salary calculation depends on whether such compensatory leave has taken place in the six months prior to the calculating-base day.

## Shifts

Regarding the regulation of shifts, the rest time between each shift shall be 11 hours so the employee can get enough rest. The amendment of Article 34 of the LSA maintains that the rest time between



each shift shall be 11 hours. However, the new law sets forth an exception, allowing the business to change the rest time by no less than a consecutive eight hours upon obtaining the consent of the labor union or consent through a meeting between the employer and employee. This relaxation of the restriction on the maximum overtime hours should be communicated to the local competent authority for recording if the business has more than 30 employees. According to “Labor Standard Act Practice FAQ” issued by the Ministry of Labor on March 5, 2018, the situation in Article 34 refers to enterprises adopting the “shift system” of labor and is limited to the situation when there is a change in work shifts. For example, in the situation that the previous shift is the early shift, and the next shift is replaced by the noon shift. This Article does not apply to the “non-shift system” or the shift system without changing the shift.

## Annual Leaves

With respect to annual leaves, if the employee has any untaken annual leaves by the end of the year, or by the termination of the employment for whatever reason, the employer shall monetize it and make the payment of salary. However, the amendment of Paragraph 4 of Article 38 of the LSA

allows the employer and the employee to carry forward the untaken annual leaves to the following year by negotiation, and temporarily halts monetizing it into salary. Whether the employer can defer annual leaves without the agreement of the employee is unknown. The Ministry of Labor on April 11, 2018 issued Lao-Dong-Tiou 2 Zi No. 1070130382 letter, stating that the matter of deferring annual leaves may be determined by negotiation and discussion between the employer and the employee. However, such deferring of annual leaves should not be made without mutual consent of the employee and the employer. It is illegal for the employer to unilaterally defer annual leaves to the next year without the approval of the employee.

## Arbitration

As for the fixed off-day, the old law provided the employee with one fixed off-day and one rest day per week. In other words, the employer cannot have the employee work consecutively for more than six days, in absence of any legitimate cause. The new law relaxes these restrictions. The amendment of Paragraphs 4 and 5 of Article 36 of the LSA affords the employer adopting the flexible work time on the basis of four weeks, the leeway to move the fixed off-

day in the period of seven days subject to the following three criteria:

1. the business is the specific occupation as stipulated by the Ministry of Labor subject to the approval of the competent authority governing the industry in the central government;
2. the adjustment to the fixed off-day requires the consent of the labor union. If the business does not have a labor union, then consent by a meeting between the employer and employee is required; and
3. an employer with more than 30 employees shall notify the local competent authority for recording.

## Conclusion

In conclusion, the new amendment to the Taiwan LSA has opened a new chapter of the law regarding the fundamental protection of employee rights with respect to overtime, shifts, annual leaves and fixed off-days. Due to its detailed and complicated legislative language, the amendment inevitably leads to some questions from the practical perspective. As a result, further elaborations and interpretations are expected to fill the gap of this part of law in the future. 