



Working Hours and Salaries for Roster Shifts

February 2025

It has been more than three years since the Revised Labour Law (**Labour Law**) came into force. For the first time, Labour Law provided detailed regulations for "roster shifts". According to Article 92.3 of the Labour Law, "For roster shift employees, the working day shall not last more than 12 hours, and overtime pay shall be calculated and paid based on Article 109.1 in accordance with Article 87. This article has created uncertainty in the application of the law and created a discrepancy between employees and employers as to how normal working hours were determined.

To clarify, the main point of contention is whether the normal working hours for roster shift employees should be calculated as 12 hours a day or 8 hours. Labour rights disputes over this issue have arisen extensively, and the Supreme Court (**SC**) has received and resolved several complaints. These types of disputes are usually resolved by the courts of first instance and the appellate courts, usually in favor of the employer. Instead, the SC received and resolved the complaints on the grounds that they were "bridging the gap in the application of the law" and that they were "of general importance in principle to the establishment of new legal concepts or the application of the law."

This Legal Insight presents a brief summary of how roster shift working hours have been understood and applied in the SC resolutions.

What happened?

Between May and October 2024, the SC resolved several disputes related to roster shift working hours. The disputes focused on the issue of not considering 4 hours out of the 12-hour workday as overtime and not paying the corresponding overtime pay. The vast majority of the disputes were decided in favor of the employer, with the Court of First Instance and the Appellate Courts dismissing the claims. Instead, the SC held that the Court of First Instance and the Appellate Courts had failed to properly interpret the Labour Law and therefore had reason to rectify it and satisfy the plaintiff's claims.

Supreme Court's analysis

Below is a brief summary of the main issues raised by the SC in satisfying the claim and resolving it in favor of the employees:

Firstly, the normal working hours for roster shift employees are 8 hours per day: Article 92.3 of the Labour Law states that the length of the workday for a roster shift employee is "not more than 12 hours," not "12 hours." In other words, the length of the normal working day for a roster shift employee shall not exceed 8 hours, and the employer may arrange for an extension of up to 4 hours as agreed with the employee, for a total of 12 hours.



Thus, the typical one-month work hours of a roster shift employee are 112 hours. The average one-month working hours for a roster shift employee is 168 hours, which is not a violation of the norm of working hours, but it should not be treated as a roster shift workday. The SC has ruled that the Court of First Instance and the Appellate Courts' conclusion that 14 days of long shift work and 14 days of rest are incorrect, including compensation for an employee being employed in excess of normal working hours.

Second, the legal status of the employee and the conditions of employment should not be impaired. In the minutes of the joint session of the Standing Committee on Justice and the Parliament that discussed the draft revision of the Labour Law, it was mentioned that if the roster shift was reduced to 14:14, the salaries received at the time would be reduced by up to 35 percent. In other words, the SC concluded that while the law stipulates that the roster shift work arrangement is 14:14, there is no justification for reducing or degrading salaries.

Third, "roster shifts" are a distinct concept that distinguishes them from ordinary labour. A 14-day rest procedure is unique to a roster shift because an employee is placed in a remote location other than where he or she is permanently resident, and he or she is performing a task for 14 days. The Labour Law provides for a 14-day rest period for an employee who has worked roster shifts, which means that he or she has worked one shift within the employer's supervision in accordance with a specific set of procedures outside the home. Hence, a period of 14 days of rest would not be considered as compensation.

Impact

The SC's resolutions significantly impact salary calculations for employers in the mining and extraction sectors. This is because the normal working hours of a roster shift employee are 8 hours a day and 112 hours a month, which has the effect of changing the salaries and calculations offered to the employee. As a result, employers have been forced to take a number of actions, including changes to their internal labour regulations and negotiations with the trade unions (if any).

Considerations

Since the Labour Law became effective, employers have changed working hours and adjusted salary calculations in compliance with the law. Particularly, most employers in the mining and extraction sector, who previously had a roster shift schedule with a ratio of 2:1, have transitioned to a schedule with a ratio of 1:1, where employees work for 14 days and then rest for 14 days. Consequently, various changes have been made, and associated costs have been incurred, such as an increase in the number of employees, the reorganization of shift schedules, and the calculation of additional pays based on average salaries. Most employers had an arrangement where roster shift employees worked 12 hours a day for 14 days and then rested for 14 days, totaling an average of 154 working hours per month (inclusive of an one-hour lunch break). Since 154 hours do not exceed the average working hours i.e. 168 hours per month (the normal working hours per month for employees other than roster shifts employees), overtime pay has not been calculated and paid in accordance with Article 92.3 of the Labour Law. This practice also aligns with the Regulation for Calculating Average Salary.

However, the SC has decided to set the normal working hours of a roster shift employee at 112 hours and the one-day duration at 8 hours. This has a major impact on payroll calculations and costs. This is because the calculation of the salary of a roster shift employee is more complex than the calculation of salaries for a typical employee. Roster shifts are made up of a number of components, such as base salary, site allowance, non-standard working conditions allowance, overtime pay, night shift pay, and public holiday pay.



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It is interesting, however, that despite these features, the length of the shift was considered a special form of employment, and the normal working hours were reduced to 112 hours. Article 85 of the Labour Law lists the conditions under which working hours can be reduced, including health reasons, pregnancy, breastfeeding, and other necessary circumstances. On the other hand, it is not clear which of the above lists applies to the calculation of the length of a roster shift employee from the normal working hours of the month.

In international practice, when it is not possible to calculate working hours by day, week, or other periods, the most feasible period for calculating working hours is chosen, and the working hours are aggregated. This method, known as the working hours averaging scheme, is combined with the method of annualized working hours.

The averaging scheme is to keep an employee working longer than their normal working hours per day (subject to legal limits) but not exceed the average hours the employee will work in one month or one year. Put simply, if an employee is expected to work an average of 168 hours per month, it is possible to make adjustments, such as working 12 hours a day for 14 days without interruption, not exceeding 168 hours. In this case, even though the employee worked 4 hours of overtime per day, the total hours worked by the employee are considered to be equal to 168 hours and therefore the overtime pay is not necessary.

For the purposes of the SC resolution, the typical working hours of a roster shift employee are 112 hours in a month, and in making this calculation, it was assumed that the employee would work 8 hours a day continuously for 14 days. However, under the Labour Law, an employer and employee may agree to adjust the schedule to a 14:14 ratio, meaning equal periods of work and rest. This adjustment would result in discrepancies with the standard calculation of 112 hours per month, such as 160 hours per month for a 10:10 work-rest ratio. In other words, it is unclear how the SC has seen the impact of working hours calculations on salary calculations.

In addition, the resolution of disputes related to the working hours of these roster shifts by the SC appears to make it difficult to implement the types of working hours arrangements in accordance with the recommendations issued by the International Labour Organization, such as the Compressed Working Hours and the Working Hours Averaging Scheme.

Let's talk!

Munkhjargal Ragchaakhuu

Senior Manager
Legal Services
munkhjargal.ragchaakhuu@pwc.com

Munkhnasan Otgontogtool

Senior Associate
Legal Services
munkhnasan.otgontogtool@pwc.com

PwC Legal LLP

Central Tower, 6th floor
Suite 603, Ulaanbaatar
14200, Mongolia
Tel : + 976 70009089

www.pwc.com/mn

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Important Notice

The court decisions referenced in this newsletter were sourced from the public electronic database on court decisions. We were not involved in the proceedings of these disputes and have not reviewed the parties' submissions or the comprehensive case file. Therefore, please note that we have not conducted any detailed analysis of the disputes and do not guarantee the accuracy or completeness of this newsletter.



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