

Briefing: ETI Revised Working Hours Clause and Chinese Law

Working hours in China is a key issue in relation to the application of the ETI Base Code. There are many instances of reported long working hours, which are in breach of both national law and the Base Code. With the revision of the Base Code Clause 6, this is a perfect opportunity to not only seek greater transparency about the degree of long working hours, but also to clarify the relationship between Chinese law and the ETI Base Code, taking into account the fact that Chinese law is often stricter than the ETI Base Code and, wherever this is the case, it is Chinese law that should take precedence.

Key points to note

- Rules on working hours are set by the [Labour Law](#) and the [Regulations of the State Council on the Hours of Work of Employees](#) (Regulation 97896 (1995)). There are two main systems for determining hours of work in the manufacturing industry;
 1. the *basic hours system*, consisting of normal working time plus any overtime hours or flexible/irregular hours not considered to be overtime.
 2. *irregular hours systems* which cover the *consolidated working hours system and other approved variable working time patterns* where daily and weekly working time can vary widely. A variable working time plan approved by the government is required under these systems.
- **Normal working time is 8 hours per day and 40 hours per week.** Although the 1994 Labour Code which is still in force provides for a 44-hour maximum work week (Article 36), Regulation 97896 subsequently lowered this to 40 hours per week.
- The **maximum weekly working hours** allowed under the Chinese basic working hours system (58) is less than the 60 hours provide for under the ETI Base Code.
- China's **consolidated working hours system** allows for derogation from the basic hours of work system "for employees working on such jobs, the particular nature and responsibility of which make it impossible to follow the standard working system of 8 hours per day and 40 hours per week". These employees, according to the law, are:
 - (1) "Employees in the transport, railway, PTT, maritime, aviation, and fishing industries may be required by the nature of their job to work continuous hours;
 - (2) "Employees in such industries as geological and resource exploration, construction... sugar production and tourism whose work is regulated by seasonal and natural conditions more than anything else;

(3) “Other employees who are more suited to the system of consolidated hours of work.”

- Each enterprise using a variable or consolidated hours system must submit a **consolidated hours plan, or other appropriate variable hours plan**, for approval by local or national labour authorities. The individual plans will include the details related to maximum daily and weekly, quarterly, half-yearly and yearly hours and other limits applicable to the respective workplace. Authorities may authorise working weeks of longer than 60 hours based on these plans.
- According to the Ministerial Regulation providing for the consolidated working hours or other variable hours systems, in all cases, the **average daily and weekly working hours** calculated according to the Government approved plan must amount to “basically” 8 hours per day and 40 hours per week.
- In practice and in most regions, the consolidated working hours system provides for a calculation of working hours based on one or more of the following reference points:
 1. 2000 yearly hours: $365 \text{ days} - 52 \times 2 \text{ (weekends)} - 11 \text{ (public holidays)} = 250 \text{ days} * 8 \text{ hours/day}$
 2. 1000 half yearly hours = $125 \text{ days} * 8 \text{ hours/day}$
 3. 500 quarterly hours = $250 \text{ days} \div 4 = 62.5 \text{ days} * 8 \text{ hours/day}$
 4. 166.64 monthly hours = $250 \text{ days} \div 12 = 20.83 \text{ days} * 8 \text{ hours/day}$
- Usually, but depending on the working time plan, any hours worked under the consolidated working hours scheme above listed hours are considered overtime, to be paid at a premium rate, not less than 150%. Such hours should not exceed 36 hours per month.
- Depending on the applicable state regulation, some workers under other irregular working patterns will not be entitled to the opportunity to work overtime.

China working hours and the ETI Base Code

Component	China basic hours system	China consolidated and variable hours systems	ETI Base Code
Regular or required working hours (per week)	40 hours <ul style="list-style-type: none"> Maximum 8 hours per day Minimum one rest day (24 hours) per week No minimum daily rest 	Average hours do not exceed 40 <ul style="list-style-type: none"> Average weekly hours must be “basically the same” as under regular hours Averaging periods contained in govt. approved plans and State Regulations 	48 hours <ul style="list-style-type: none"> Defined by contract Workers shall be provided with at least one day off in every seven day period Averaging permitted in accordance with national law
Overtime rules	<ul style="list-style-type: none"> 1 hour per day in normal circumstances 3 hours overtime per day “in special circumstances” provided it does not jeopardise the health of the employees. Maximum 36 hours per month Firms must consult with unions and workers before ordering overtime No limits on overtime where work is required to respond to an accident, equipment fault or other emergency. 	<p><i>Overtime under the consolidated working hours system considered to be any hours in addition to those allowed under the plan and must be compensated at a premium rate, not less than 150%.</i></p> <p><i>Overtime does not apply to other irregular working time practices in some state jurisdictions.</i></p>	<ul style="list-style-type: none"> All overtime shall be voluntary Overtime shall be used responsibly Overtime shall take into account the extent, frequency and hours worked by individual workers and the workforce as a whole Not replacing regular employment Compensated at a premium rate, not less than 125% Limits can be exceeded only under certain exceptional conditions (see below)
Maximum working hours (per week)	58 hours maximum <ul style="list-style-type: none"> 40 regular hours + maximum 18 (6 days x 3 hours) overtime hours Limit does not apply where work is done in response to an accident or emergency. 	<p>The 58-hour limit can be exceeded under the consolidated working hours system provided total overtime does not exceed 36 hours’ overtime per month on average. Weekly limits set out in govt. approved variable or consolidated hours plans, calculated on the basis of 20.83 working days per month, 250 days per year.</p>	60 hours maximum unless <ul style="list-style-type: none"> this is allowed by national law this is allowed by a collective agreement freely negotiated with a workers’ organisation appropriate safeguards are taken to protect health and safety the employer can demonstrate that exceptional circumstances apply (NB this does not include predictable seasonal peaks).

Decision tree: 60+ hour working weeks in China

