

My No: 4/16/4/6

Legal Division  
Ministry of Labour

17 08.2012

Secretary  
Ministry of Labour and Labour Relations

**REPORT OF THE COMMITTEE ON AMENDMENT TO  
THE SHOP AND OFFICE EMPLOYEES ACT NO. 19 OF 1954**

The Committee of Government Officials in the Department of Labour and the Labour Ministry examined the provisions of the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 with a view to suggest amendments to the Law to relax the existing provisions on night work to accommodate Information Technology Enabling Services and such other areas for which night work of female employees are mostly involved. Taking into consideration of emerging service industries where the employment of women workers are in demand the existing provisions of the Act were examined subject to imposition of certain statutory conditions.

The Committee identified the following emerging service industries in Sri Lanka demanding more and more women employees to work at night.

- i. Information Technology Enabling Services including Business Processing outsourcing in Sri Lanka.
- ii. Super Markets.
- iii. Health Centres concerning channeling of Medical Practitioners by patients; laboratory services for medical purposes, and
- iv. Pharmacies.

Section 10 of the Shop and Office Employees Act prohibits night work except for specified categories of work by woman workers. The relevant provisions read as follows:

S.10 (1) A person who has not attained the age of fourteen years shall not be employed in or about the business of a shop or office.

(2) A person who has attained the age of fourteen years and who –

- (a) being a male, has not attained the age of eighteen years, or
- (b) is a female,

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shall not be employed in or about the business of a shop or office before 6 a.m. or after 6 p.m. on any day:

Provided, however, that --

- (i) any female who has attained the age of eighteen years may be employed in or about the business of a hotel or restaurant for the period, or any part of the period between 6 p.m. and 10 p.m;
- (ii) any female who has attained the age of eighteen years may be employed in or about any prescribed work in a residential hotel before 6 a.m. or after 6 p.m., on any day; and
- (iii) any female who has attained the age of eighteen years may be employed in or about the business of a shop or office for the period, or for any part of the period, between 6 p.m. and 8 p.m. and
- (iv) any male who has attained the age of sixteen years may be employed in or about the business of a hotel, restaurant or place of entertainment for the period, or for any part of the period, between 6 p.m. and 10 p.m.

(3) Where in any prosecution for any alleged contravention of any provision of this section it is alleged that a person employed in or about the business of a shop or office was under any specified age, and he appears to the court to be a person who, at the date of the commission of the alleged contravention, was under the specified age, he shall, unless the contrary is proved, be presumed for the purposes of this Act to have been under that age at that date.

To accommodate the women employees engaged in night work of the categories mentioned above the relevant provisions to Section 10 of the Act and the relevant regulation need to be amended.

In the course of the discussion the members of the Committee agreed to add more restrictive measures than those in the Women, Young Persons and Children Act introduced by way of amendments in 1984 so as to prevent women employees being exploited or abused during working hours at night. Thus the health conditions and personal protection of the women workers were mostly taken care of. The young women workers who were to be future mothers, the amendment should be made in such a way that a female worker should be in sound health when she attains the motherhood. With that spirit the amendments to the Act were suggested by the Ministerial Committee.

**Proposed Amendments:**

Section 10 of the Shop and Office Employees (Regulation of Employment and Remuneration) (Chapter 129) is amended as follows:-

(1) By the insertion immediately after paragraph (iii) of the proviso to Subsection (2) of Section 10 of the following new paragraph.

"(iv) any female who has attained the age of 16 years may be employed in the business of -

- (a) Information Technology Enabling Services,
- (b) Super markets,
- (c) Banks, or
- (d) Health Centres for the purpose of channel consultation of medical practitioners by patients, Laboratory Services for medical purposes or Pharmacies registered under the ..... Act, for the period, or any part of the period before 6 a.m. or after 6 p.m. subject to the following conditions".

(a) A female who has worked 12 hours or part of that period shall not be further employed before expiry of another 12 hours under the same employer or any other employer,

(b) no woman shall be compelled to work at night against her will,

(c) that written consent of the women employees given to the employer is valid for twelve months but renewable and such consent shall be obtained by the employer before assigning night work however subject to repudiation of the consent in writing by the women on her own free will at any time,

(d) that employer shall obtain the written sanction of the Commissioner of Labour for women workers to engage in night work which is valid for a period of one-year but renewable prior to employment of women for night work.

(e) no woman who has been employed during the hours of 6 a.m. and 6 p.m. shall be employed at night,

(f) every woman who works at night shall be in receipt of a payment of not less than one and a half times the normal payment received by her,

(g) there shall be appointed female wardens to see to the welfare of women workers who works at night,

(h) every female employed referred to in paragraph (a) shall be provided with rest room facilities, dinner and refreshment and with sufficient security to ensure privacy and safety of such female employee,


(i) no women shall be employed for more than fifteen days on night work, during any one month,



- (j) every woman working at night as required by her, provide medical care and facilities for emergency treatment by the employer,
- (k) there shall be not less than 05 female workers working when women engage in night work,
- (l) every female employed during the period referred to in paragraph (a) shall be provided with transport facilities from her residence or closest place from her residence to the workplace, and to return to her residence,
- (m) no employer shall engage woman in night work during her pregnancy when notice to that effect is given by the woman to the employer,
- (n) no woman who is nursing the child for a period of twelve months from the date of confinement, upon notice given to the employer by the woman shall be engage in night work,
- (o) in the event of any violation of provision under this section, the Commissioner General of Labour at his discretion may rescind the sanction given to the employer for women to engage in night work.

It is further suggested that the Legal Draftsman may draft suitable interpretations to the terms, "Information Technology Enabling Services" and "Super Markets".

This report may be submitted to the Hon. Minister and with his concurrence referred to the National Labour Advisory Council for further discussion.

  
 R. P. Wimalasena 17-08-2012.  
 Senior Legal Advisor  
 Ministry of Labour and Labour Relations

Copies to: Commissioner General of Labour/DOL } For information  
 All members of the Committee } please.

For discussion at NLAC  
(Original note of 21.11.2011 is revised)

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Ministry of Labour

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PROPOSED "FIVE-DAY" WEEK

The Director General of the Employers Federation of Ceylon by his letter of 01<sup>st</sup> September 2011, under caption "Spread over of hours of work on 5 days of the week" has proposed introduction of regulations to the Wages Boards Ordinance to spread working hours for 5 days of the week on the requirement of each industry. His letter further states, the daily working hour limit of eight-hours should not exceed for more than one hour and also there should be a mutual agreement on such a change in the work arrangement between the employer and the workers. There should be no additional payment to the worker for the spread over of hours and if a worker is to engage in work on short working day he should be remunerated on the basis of overtime.

DG/EFC has made a similar proposal even in 2009 and since then up to now at several meetings of NLAC the said proposal was discussed without a finality. The stand taken by certain Trade Unions was that any hours exceeding normal working hours should be remunerated on the basis of overtime. Whereas the other trade unions suggested that the proposal may be practiced by enterprises only on mutual agreement between the employer and the workers.

Many work places in the private sector adhere to five-and-half day week in respect of workers falling under the Wages Boards Ordinance and to a lesser extent under the Shop and Office Act, whereas only in few work places the employers observe 5 day week within the limitations provided in these two Laws. The suggestion of the DG is to make Regulations under the Wages Boards Ordinance. However, in terms of the Wages Boards Ordinance Section 24 (2) the number of hours for a normal working day fixed by a Wages Board is limited to nine hours where the duration of the intervals for meals or rest does not exceed one hour, and if such duration of intervals for meals or rest exceeds one hour, normal working hours should not be more than the aggregate of nine hours and the period by which duration exceeds one hour or, if such aggregate exceeds 12 hours, it should not be more than 12 hours. The number of working hours constituting a normal working week is not to exceed forty eight hours [Section 24(3)]. [Vide - The Wages Boards Ordinance Section 24(2) paras (a) & (b) and sub-section (3)].

In terms of the Shop and Office Employees Act Section 3, Sub-section (1), the normal period during which any person may be employed in or about the business of any shop or office should not exceed eight hours on any one day and should not exceed forty five hours in any one week excluding interval allowed for rest or for meals. Accordingly as the provision stands in the Wages Boards Ordinance I am of the opinion that it will not be possible to frame regulations as suggested in DG's letter for the reason

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that the Law stipulates the normal working hours to be nine-hours including an hour for meals. Hence framing of the proposed regulations may not be possible unless Section 24(2) paras (a) & (b) are amended. Instead I suggest the Wages Ordinance may be amended suitably stipulating the provisions on Five-Day Week.

**The Fuel Conservation – Five Day Week Act No. 11 of 1978, was promulgated for the following reasons:**

- Reduction of cost of production, overheads and management
- Fuel and energy saving
- Easy competition in foreign markets
- Convenience of management
- Convenience of workers to enjoy the sixth day as a holiday.

Section 2 of the Act stipulates Saturdays not to be working days in any Government Department, Public Corporation, Local Authority or Trade in which, immediately prior to the relevant date, (17.02.1977) Saturdays were not or were required not to be working days under any regulation made under Section 5 of the Public Security Ordinance or in any other institution or part thereof specified by the Minister by regulations. Section 4 of the said Act states no worker is entitled to a payment of overtime in respect of the extra hours of work performed by him from Monday to Friday in consequence of Saturday not been a working day. However if a worker has been asked to work on Saturday by his employer as provided in Section 5 of the Act, such worker is entitled to overtime payment. Section 7 of the Act stipulates "every employer in any institution to which the provisions of Section 2 apply shall take account of every Saturday in each week, as though every worker employed under him, had worked on that day, for the purpose of computing the number of days worked for the grant of annual holidays to such worker in terms of the provisions of any decision of any Wages Board established under the Wages Boards Ordinance". Outside the Government Departments, Public Corporations and Local Bodies I am not aware of any other trade or trades in the private sector specified by the Minister by means of regulations under Act No. 11 of 1978 to which The Fuel Conservation Act applies. Hence, I believe, right now the Fuel Conservation Five-Day Week Act will not apply to the private sector institutions:

**ILO Convention: - Hours of Work (Industry) Convention 1919:**

Sri Lanka has not ratified the ILO very first Convention No. 1 on Working Hours. However, as a member of ILO for well over half a century, Sri Lanka recognized the standards set out in this Convention. It is worth to note the globally recognized Chicago Hay Market strike in 1886 of which the main demand was eight-hour working day that led to declaration of "May Day" as the workers day of the world. The ILO signified this global event in their first Convention in 1919 concerning limiting of hours of work in industrial undertakings to eight in a day and forty-eight in the week.

**The Rigidity of Labour Laws:**

The aspect of "Rigidity of Labour Laws" has been emphasized at many forums and in writings including Mahinda Chintana, "Vision for a New Sri Lanka – a Ten Year Development Framework, 2006 – 2016". In this context we should examine within the framework of the Law how to accommodate the



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- (4) For the workers in any trade on application of five day week under subsection (1), the rest of the two days of the week shall be the days of weekly rest and deemed to be the weekly holidays to workers for which they should be paid wages.
- (5) Any Wages Board making determination under Subsection (1) and (2) shall transmit such determination to the Commissioner of Labour.
- (6) Every employer who decides to act in terms of Subsections (1) and (2) shall seek the approval of the Commissioner General of Labour to apply the provisions under Subsections (1) and (2) in respect of the workers in the work place.
- (7) The Commissioner of Labour for the application made under Subsection (6) having satisfied that the employer had received the consent of employees in writing of not less than sixty per centum of workers to whom Subsections (1) and (2) shall apply, transmit in writing to the employer his approval to apply the provisions under subsections (1) and (2) subject to such terms and conditions as may be prescribed for a period of three years which is renewable.
- (8) The approval made under subsection (7) may be rescinded by the Commissioner if he is satisfied that the approval so made is no longer valid on account of non compliance of provisions under subsection (7) in which case Section 24 shall apply to such employer.
- (9) In the event of any ambiguity, uncertainty or dispute as to the consent of the workers in giving the option for the purpose of subsection (7), the Commissioner of Labour or an officer authorized by him in that behalf may conduct a poll in any work place in order to ascertain whether at least sixty per centum of the workers on whose behalf Subsections (1) and (2) apply have consented.



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Copies to: Secretary, Ministry of Labour and Labour Relations - } For information  
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