

ICTI CARE Process Position on 5-Day-or-6-Day-Workweek in China

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Understanding that there have been controversies around the legality of 5-day or 6-day workweek practiced in manufacturing facilities in mainland China, the ICTI CARE Process, the ethical manufacturing program of the toy industry, has sought opinions from various distinguished professional law firms, legal practitioners, national and local toy associations in mainland China, as well as the Ministry of Human Resources and Social Security in China.

The controversy revolves around whether 5 working days with 8 hours of normal work hours per day and henceforth two rest days in a week, or, 6 working days with less than 8 hours of normal work hours per day but still with overall normal work hours at or no more than 40 hours per week and henceforth one rest day per week, should be regarded as a normal workweek. Different understanding of what constitutes a legal work week results in different calculations of overtime pay for workers and the number of rest days workers would be entitled to, and therefore has led to debate on the legality of the 6-day-workweek model.

Many legal experts well-versed in China labor laws and the Chinese government itself have reiterated, normal working hour arrangements for workers (not including overtime) will be considered legal as long as the following criteria are met –¹

- Workers do not work more than 8 hours a day and do not work more than 40 hours a week;
- Workers have at least one day off per week
- Enterprises which cannot meet the above requirements must obtain government's approval for irregular working hours arrangement or comprehensive working hours scheme.

Local authorities have also issued guidance documents for court jurisdictions in favor of the 6-day-workweek model. For example, the Shenzhen City People's Court and the Jiangsu Provincial Committee for Labor Dispute Arbitration respectively stated in no uncertain terms that 6-day-workweek with overall weekly normal hours not exceeding 40 is legal and should be approved.²

The ICTI CARE Process respects local laws and has always promoted that it is the responsibility of manufacturers to meet local legal requirements. In view of the positions reiterated by the Chinese authorities, and unless local laws or local government authorities specify otherwise in written notification, the ICTI CARE Process accepts both 5-day-workweek and 6-day-workweek arrangements in manufacturing facilities in China in accordance with the labour laws and regulations in China. Under all circumstances, ICTI CARE Process requires that

- The working hours arrangement should be written clearly in the individual contract between the employer and the individual worker; also, such arrangement can only be changed with agreement from the workers.
- The actual working hours arrangement for each normal work shift should match with what is stated in the contract and must not include overtime hours in a normal work shift (i.e. it is not acceptable for a factory claiming to be practicing 6-day workweek to arrange workers to work 8 hours every day in a normal shift, thereby making workers work overtime every day with no choice)
- All overtime hours must be voluntary and legal rates of pay (including premiums for overtime) must be observed regardless of which workweek system is practiced.³

¹ The criteria are stated in the *PRC National Labour Law* (<中华人民共和国劳动法>), Article 36 and 38, promulgated in 1994; the *State Council's Decision on Revision of Regulation of Employees' Working Hours* (《国务院关于修改<国务院关于职工工作时间的规定>的决定》修订), Article 3, promulgated in 1994; and Ministry of Labour and Social Security's *Approval Methods for Enterprises' Implementation of Irregular Working Hours and Comprehensive Working Hours Scheme* (《关于企业实行不定时工作制度和综合计算工时工作制的审批办法》), Article 3, promulgated in 1994. The same criteria are also reiterated in the Ministry of Labour and Social Security's *Reply to Relevant Questions on Employees' Working Hours* (《关于职工工作时间有关问题的覆函》), issued in 1997.

² Shenzhen City People's Court issued the *Guiding Opinions for Questions Related to Labour Dispute Jurisdiction* (深圳市中级人民法院《关于审理劳动争议案件若干问题的指导性意见》(试行)) in 2009, Article 101 specifies that "Enterprises should be allowed to practice 6-day workweek with weekly working hours not exceeding 40. This work system should be regarded as a standard working hours system". The Jiangsu Provincial Committee for Labor Dispute Arbitration issued the *2007 Log of Jiangsu Province's Labour Dispute Arbitration Cases* (江苏省劳动仲裁案件研讨会纪要(2007年)), Paragraph 6 of the log states clearly that "It does not violate relevant regulations for enterprises to specify in its internal rules to practice 6-day workweek with overall hours not exceeding 40 hours per week".

³ The *PRC National Labour Law* (<中华人民共和国劳动法>), Article 44, promulgated in 1994, states requirement for overtime payment at not less than 150% of normal wages for extended working hours, and at not less than 200% of normal wages for overtime work on rest days for which compensation leave cannot be arranged, and also at not less than 300% of normal wages for overtime work on statutory holidays. As such, a factory practicing 6-day workweek should make sure that at least 150% of normal wages are paid to workers for overtime work on all 6 normal work days.