



Base Code Guidance: **Working hours**



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1 Introduction

Your company depends on its workforce and those of your suppliers to meet orders, and workers want to work to earn money. However, the combination of these factors can lead to excessive working hours that can negatively impact your company and workers' well-being.

Clause 6 of the ETI Base Code on working hours (see box 2), which was revised with effect from 1 April 2014¹, helps clarify your responsibilities as an employer, while ensuring that workers' fundamental rights on working hours are upheld. It is one of the most important Base Code clauses along with freedom of association, living wages and discrimination.

The purpose of this document is to provide practical guidance on implementing the clause on working hours. It is primarily aimed at retailers and brands that want to ensure that they and their suppliers are following the Code. It offers practical steps that brands can take to work with and support their supply chain business partners and also looks at how they can implement clause 6 within their own company's HR policies.

It should therefore be useful to both companies that are new to the ETI Base Code and need assistance on how to revise policies and procedures to ensure they are following the working hours clause, as well as any companies currently following the Code who want to review or refresh their compliance.

See the Annexes for FAQs, a summary of common working hours problems and suggested controls, and guidance on working hours legislation in China.

THE BUSINESS CASE FOR AVOIDING EXCESSIVE HOURS

1

Regulating working hours is important not only for workers' health and safety but also for the company. Respecting limits on working hours helps **meet legal requirements, avoids penalties and meets customers' requirements**. Ensuring that workers work a reasonable number of hours – and that these hours are agreed to by the worker – can improve worker satisfaction, morale, safety and welfare. These benefits to workers can also bring **business benefits**, such as:

- Increased productivity due to better worker health and increased alertness. Well-rested workers generally work faster and make fewer mistakes.
- Reduced staff turnover.
- A more harmonious workplace as rested workers are less irritable and less likely to conflict with co-workers or senior staff.
- Increased business from customers.

¹ A previous version of this Guidance document was produced in March 2014 to introduce companies to the revised clause and help them start the process of compliance. This current Guidance supersedes that document.

1.1 ETI BASE CODE CLAUSE 6

- 6.1** Working hours must comply with national laws, collective agreements and the provisions of 6.2 to 6.6 below, whichever affords the greater protection for workers. Sub-clauses 6.2 to 6.6 are based on international labour standards.
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- 6.2** Working hours, excluding overtime, shall be defined by contract and shall not exceed 48 hours per week.*
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- 6.3** All overtime shall be voluntary. Overtime shall be used responsibly, taking into account all the following: the extent, frequency and hours worked by individual workers and the workforce as a whole. It shall not be used to replace regular employment. Overtime shall always be compensated at a premium rate, which is recommended to be not less than 125% of the regular rate of pay.
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- 6.4** The total hours worked in any seven-day period shall not exceed 60 hours, except where covered by clause 6.5 below.
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- 6.5** Working hours may exceed 60 hours in any seven-day period only in exceptional circumstances where all of the following are met:
- this is allowed by national law;
 - this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;
 - appropriate safeguards are taken to protect the workers' health and safety
-
- 6.6** Workers shall be provided with at least one day off in every seven-day period or, where allowed by national law, two days off in every 14 day period.

*International standards recommend the progressive reduction of normal hours of work, when appropriate, to 40 hours per week, without any reduction in workers' wages as hours are reduced.

1.2 CLAUSE 6 AND INTERNATIONAL STANDARDS

It is important to remember that clause 6 (specifically items 6.2 to 6.6) is based on international standards on working hours. *International standards are considered at the core of and fundamental to the ETI Base Code, and working hours are no exception.*

Relevant ILO conventions:

- C1: Hours of Work (Industry) Convention, 1919
- C14: Weekly Rest (Industry) Convention, 1921
- C47: Forty-Hour Week Convention, 1935
- C171: Night Work Convention, 1990

Other relevant international standards and guidelines:

- The **Universal Declaration of Human Rights** (1948) states that all persons have the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay (Article 24).
- The International Covenant on Economic, Social and Cultural Rights (1966) addresses labour rights in article 6, which states that workers are entitled to sufficient rest and leisure, including limited working hours and regular, paid holidays.
- ILO Recommendations also address working hours, such as the Reduction of Hours of Work Recommendation, 1962 (No. 116).

1.3 WHAT DOES CLAUSE 6 MEAN FOR MY COMPANY?

Any company that follows the ETI Base Code needs to comply with clause 6. Companies that use audits to check on their suppliers' compliance with the ETI Base Code should note that such audits must be conducted to the new standard (which was revised in 2014). The clause now provides greater precision on a number of points and offers clear provisions on hours per week, overtime and rest days.

To meet the requirements of clause 6, you may need to revise the processes that you use to manage working hours (such as production planning to avoid long hours) and update your policies and procedures to ensure that:

- Workers do not work over the legal or ETI limits for regular or overtime hours.
- Workers are given one day off in seven.
- Legally required breaks are provided to workers during their working day.
- Workers are paid a premium for their overtime hours, which should be in line with legal requirements or at least the recommended 125% of the regular rate of pay.
- Overtime is voluntary and undertaken with the agreement of workers.
- Workers' hours are accurately recorded, preventing underpayment of wages.

It is important that your updated processes are accurately documented and communicated. You should also regularly monitor processes to make sure they are working, making adjustments if your policy objectives are off track.

As you make changes to your policies and processes, take care to work with others, such as trade unions². Trade union negotiations and worker agreement as part of this process are not only necessary but also helpful (see box 3).

The next sections of this Guidance document will take you through the steps needed to meet the requirements of clause 6.

NEGOTIATE WITH TRADE UNIONS

3

If there is a trade union present at the company, you will have to re-negotiate the collective agreement as part of the process of implementing clause 6.

The trade union will be able to help you understand how any changes will impact on workers.

Make sure the union is involved in all stages of your company's revision process. If the company has unionised sub-contractors, ensure that there is enough time for those negotiations.

Once the negotiation process is complete, communicate the new agreement with the union to all managers, supervisors and workers. The trade union can also help communicate changes to workers thus ensuring a smoother and more effective transition.

² If there are currently no trade unions, companies should allow or facilitate workers to set up and join trade unions and encourage collective bargaining. This Guidance document refers to trade unions throughout as the ideal, but with the understanding they are not always in place.

2 Steps for implementation

In order to effectively implement clause 6 on working hours, you will need to **review all of your company's policies, procedures, communication mechanisms and documentation systems**. All processes used to manage working hours should comply with its wording. Problems arise when actions and processes designed to prevent excessive working hours are either poorly maintained or are not implemented at all. Your company should undertake analysis and evaluate the **root causes** of potential issues around working hours in order to develop effective and longer-term solutions.

2.1 REVISING POLICIES

The **written policies** that define your commitments and describe your practices may need to be updated to meet the ETI standard. For your policies on working hours to comply with clause 6, they should include:

- A restriction on working more than 48 regular working hours per week.³ Ensure you understand local legal requirements, since you must follow whichever limit is stricter. Many countries have laws prescribing a 40-hour regular work week (see, for example, Annex III Clause 6 and Chinese law).
- A requirement to provide all workers with at least one day off per seven-day week. Where national law allows, this may be met by giving two days off in every 14-day period.
- A statement ensuring that overtime will be used responsibly, per ETI guidance.
- A limit on overtime that follows legal or ETI requirements, whichever is stricter. Total working hours should not exceed 60 per week except under rare and exceptional circumstances and only if permitted under local law.⁴ Make clear in the policy that under no circumstances should workers' health and safety be compromised by excessive working hours. Any work over 60 hours per week can only be considered under a collective agreement that is freely negotiated with a workers' organisation representing a significant portion of the workforce.
- Clear separation between regular and overtime working hours. For example, your policies might state when overtime hours begin and end within various shifts.
- A statement that all overtime is voluntary and agreed to by workers. Workers should not face penalties of any kind for refusing overtime, including threats, intimidation or loss of opportunity for other overtime work. The policy should guarantee that all workers under the same skill band or job category have the same chances to work overtime and detail the process for workers to approve, accept or refuse overtime work.
- Where employment contracts or agreements exist, they should specify regular hours, rest days, overtime hours and overtime pay. They should also state that overtime work is voluntary.
- An undertaking to pay for overtime work at a premium recommended to be no less than 125% of regular wages (higher if required by laws or a collective agreement). Be aware that many countries legally require that overtime premiums be a minimum of 150% or higher if, for example, the overtime is worked on a holiday.
- A commitment to co-operate on a regular basis between worker representatives and staff handling wages and benefits to ensure that all hours worked, including overtime hours, are paid in full and on time.
- A grievance procedure to record and respond to all complaints related to issues of working hours and prescribing outlets for workers to ask questions about your policies, with prompt and clear responses. Policies should encourage workers to report cases of concern within clause 6, including inability to refuse overtime or cases of unsafe situations due to working long hours.
- A statement that any agencies or business partners recruiting and managing workers on your behalf (such as contract or agency workers) must follow all of your policies on working hours.

³ For peripatetic workers UK law now includes travelling time, which should be included in contracts and wages. For example, if a worker has to be at a pick-up point and travels for an hour to his or her place of work and works there for 8 hours before being dropped back, that is 10 working hours.

⁴ Clause 6.5. See section 1.1.

SAMPLE QUESTION ON OVERTIME LIMITS

Q. In Sri Lanka, legally permitted normal working hours for the garment industry is 45.5 hours and legally permitted overtime per week is 14.5 hours. So far, as an ETI-compliant supplier, we are following the 12 hours overtime per week principle. That means a total of 57.5 working hours. As per clause 6, can we go for 14.5 overtime hours per week (which would mean a total of 60 working hours per week)?

A. Strictly speaking, increasing overtime hours to 14.5 would not contravene clause 6. However, the footnote to the clause states: "International standards recommend the progressive reduction of normal hours of work, when appropriate, to 40 hours per week, without any reduction in workers' wages as hours are reduced". It is also important to bear in mind that all overtime shall be voluntary; overtime shall be used responsibly, taking into account the extent, frequency and hours worked by individual workers and the workforce as a whole; overtime shall not be used to replace regular employment; and overtime shall always be compensated at a premium rate. It is also vital that any proposed increase in overtime hours is discussed and agreed with workers and their representatives.

As noted above, trade unions should be consulted from the start when drafting updated policies. In addition, you need to support your suppliers in updating their policies in order to comply with the ETI Base Code. This could mean answering questions, helping to interpret the wording of clause 6 and making sure they have resources (such as this Guidance document).

HOW DOES THE COMPANY ENSURE THAT OVERTIME IS VOLUNTARY?

4

Overtime must be voluntary and workers must agree to work extra hours. Use the following methods to demonstrate that overtime is voluntary in practice:

- Company policy clearly states that workers may sometimes be asked to work overtime but that they can refuse without fear of penalty or harassment.
- The company gives workers at least 24 hours notice when scheduling overtime. This also gives the business time to make other arrangements in case some workers cannot do so (eg to find other workers who can do the work).
- Workers sign a consent form if they are willing to work overtime each time they are asked.
- Overtime arrangements have been negotiated with the workforce and are described in a collective bargaining agreement.
- There is a grievance process in place that workers can use to report violations of the working hours policy.
- Employment contracts or agreements state that overtime is voluntary and specify the overtime – up to 12 hours per week – that workers may be asked to work.
- Where transport is provided, it should be available at the end of the standard shift as well as the overtime shift.

BREAKS AND REST DAYS

5

Laws and standards that regulate the provision of breaks after every three or four hours of work exist for important reasons. They are based on research indicating that continuous work in excess of those hours contributes to fatigue as well as a slowdown in brain and motor skills. A 15 minute break allows workers to recharge their energy and produce better quality output. Pregnant and breastfeeding women will need more rest time.

Laws that stipulate the provision of at least one rest day a week and holiday leave recognise the importance of a reasonable, work-life balance. This ensures that other aspects of a worker's life – family, leisure and educational and vocational pursuits – are fulfilled. Take into consideration the additional unpaid domestic work that women workers are usually expected to do and consider how you can alleviate this – eg by providing a crèche or transport to/from work. These aspects contribute to the worker's overall well-being and continuing development, which benefits the company by reducing absenteeism and tardiness, increasing worker productivity and improving the quality of outputs.

2.2 UPDATING PROCEDURES

Once written policies are updated, it is critical that you **review and update procedures** to make sure these are effective in complying with clause 6. Either a person or a department, depending on the size and nature of your business, should be assigned to make sure the policies are carried out in practice. Make sure there is a person or team assigned to work with your suppliers and guide them through implementation.

Please see 3.2 for details of training on clause 6 available from ETI.

Much like written policies, it is likely that companies already implement many procedures for working hours, but you should review them all while considering compliance with clause 6. For example, it is likely that you already provide your workers with pay slips. However, in order to demonstrate you are meeting the requirements in the clause, you should make sure pay slips clearly distinguish between regular and overtime working hours and also show overtime pay separately.



SAMPLE QUESTIONS ON BREAKS AND REST DAYS

Q. If there is an in-work rest break that is paid, and our employees are requested to remain on site for the duration of that break, is this still considered as working time?

A. A paid rest break would not count as working time, but if a worker is required rather than 'requested' to stay on site, it may be considered as working time. Clear records of working hours and rest periods should be kept. Employers should also check the requirements of national legislation, which may be stronger than the Code in some cases.

Q. If a worker works from Tuesday to Sunday, and then Monday – the day when the worker would normally not be working – is a national holiday, would our company be in compliance with clause 6 if we did not provide an extra day's holiday?

A. As long as the worker has at least one day off in seven or two days in 14 if allowed by national law, and if this is what was agreed in the worker's contract, your company would not be contravening the working hours clause. However, if national law stipulates that workers are entitled to national holidays regardless of whether or not these fall on a day when the worker would not normally be working, then public holidays should be given in addition to the ETI standard.

Make sure HR procedures cover:

- A work scheduling process that limits regular working hours to 48 hours per week for all shifts, workers and staff, limits overtime to within legal limits (or such that weekly working hours do not exceed 60 hours per week) and ensures all workers are given at least one day of rest (that is, 24 consecutive hours) per seven days worked, or at least two days off per each 14-day period if this is legally allowed. When scheduling work, bear in mind that women workers often have heavy additional domestic workloads on top of the hours they work for your company or your suppliers.
- An overtime scheduling and approval process that makes sure workers either agree to or are free to refuse any overtime offered. This may be specified in updated employment contracts or collective bargaining agreements (if relevant).
- An accurate time recording system in which all workers record their own working hours. This is important since it creates transparency regarding hours worked. Make sure that supervisors and security guards do not record hours worked for employees.
- A payroll system that provides workers with pay slips indicating the number of regular and overtime hours worked for the pay period, plus any deductions or other relevant items.
- A process to make sure accurate records are kept of the hours (both regular and overtime) that each employee works.
- A process to change existing worker employment contracts or agreements to match your policies on working hours that meet clause 6 requirements. Remember that both existing contracts and those for new employees should comply with clause 6.
- A process to negotiate with trade unions and work with employees to make sure all are in agreement about the changes. You may also have to re-negotiate collective agreements.
- Worker input and feedback. Consult with the trade union or, if there is no union active at the company, gather worker input and reflect their feedback in your implementation process. Ensure that information is gathered in such a way that women workers feel free to make their needs and concerns known – eg anonymous surveys, women-only focus groups – especially in countries where a patriarchal culture is the norm.

In addition, work closely with any suppliers to help them revise procedures accordingly. Make sure they have access to guidance and training materials and, importantly, answer their questions promptly and clearly. Suppliers will need your support through the implementation process.

SAMPLE QUESTION ON 12-HOUR SHIFTS

Q. Our shift pattern – introduced six years ago with full consultation – involves two teams (when one is working, the other is off). They work 12-hour shifts 6 am–6 pm on four days one week and three the next, averaging 40 hours per week. We do not work much overtime but do have contract staff to work up to 40 training hours per year, which takes place on days off. In terms of pay rates, we use the Mondri Calculator, which values every hour of the week – eg 10 am on a Sunday morning is worth more than 10 am on a Monday morning – and calculates one hourly rate for all hours worked, including any overtime. Our rates of pay are consistently in the upper quartile of those paid in our sector.

A. Your shift system complies with national law as it does not exceed 48 hours per week, working hours are defined by contract and workers get at least one day off in each seven-day period. In these respects it does not conflict with the Base Code. However, areas you may need to consider further are:

i) The voluntary nature of shifts: Best practice would be for the system to be covered by a freely negotiated collective bargaining agreement with a workers' organisation representing a significant portion of the workforce that includes an option for workers with family responsibilities to work a conventional working week (please refer to ETI Base Code clause 7 on discrimination).

ii) Daily working hours: There is a duty in the Base Code and national law to provide a safe system of work, which must prevent excessively long work shifts or continuous working. In many countries, national laws contain provisions related to either maximum daily working hours, minimum daily rest hours and rest days. Remember too that ILO Convention No 1 (1921) calls for the adoption of an 8-hour maximum day.

iii) Overtime payment: Please consider how workers can check their overtime is correct when they are paid on a single hourly rate as this must vary with the overtime hours worked.

iv) Legislation: In the UK, every employee has the statutory right to request flexible working after 26 weeks employment service.

See: www.acas.org.uk/index.aspx?articleid=1616

2.3. TRAINING AND COMMUNICATION

It is important that your policies and procedures are disseminated among managers, supervisors and workers. You should use a variety of communication methods so that all employees understand how their responsibilities have changed. Use the following methods to make sure your employees are aware of policies and procedures on working hours:

- Provide training programmes⁵ for existing managers, supervisors and workers as well as for new managers and supervisors and new employees on your company's policies and procedures on working hours and time off. This will ensure that your procedures become a normal part of day-to-day business.
- Regularly retrain all employees – management, supervisors and workers – on the procedures for assigning and refusing overtime.
- Ensure that your training and communication efforts are suitable for women as well as men and cover all types of workers (eg domestic migrants, foreign migrants, apprentices, temporary workers, trainees, probationary workers and so on).
- Prominently display updated company policies, laws, regulations, the ETI Base Code and employee rights on working hours (in a language workers understand) and include them in an employee handbook that is given to each worker.
- Work with trade unions or worker representatives to coordinate communication efforts. Make sure the re-negotiated collective agreement is communicated to all employees.

You should also work closely with suppliers to ensure that they implement clause 6 effectively. Use a combination of the following methods to support them:

- Make sure suppliers are clear on how to interpret the wording. Point them to the interpretation document⁶ and answer any questions they may have after reviewing it.
- Alert suppliers to ETI guidance materials, such as this document, as well as the training sessions provided.
- Ensure suppliers have one or more contact persons available to answer questions. Tell suppliers clearly that you are available to support them.
- Provide in-house briefings to suppliers. Doing this in person is best.
- Check in regularly on progress and help suppliers if they are not on track.

⁵ Please see 3.2 below for details of training on clause 6 available from ETI.

⁶ This resource is available at: www.ethicaltrade.org/resources/working-hours-eti-base-code-guidance



COMMUNICATING POLICY AND PROCEDURAL CHANGES

6

Communication is always more effective if you use multiple methods. In addition to regular training sessions, use some or all of the methods below to ensure your message on working hours is received:

- Create summaries of key policy revisions and display them on notice boards.
- Work with trade unions to communicate messages.
- Display reminders in workers' accommodation if provided.
- Hold meetings where workers can ask questions on changes.
- Make sure communication is in a language that workers understand, especially migrant workers
- Verbally explain changes to workers who may not be able to read. Remember that in some countries, women's literacy rates are much lower than men's.
- Use team meetings and other forums to reinforce key updates.
- Require recruitment agencies or any party managing HR on your behalf to communicate messages.

WORKING HOURS AND HOMEWORKERS

7

Homeworkers deserve equal treatment to other workers and equivalent access to benefits even where these are not required by national law. Benefits should be covered in contracts, as for any other type of worker.

Homeworkers who are paid by the hour are entitled to the limits on overtime and premium payments of clause 6. However, many homeworkers are paid by production or piece rate. Their work may also be irregular, which means that working hours vary widely. They may be expected to work long hours with no overtime pay and are unlikely to refuse if there is no guarantee of regular work. This may not be visible to companies, especially where work is distributed down sub-contract chains, so it is important to make your position on homeworkers and clause 6 clear to suppliers. Many homeworkers are women living in cultures where speaking out for themselves is discouraged. See ETI's homeworker guidance for ways to overcome this.

- Homeworkers should be paid piece rates that are equivalent to or greater than the legal minimum wage or industry benchmark standards, whichever is the highest, or the minimum wage for a factory worker doing the same task. For guidance on setting piece rates go to www.ethicaltrade.org/in-action/programmes/homeworkers-project/guidelines and scroll down to 'Additional guidance'.
- Once an equitable piece rate has been agreed, this should be used to calculate how many hours work given to homeworkers will take. Homeworkers should not be obliged to complete more work than can be done in the regular hours for your site.
- Avoid giving unreasonable deadlines for orders. When short deadlines are unavoidable, a premium can be added to the piece rate, as defined for a factory worker doing the same task.
- Assess the capacity of homeworking contractors to ensure that their pool of workers is large enough to meet your order without demanding excessive hours.
- Homeworkers should not be penalised if they refuse or are unable to complete extra work.
- Simple documentation (eg homeworker log books) should be used to monitor work given to homeworkers; these can be used to demonstrate that homeworkers' hours of work are not excessive.

2.4 IMPLEMENTATION IN PRACTICE

The best plans, policies and procedures will not eliminate the challenges in implementing clause 6. Overbooking, poor capacity planning, unanticipated client demands, production mistakes, high absenteeism and a lack of flexibility in workers' skills are typical contributors to the need to work excessive overtime. Suggestions for managers to reduce the need for overtime and comply with clause 6 include:

- Set reasonable production targets and schedules based on realistic labour efficiency rates. Measures of worker productivity form the basis for setting targets and schedules. If the efficiency rate is unreasonably set, the timetable is naturally affected and workers will have to work overtime to complete their targets. Make sure that labour efficiency rates consider set-up time and allow sufficient time for workers to eat, rest, stretch and go to the toilet. Failure to consider these factors could result in other, more serious conflicts with the ETI Base Code.
- Closely coordinate HR plans and production targets. Suppliers' capacity planning should consider past client demands, the complexity of the production process and workers' skills and how these will affect your efforts to implement clause 6.
- Continually upgrade workers' skills through training, mentoring and coaching. Having workers with skills that match their jobs reduces the amount of unnecessary extra work, which often leads to the need for irresponsible overtime. Having multi-skilled workers who are competent in more than one operation allows more flexibility and efficiency in the production process, which in turn increases productivity. Ensure that women workers have equal access to all training opportunities, including management training and skills for jobs that are traditionally considered "male" roles.
- Improve communication with supervisors and line managers and between line managers and workers. It is critical that you involve workers throughout the process. Reduce errors that could cause costly delays by holding team meetings and giving clear instructions. Ensure there is no bullying or abuse (which may particularly be the case when the majority of workers are women and the majority of supervisors are men). Pay special attention to feedback from trade unions and worker representatives on your efforts to comply with clause 6.

Excess overtime may be a sign that companies need to improve human resources and industrial relations. Workers who are treated with respect by supervisors, who have been properly trained and who are well paid will be more productive. Managing working hours effectively cannot be done overnight, so make sure you think about all of the different ways you can meet your implementation plans.



MANAGING PRODUCTION DEMAND FROM DIVERSE CUSTOMERS

8

Your supplier probably has many customers, each with different production and delivery requirements. They may also have different social responsibility codes of conduct.

It is important that suppliers develop management practices to avoid peaks, and negotiate achievable lead times bearing in mind all orders. Suppliers should be encouraged to communicate with customers and warn them if they are creating demand peaks.

2.5. DOCUMENTATION

You need to make sure your processes for meeting the requirements of clause 6 are well documented. This not only helps track changes in practices but also ensures that practices are transparent and accountable.

In order to keep working hours within the limits stipulated in the Base Code, you must keep impartial, accurate and transparent records. These should show how many hours (both regular and overtime) are being worked and how often and for how long workers are allowed to rest. Documentation also serves as a means for identifying working hour trends and highlighting problem areas responsible for excessive hours. It is also important to check that written records match actual practice; under-recording working hours is the most common way that unscrupulous employers get around payment of the legal minimum wage, for example.

While companies will have different approaches to keeping time and payroll records, to comply with the requirements in clause 6 the documents should always include:

- Accurate records of hours worked for each employee, such as workers' pay slips and summary reports generated from timekeeping and payroll systems.
- Accurate reflection of regular and overtime hours worked and the rates paid in the payroll register and on pay slips.
- Clear separation between regular and overtime hours in all working hours' documentation. (See FAQs for further guidance on consolidated hours)
- Records of any complaints related to either inaccurate recording of working hours or inaccurate wage payments based on recorded hours (both regular and overtime).
- Employment agreements (updated or issued to new employees) that show regular hours expected, the process for requesting workers to work overtime and what rates will be paid.
- If relevant, a collective bargaining agreement on working hours.

Make sure documents are kept for all types of workers (including temporary or seasonal) and for any agency workers.

Employment agreements must include detailed information regarding work hours/schedules and pay rates as well as an express statement that overtime is strictly voluntary. Workers' signatures should be secured on the agreement. A complete copy of any collective bargaining agreement governing working hours and wages should be kept on file to ensure cooperation and compliance.

RISK CONTROL: MONITOR EXTERNAL AGENTS

9

A major source of risk for compliance to any social requirement is when workers are employed by an external recruitment agent. In many cases, these agents are responsible for HR functions among the workers they recruit (such as recording hours and paying wages). Your company might use these agents to recruit temporary workers, for example.

It is critical that you require agents to follow your company's policies and procedures on working hours. If during the busy season, 50% of your workforce is temporary and you are only monitoring your own direct workers, you are ignoring half the workforce. You will also want to monitor agency workers' hours to ensure that the combined hours they are working for you and for other agency clients does not exceed ETI or legal limits.

2.6. MONITORING IMPLEMENTATION AND IMPACT

You will need to monitor whether your policies on working hours are being followed and that the processes are effective. Use the following steps to evaluate and improve the effectiveness of your programmes:

- Monitor trends and key performance indicators (KPIs) to identify actual and potential problems relating to your policies on working hours. This might include looking at total overall number of hours, including overtime, worked by individual workers and by groups of workers; regular hours; overtime hours; and rest days.
- Monitor and evaluate trends in recruitment, production needs, working hours and other functions and data to help you comply with the wording on regular and overtime hours. This will also help you plan overtime hours accordingly to keep within ETI limits.

- Regularly review the compensation process to make sure that overtime hours are paid correctly.
- Perform random checks of the working hours listed on workers' pay slips against timekeeping system records to make sure that hours are being properly recorded. Working hour totals are only as accurate as they are verifiable by documentation from at least three sources: personal time records, payroll registers and workers' pay slips.
- Encourage and obtain feedback from workers on problem areas. If there is a trade union at your company, this will be an excellent source of feedback for you.

NB While audits may form a useful part of an overall monitoring strategy, they should not be solely relied on to tackle issues such as excessive working hours.



SAMPLE QUESTIONS ON FLEXTIME AND PAY DEDUCTIONS FOR LATENESS

Q. My understanding is that there are core hours, times when you have to be there and flexible start/end times but that overall in a four-week period you must have worked your total standard weekly hours – ie, 37.5 x 4. However, if you work more than 150 hours over four weeks, you can take this time off rather than claim it as overtime. Is this correct?

A. The ETI Code does not rule out the use of flexible or annualised hours, as long as all of the criteria set out in clause 6 are met. However, if the contract states that workers are paid for 150 hours per 4 weeks, then everything above this is overtime and should be compensated at a premium rate. Having time off in lieu is not a premium. It is important that any flexitime system is agreed with the trade union.

Q. If an employee is hourly paid and clocks in after their start time, and is then not paid for the minutes or hours lost due to the lateness, is this considered a deduction of earnings/ wages for the purposes of ETI? Our workers' contracts state that they are paid from their contract start time or time they clock in, whichever is later. For example, if an employee is due to start work at 8.30 am but clocks in at 8.33 am, we pay them from 8.33 am.

A. If this is covered by the worker's contract and is understood by the employee it is acceptable, as long as you are not using a clocking in system that calculates pay on 15-minute increments, as this would mean in this case the worker was doing unpaid work for 12 minutes. Also, if they work an extra three minutes at the end of the working day, then they have completed a full day and this should also be understood by all parties as it may be used in the calculation of overtime.

CAN WORKERS EXCEED 60 HOURS PER WEEK?

10

Generally, no. However, ETI clause 6.5 does make some exceptions in cases where local law and collective agreements allow this practice. In addition, exceeding 60 hours per week can only happen under exceptional circumstances and when workers' health and safety are guaranteed. Note that ALL FOUR criteria in this sub-clause must be applied before 60 hours can be exceeded.

The term 'exceptional' means just that – something has to happen that you cannot predict. If you have a peak season every year (eg right before December holidays or Chinese New Year), this is not considered exceptional since it happens annually.

On the other hand, if a supplier's customer doubles the typical order and needs delivery right away, this is exceptional since you had no way to foresee it (which is why it is important for sourcing companies to avoid making changes at short notice like this). Other examples of exceptional circumstances include machine/plant breakdown and early harvesting. (See also 2.7 Responding and investigating)

However, you will need to have agreed to this exception with your workforce in advance and even then only within the maximum number of hours permitted by national or local labour laws.

The rule is that you must always follow legal requirements, or the revised ETI guidance if it is more stringent than local regulations.

2.7. RESPONDING AND INVESTIGATING

Investigate potential problems and concerns and analyse why they occur. When a situation arises that indicates the existence of a potential problem in complying with clause 6, the company should investigate the root cause and what can be done to address it.

For example, if you find that some workers did not get a day off in every seven days or worked more than the legal limit for overtime, find out why this happened – whether because of unexpected circumstances such as a rush order or broken equipment, or due to a larger problem such as high staff turnover or unreasonable production quotas. If this is the case, dig deeper and find out why these problems have arisen. For example, the broken equipment may be so because of the excessive hours it has been working without maintenance, the rush order may have been delayed within the internal system and not a last minute request etc. What changes will need to be made by either the buyer or the supplier to ensure that such problems do not recur?

If your company has multiple suppliers or a large supply chain, it is important to collect data from across all components of your business. Examine trends at various levels – from overall across the company through to individual suppliers or business units:

- Look for particular suppliers or business units where hours are excessive and that might need more help or training than others.
- Look for particular suppliers or business units that are more successful in managing hours. This could help you identify good practices for replication elsewhere.
- Work with trade unions to find solutions for potential problems. Workers themselves are among your best resources for finding answers to problems as challenging as managing working hours. Ensure that the voices of women workers are being heard.
- Look for trends, such as particular times of the year when overtime is excessive, which could be used to help focus resources and management efforts.
- Compare data against multiple factors – such as geography, particular production processes, seasonal production spikes and reliance on seasonal or temporary workers.

The better and more comprehensive your data is, the better you will be able to identify risk and the areas where more efforts will be required to meet the requirements in clause 6.



3 Additional resources

3.1. ONLINE RESOURCES

The following organisations, websites and documents provide additional information on working hours:

- ETI website: www.ethicaltrade.org
- The ETI Base Code: www.ethicaltrade.org/resources/key-eti-resources/eti-base-code
- ETI Interpretation Note on ETI Base Code Clause 6: Working Hours (with particular focus on the revision of the clause 6 wording in 2014): www.ethicaltrade.org/resources/working-hours-eti-base-code-guidance
- ETI training www.ethicaltrade.org/training/working-hours
- International Labour Organization: International labour standards on working time: www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_TIM_EN/lang-en/index.html
- The Sedex Members Ethical Trade Audit (SMETA), developed by the Associate Auditor Group of the Supplier Ethical Data Exchange (Sedex), offers detailed guidance on auditing. It incorporates best practice guidance on conducting ethical trade audits; instructions on the items to be checked by auditors; a common audit report format; and a common corrective action plan format. For more information, see: www.sedexglobal.com/ethical-audits/smeta/
- Verité: www.verite.org
- For Workers' Benefit – Solving Overtime Problems in Chinese Factories: www.verite.org/sites/default/files/Chinese_Overtime_White_Paper.pdf

3.2. TRAINING RESOURCES

ETI offers a half-day training programme on understanding and implementing the ETI Base Code working hours clause. This workshop provides the opportunity to gain further clarity on the wording, guidance and process of implementation as well as to discuss any issues relating to supply chain implementation. Please see ETI's website for further details: www.ethicaltrade.org/training/working-hours

ANNEX I. FAQs

1. What are the maximum contracted or required hours under the ETI Base Code?

Normally 48 hours per week, unless a lower figure is set by national law or a collective agreement. Where "averaging" is allowed, the average required hours should not exceed 48 and the total should not exceed 60 hours per week unless all of the following conditions are met: (i) it is allowed by national law, (ii) it is covered by a collective agreement, (iii) appropriate safeguards are in place and (iv) there are exceptional circumstances (as per sub-clause 6.5)

2. What does "averaging" mean in the context of UK law?

UK Working Time Regulations allow the legal maximum limit of 48 hours per week to be exceeded in any one week as long as the average number of hours over 17 weeks (the reference period) does not exceed 48 hours per week.

3. Which standard should be applied if the ETI 60-hour limit on weekly working hours is stricter than country law?

The Code should apply. The 60-hour limit includes all overtime, which must be voluntary and only exceeded if four specific conditions are met (see question 1).

4. What is considered to be a "significant portion of the workforce"?

It depends on the circumstances. Where national law on collective agreements provides for derogation from working time rules (eg Regulation 23 of the Working Time Regulations 1998 in the UK), this should be followed. If there is no relevant rule, this provision aims to ensure that agreements with organisations representing small numbers of workers do not remove protections from the whole workforce.

5. Can the 60-hour weekly working hour limit be exceeded in seasonal work?

No. Seasonal work is not considered to be an exceptional circumstance as that the work, while irregular, is predictable.

6. Can a worker work more than 60 hours per week by averaging the hours worked over a period of time?

The Code is very clear that a worker cannot exceed 60 hours in any one week unless four specific conditions are met (see question 1). This is an absolute weekly, hourly limit.

7. How can the company ensure that overtime is voluntary?

The employer should clearly communicate that workers are free to refuse overtime – and there will be no negative repercussions if they do. Employers must ensure that: doors or gates are unlocked to allow workers to leave freely (and any transportation provided is available at the end of the normal work day); daily production targets are achievable within standard working hours; overtime requests are not always directed at the same workers; workers are given sufficient notice of overtime so alternative arrangements can be made if they do not agree; and workers' agreement to perform overtime is documented.

8. If workers have signed a 48-hour week opt-out agreement in the UK, can any overtime they do be considered voluntary?

In the UK, workers over the age of 18 can choose to opt out of the 48-hour limit. This agreement must be made voluntarily in writing and can be cancelled with at least seven days' notice. However, signing the opt-out clause does not prevent workers from refusing to work for more than 48 hours per week as overtime must be voluntary. In addition, the Code takes precedent over opt-out agreements, workers should not work more than 60 hours in any week unless four specific conditions are met (see question 1) and a premium must be paid for any overtime.

9. When are part-time workers or workers with flexible hours contracts entitled to overtime premium payments?

Workers' contracts, collective agreements and national law will state when overtime payment starts. In some situations, part-time workers only get overtime premiums once they have worked more than the normal full-time hours for comparable workers. If this is the case, it should be clearly stated in writing when they start work.

10. Are workers allowed to work more than seven days without a rest day?

This depends on the law. The Code states that, if the law allows for workers not to have a rest day in each seven-day period, they must have two full days off in every 14-day period.

11. Are there limits on daily working?

The Code does not specifically regulate the number of hours, but a safe system of work precludes excessively long work shifts or continuous working due to health and safety risks. In many countries, national law will contain provisions related to either maximum daily working hours or minimum daily rest hours and rest days. ILO Convention No 1 (1921) called for the adoption of an 8-hour maximum day.

12. Who is responsible for paying overtime premiums to agency workers in the UK?

If workers are employed by an agency that contracts their services to a company, the agency is responsible. However, companies must ensure that the Code is respected in relation to all workers, direct or indirect (agency workers), and should assess whether the fees they pay to the agency are sufficient to allow for overtime premium payments. If the agency merely finds the workers, and the client employs them, the client is responsible.

13. Is it a problem if overtime is systematically requested of the same workers?

Potentially, yes. For example, in certain facilities, employers may offer overtime exclusively to migrant workers as there is a perception that they need less leisure time than local workers. However, local workers may perceive this as discriminatory because it prevents them from working overtime and earning more money – although workers should not have to resort to working overtime to earn enough to meet their basic living costs (see ETI's Base Code clause on Living Wages). Similarly, overtime should not be preferentially offered to workers who have previously been willing to work overtime as this may suggest a compulsion to work overtime in order to get a future opportunity to do so.

14. Clause 6.2 has a footnote reference to the ILO's 40 hours per week recommendation: would an ETI member be expected to ensure that their suppliers were actively reducing working hours to 40 per week?

No, although they might wish to encourage this and give preference to suppliers who have, for example, negotiated a shorter working week with their workforce. The international standards that underpin the Base Code establish 48 hours as the maximum length of the normal working week but also recognise the importance, in terms of workers' health and well-being, of moving to a shorter working week, over time and as appropriate and achievable in the national context.

15. Will ethical audits be expected to cover this footnote?

No, this footnote is a recommendation rather than a requirement. However, the length of the normal working week should be recorded as part of any audit, and it would be expected that employers explore options for continuous improvement that work towards achieving this. Employers are encouraged to discuss opportunities for reducing the working week with their employees as part of normal negotiations over conditions, and with the ETI member companies they supply.

16. If consolidated rates of pay have been agreed including a higher standard rate and lower overtime premium, does this comply with clause 6?

No. The existence of consolidated rates that include overtime hours assumes that overtime will take place, which runs against the principle of voluntary working and is therefore contrary to the ETI Base Code. Employers should clearly define the base rate and the overtime premium that is payable on that rate and should communicate this to workers, making it clear that the worker may choose not to work additional hours. If the latter is not the case and if it cannot be the case, then the ETI Base Code has been breached irrespective of any enhanced pay.

17. Why is the overtime premium rate of 125% a recommendation rather than a strict minimum?

The Base Code recommends that overtime be paid at a rate of not less than 125% of the standard rate. This is a recommendation rather than a strict minimum because we recognise that some companies may have a valid reason for paying less than 125%. For example, their standard rate may be higher than the prevailing rate. When overtime premium payments of below 125% are observed, there should be a conversation between the customer and the supplier to find out why the particular rate is being paid. The two parties can then decide whether this is reasonable and whether corrective action is needed. Bear in mind that this may involve changes to the brand/retailer's own purchasing and other business practices as much as the supplier's HR practices.

ANNEX II. SOME COMMON WORKING HOURS PROBLEMS AND SUGGESTED CONTROLS

Examples of non-compliance with ETI Base Code clause 6

Suggested company controls

WORKING HOURS (REGULAR AND OVERTIME) EXCEED LEGAL OR ETI LIMITS

This could mean:

- Regular hours exceed 48 in a week.
- Overtime limits exceed legal requirements.
- Workers work more than 60 total hours per week.

Clause 6 wording reminder:

6.1 Working hours must comply with national laws, collective agreements and the provisions of 6.2 to 6.6 below, whichever affords the greater protection for workers.

6.2 Working hours, excluding overtime, shall be defined by contract and shall not exceed 48 hours per week.

6.5 Working hours may exceed 60 hours in any seven-day period only in exceptional circumstances and when certain conditions are met.

Ensure policies on overtime indicate the start and end of regular working hours and follow limitations set by the law and ETI, whichever is stricter.

Establish a mechanism for overtime approval that requires sign-off for hours in excess of the code limits under exceptional circumstances.

Ensure that all managers, supervisors, staff and workers are aware of company policies related to hours and overtime.

Answer questions from workers, as well as other stakeholders, regarding hours and overtime policies.

Monitor and evaluate trends and practices related to clause 6 implementation and take measures to ensure that all laws and policies are being followed at all times.

Indicate specified hours of work in the employment agreements of all types of workers (ie, domestic workers, foreign contract workers, temporary workers, apprentices, trainees, probationary workers and so on).

Communicate policies on work hours to all employees by displaying them in prominent locations, uploading them on the company intranet and including them in the employee handbook that is distributed to workers.

Have national laws and regulations on working hours, including government limitations on overtime, easily available to workers in a language they understand.

OVERTIME IS INVOLUNTARY

This could mean:

- Workers cannot refuse overtime work.
- Workers must work overtime until production quotas are met.
- Workers must work extra time for disciplinary reasons.
- There is no transport available for workers who are not working overtime.
- Workers are not paid enough to meet their living costs within a standard working week.

Clause 6 wording reminder:

6.3 All overtime shall be voluntary. Overtime shall be used responsibly, taking into account all the following: the extent, frequency and hours worked by individual workers and the workforce as a whole. It shall not be used to replace regular employment.

Ensure your policy on overtime expressly states that this is, at all times, voluntary and that no penalties will be imposed on workers for refusing overtime.

Make sure the policy includes a provision on equal opportunity for overtime among all types of workers.

Communicate the company's policy that overtime is voluntary to all new and existing workers.

Make sure there is a way for workers to report cases of involuntary overtime to management.

Make sure any production quotas are reasonable and workers can finish them within legal and ETI working hours limits.

Ensure transport, where provided, is available at the end of the standard shift as well as the overtime shift.

Ensure workers are paid enough to meet their living costs without having to work overtime (see ETI guidance on living wages: www.ethicaltrade.org/in-action/issues/living-wage)

LEGALLY REQUIRED BREAKS ARE CURTAILED OR NOT PROVIDED

This could mean:

- Breaks are shorter than the legal minimum entitlement.
- Workers work through breaks to meet targets.

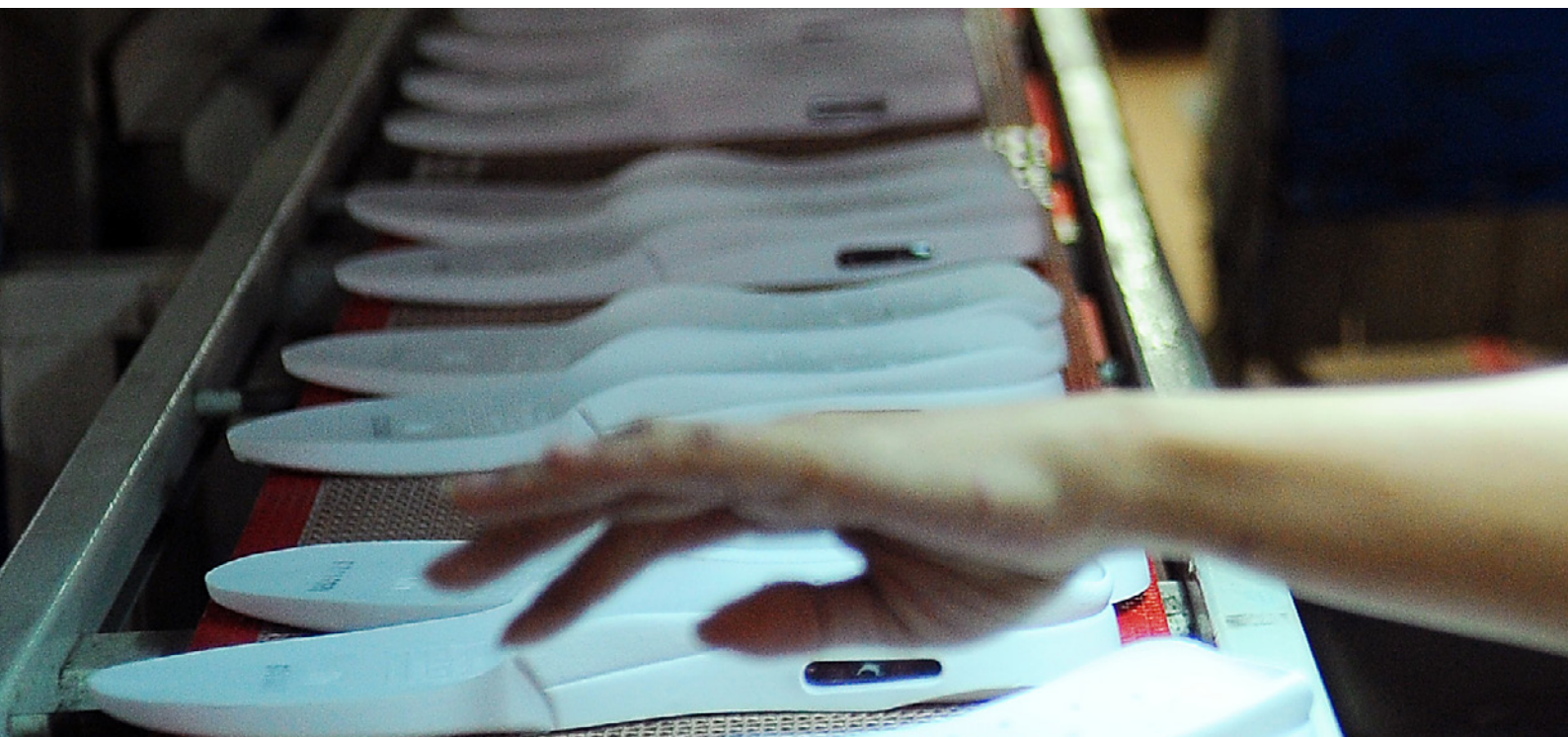
Note: Provision of breaks at work is almost always required by law and necessary in order to meet clause 6 requirements.

Establish a policy stating workers are to be provided with all legally required breaks.

Communicate the company's policy on breaks at work to all new and existing workers. This should include a policy on sufficient rest breaks for pregnant women.

Review production quotas, targets or other productivity requirements to make sure these can be achieved within ETI working hour limits.

Communicate to supervisors that practices such as working through breaks or other designated rest times is not permitted.



Examples of non-compliance with ETI Base Code clause 6

Suggested company controls

ONE DAY OFF IN SEVEN IS CURTAILED OR NOT PROVIDED

This might mean:

- Workers work on weekends.
- Workers are asked to give up their days off in order to meet quotas.

Clause 6 wording reminder:

6.6 Workers shall be provided with at least one day off in every seven day period or, where allowed by national law, two days off in every 14-day period.

Ensure company policy states that all workers receive at least one day off per week or, if legally permitted, at least two days off in every 14-day period.

Inform all workers (new and existing) of the company's policy on rest days.

Monitor and track all departments, paying special attention to areas of greatest risk, to make sure your updated policy is followed.

Communicate to different departments and supervisors that working on designated rest days is not permitted.

UNEQUAL ACCESS TO OVERTIME

This might mean:

- Permanent workers receive overtime while temporary workers do not.
- Workers who refuse overtime are denied future opportunities for overtime.

Note: unequal access to overtime could lead to other contraventions of the ETI Base Code, such as discrimination.

Commit to eliminating discriminatory practices. Practice fairness and provide equal opportunity for all workers.

Embed this policy into the production planning system and the company's wage/salary administration system. Ensure that women are paid equally to men for work of equal value.

Ensure that overtime work assignments are based on production needs and on clear agreement with the employee working overtime.

Ensure that any barriers to women volunteering for overtime are removed, eg by providing childcare and safe night- time transport.

NO RECORD OR INACCURATE RECORD OF WORKING HOURS

This might mean:

- Overtime hours show up as regular work hours.
- Manual records are poorly entered into a computer system.
- The time clock is broken.
- Workers are not clocking in and out themselves.
- There are systematic errors in recording systems.

Note: You must record working hours (regular and overtime) accurately in order to make sure you are meeting the ETI Base Code requirements.

Implement an effective and transparent time recording system.

Maintain accurate and transparent records of regular and overtime working hours for each employee.

Make sure regular and overtime hours are clearly distinguished in all documentation related to working hours.

Liaise on a regular basis with staff handling wages and benefits to ensure that all hours worked are paid in full and on time.

Communicate the company's policy on keeping accurate records of all work hours to all new and existing workers.

Implement practices that ensure workers personally record their hours (supervisors and security guards should not be recording workers' hours).

Ensure accurate recording of actual regular and overtime hours worked in the payroll register and on pay slips.



ANNEXE III - CLAUSE 6 AND CHINESE LAW ⁷

There are many instances of reported long working hours in China, which are in breach of not only the ETI Base Code but also national law. Chinese law, in fact, is often stricter than the Code and, wherever this is the case, should take precedence.⁸ The two main systems for determining hours of work in the manufacturing industry are: (1) basic hours – normal working time plus any overtime hours or flexible/ irregular hours not considered to be overtime; and (2) irregular hours – the consolidated working hours system and other variable working time patterns where daily and weekly working time can vary widely (these require government approval).

Key points:

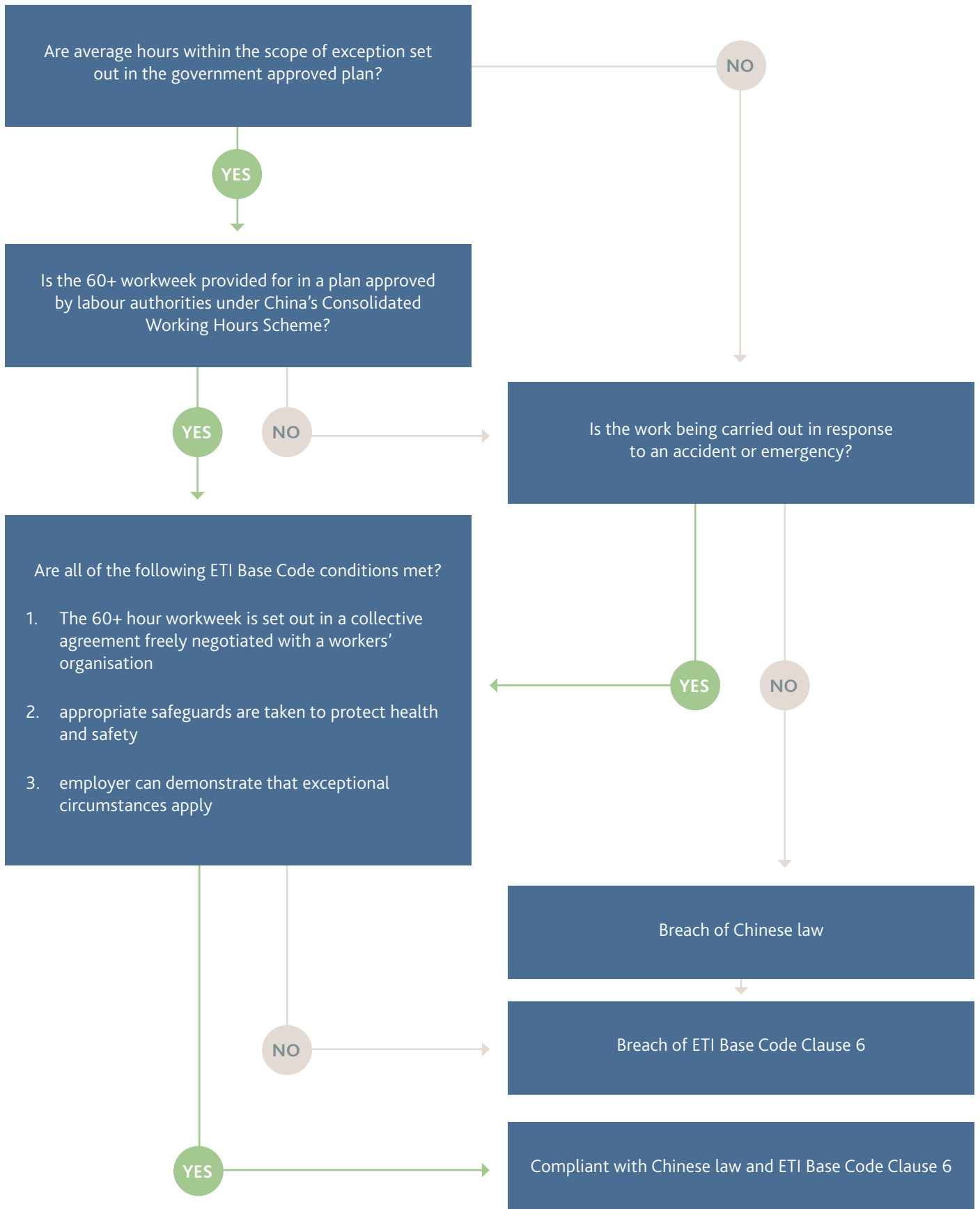
- Normal working time is 8 hours per day and 40 hours per week. Although the 1994 Labour Code provides for a 44-hour maximum work week (Article 36), Regulation 97896 subsequently lowered this to 40 hours per week.
- The maximum weekly working hours allowed under the basic working hours system (58) is less than the 60 hours provided for under the Base Code.
- China's consolidated working hours system allows for derogation from the basic hours of work system for certain workers: "(1) Employees in the transport, railway, PTT, maritime, aviation, and fishing industries ... (2) Employees in such industries as geological and resource exploration, construction ... sugar production and tourism whose work is regulated by seasonal and natural conditions ... [and] (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 or other appropriate variable hours plan for approval by local or national labour authorities. The plans will include details related to maximum daily and weekly, quarterly, half-yearly and yearly hours.
- 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.
- Hours worked under the consolidated working hours scheme are usually 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.

⁷ More on this topic can be found at www.ethicaltrade.org/sites/default/files/resources/china_working_hours_briefing.pdf

⁸ 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)).

DECISION TREE: 60+ HOUR WORKING WEEKS IN CHINA

In situations where a worker is being asked to work more than 60 hours in a 7-day period:



The Ethical Trading Initiative (ETI) is a leading alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe. Our vision is a world where all workers are free from exploitation and discrimination, and enjoy conditions of freedom, security and equity.

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