

National Cheng Kung University FAQs on Amendments to the Labor Standards Act

Amended on March 1, 2018

◆ One fixed day off and one flexible rest day policy:

Q1: What is the difference between a “fixed day off” and a “flexible rest day”?

A1:

	Fixed day off	Flexible rest day
Condition of overtime work	An employer shall not have their employees work overtime even if employees volunteer to do so. Failure to comply with this regulation shall be considered a violation of the Act.	An employer may have their employees work overtime if the employees agree to.

Q2: Is designating specific fixed days off and flexible rest days necessary?

A2: The employer and employee shall negotiate and reach an agreement on such days. In the context of the University, for which days off are on weekends, employees shall discuss with their employer and choose a day from the weekend as the fixed day off and another as the flexible rest day. However, for units whose business days are not from Monday to Friday because of the nature of their duties, employees should discuss these days with their employer.

Q3: Is it necessary to designate the same fixed day off and flexible rest day for all employees of the university?

A3: No.

Q4: Can employees work on their fixed day off?

A4: No.

1. A fixed day off is compulsory to cap the number of consecutive workdays for the protection of employees’ physical and mental health.
2. Working on a fixed day off is only legal under special circumstances (i.e., natural disasters, accidents, or unexpected events) listed in Article 40 of the Labor Standards Act; otherwise, working on a fixed day off is not allowed even if the employees agree to do so.

Q5: Can employees work for more than 6 consecutive days?

A5: No. A cycle of 7 days shall contain at least 1 fixed day off; employees are not allowed to work more than 6 consecutive days unless otherwise specified.

Q6: What if an employee works for more than 6 consecutive days because they are participating in an event hosted on both days of a weekend (fixed day off and flexible rest day) or a business trip?

A6: If working for more than 6 consecutive days is necessary, the employer shall, with agreement of each individual employee involved, adopt the following measures:

1. If working for more than 6 consecutive days is necessary for hosting or participating in events, the employees involved shall be divided into two groups.
2. The employer may implement flexitime (altered working hours) for the involved employees over the following 4 weeks, during which time the fixed day off and flexible rest day of these employees may be adjusted accordingly. Specifically, the employer and employees may negotiate to produce a temporary work schedule for this 4-week period (both parties shall sign on the University's Letter of Agreement Between Employer and Employee on Four-Week Altered Working Hours) with adherence to the rule that 2 fixed days off shall give every 2 weeks. If an employee working on the rescheduled flexible rest day is necessary, the employee shall be paid in accordance with overtime pay regulations.

Q7: Does the university adopt the 2-week altered working hour system?

A7: In this system, at least 1 fixed day off shall be given to an employee for every 7 days, and a total of 4 days off (fixed day off and flexible rest day) shall be given to an employee every 2 weeks. In other words, only flexible rest days are allowed to be rescheduled in the system, which fails to solve the problem that occurs when employees are required to work both days of a weekend.

Therefore, the University does not adopt the 2-week altered working hour system.

◆ National holidays:

Q1: When were the national holidays established and standardized for all employees across Taiwan?

A1: Since January 1, 2017, the national holidays for employees have followed the holidays (memorial days and festivals) announced by the Ministry of the Interior, for a total of 12 days annually, including May 1.

◆ Overtime and overtime pay:

Q1: How is overtime pay calculated?

A1: The pay for overtime work on a workday, flexible rest day, fixed day off, and national holidays for an employee with a base salary of NT\$ 36,000 is calculated separately as follows:

Length of overtime		Overtime pay calculation	Hour calculation	Example
Workday	First 2 hours	Hourly pay $\times (1 + 1/3)$ \times number of hours	Calculated on an hourly basis, with a maximum of 4 hours	Overtime pay for 3 hours of overtime: $150 \times (1 + 1/3) \times 2 +$ $150 \times (1 + 2/3) \times 1 = 650$ (NT\$)
	Last 2 hours	Hourly pay $\times (1 + 2/3)$ \times number of hours		
Flexible rest day (from March 1, 2018 onward)	First 2 hours	Hourly pay $\times (1 + 1/3)$ \times number of hours	Calculated on an hourly basis, with a maximum of 12 hours	In addition to the employee's daily pay, the overtime pay is calculated as follows: 1. For 1 hour of overtime: $150 \times (1 + 1/3) \times 1 = 200$ (NT\$) 2. For 5 hours of overtime: $150 \times (1 + 1/3) \times 2 +$ $150 \times (1 + 2/3) \times 3 = 1,150$ (NT\$) 3. For 9 hours of overtime: $150 \times (1 + 1/3) \times 2 +$ $150 \times (1 + 2/3) \times 6 +$ $150 \times (2 + 2/3) \times 1 = 2,300$ (NT\$)
	The 3rd–8th hours	Hourly pay $\times (1 + 2/3)$ \times number of hours		
	The 9th–12th hours	Hourly pay $\times (2 + 2/3)$ \times number of hours		
Fixed day off	※ Working is only permitted in case of natural disasters, accidents, or unexpected events. ※ Pay is doubled with compensatory leave granted to the employee.			In addition to the employee's original daily pay, he or she will receive an extra NT\$ 1,200 and 1 day of compensatory leave.
National holiday	First 8 hours	Daily pay	Calculated on the basis of 8 hours	Working for more than 1 hour, the employee will receive NT\$ 1,200 in addition to his or her original daily pay.
	The 9th–10th hours	Hourly pay $\times (1 + 1/3)$ \times number of hours	Calculated on an hourly basis, with a maximum of 4 hours	Overtime pay for 3 hours of overtime: $150 \times (1 + 1/3) \times 2 +$ $150 \times (1 + 2/3) \times 1 = 650$ (NT\$)
	The 11th–12th hours	Hourly pay $\times (1 + 2/3)$ \times number of hours		

Q2: Is there an upper limit for overtime?

A2: Yes. The sum of overtime and regular work time shall not exceed 12 hours a day (i.e., overtime shall not exceed 4 hours on a workday and 12 hours on a flexible rest day or national holiday). Furthermore, overtime shall not exceed a total of 46 hours a month. However, if agreed in a meeting between the employer and employees, the overtime may be calculated on a basis of 3 months, with a maximum of 54 hours a month and 138 hours every 3 months.

Q3: How is overtime calculated for a workday, flexible rest day, and national holiday? How can employees comply with the University's terms and conditions?

A3: Workday: Overtime is calculated on an hourly basis with a maximum of 4 hours. Flexible rest day: From March 1, 2018 onward, overtime is calculated in accordance with the actual work time and on an hourly basis, with a maximum of 12 hours.

National holiday: For the first 8 hours, an employee working overtime of less than 8 hours shall receive 8 hours' worth of pay. Work time on a national holiday should be kept to 8 hours and will not be counted toward the monthly total overtime. Overtime from the 9th to 12th hour is calculated on an hourly basis, with a maximum of 4 hours.

Q4: Can I apply for overtime afterwards?

A4: Overtime applications must be completed in advance to avoid unnecessary overtime work and disputes between employers and employees.

Q5: Is compensatory leave the only option for working overtime on a workday, flexible rest day, or national holiday or can I ask for overtime pay?

A5: An employer may negotiate with their employees on this matter and compensate for an employee's overtime work with his or her consent as opposed to providing overtime pay. However, when an employment contract ends, untaken compensatory leave may be converted into corresponding overtime pay.

Q6: Can an employee apply for a workday off for working on a national holiday in advance?

A6: Yes. If an employee consents to working on a national holiday, he or she may schedule the compensatory leave on a workday in advance in agreement with the employer. However, such compensatory leave shall be applied on a daily basis to avoid unfair treatment among employees.

◆ Annual leave:

Q1: Does an employee have to schedule his or her annual leave in advance? Are changes allowed for scheduled leave?

1. According to Paragraph 2, Article 38 of the Labor Standards Act, annual leave shall be scheduled by employees. However, an employer or employee may negotiate with each other to adjust scheduled leave in instances of operating emergencies or the employee's personal reasons. The Personnel Office has specified in an official document (document code: *Cheng Da Ren Shi (Zhuan) Zhi* No. 006) issued on January 3, 2017 that an employee shall schedule his or her annual leave in advance (through the Monthly Schedule Form for Annual Leave).
2. Changes or cancelations can be made to scheduled leave.

Q2: Does an employee have to apply for leave using the Online Attendance System if the leave has been applied for in written form?

A2: Yes. Please also apply for leave on the University's Online Attendance System in advance.

Q3: How can an employee find information about his or her annual leave?

A3: An employee may check the periods and days of his or her annual leave (including the days of leave allowance, taken leave, and untaken leave) on the University's Online Attendance System or the attendance app on their smartphone.

Q4: At the year-end calculation or end of an employment contract, an employer shall pay the employee in accordance with the remaining days of annual leave allowance. What is the "year-end calculation"?

A4: The year-end calculation day is set according to an employee's start date. For example, the year-end calculation day for an employee who started work on October 1 will be on September 30 each year.

Q5: At the year-end calculation, can an employee carry forward his or her annual leave allowance to the next leave year?

A5: Yes. The remaining days of annual leave allowance calculated at year-end may be carried forward to the next leave year with agreement between the employer and employee. However, at the next year-end calculation or end of the employment contract, the remaining leave allowance carried forward from the last leave year shall be converted into the corresponding amount of money and paid to the employee.

Q6: An employee's remaining annual leave allowance carried forward from the last leave year shall be converted into the corresponding amount of money and paid to him or her at the year-end calculation or end of his or her employment contract. How is the remaining leave allowance converted into money?

A6: For example, an employee with a monthly salary of NT\$ 30,000 has a daily pay of NT\$ 1,000. For 7 remaining days of annual leave, the employer shall pay NT\$ 7,000 to the employee.

Q7: How many days of annual leave does an employee have under the amended Labor Standards Act?

A7: In accordance with Article 38 of the amended Labor Standards Act, an employee's annual leave allowance increased from January 1, 2017 onward. The following table compares the allowance before and after the amendment.

Seniority	Days of annual leave		Seniority	Days of annual leave	
	Before amendment	After amendment		Before amendment	After amendment
6 months—1 year	0	3	13 years	18	19
1 year	7	7	14 years	19	20
2 years	7	10	15 years	20	21
3 years	10	14	16 years	21	22
4 years	10	14	17 years	22	23
5 years	14	15	18 years	23	24
6 years	14	15	19 years	24	25
7 years	14	15	20 years	25	26
8 years	14	15	21 years	26	27
9 years	14	15	22 years	27	28
10 years	15	16	23 years	28	29
11 years	16	17	24 years or above	29	30
12 years	17	18			

◆ Others:

Q1: What if clocking in or out on the Online Attendance System is not available?

A1: According to Article 30 of the Labor Standards Act, an employer shall record employees' attendance and archive the records for 5 years. Failure to do so will result in a fine from NT\$ 90,000 to NT\$ 400,000. Each principal investigator shall closely monitor and ensure that all project staff clock in and out accordingly. In instances where an employee cannot clock in or out on the Online Attendance System, the employment unit shall retain the attendance record for future reference.

Q2: What if disputes occur between an employer and project staff whose records of attendance, leave, and overtime work are untraceable because their record keeping mode is set to the “Managed by Principal Investigator” mode on the Online Attendance System?

A2: Please apply to have the mode switched from “Managed by Principal Investigator” to “Designated Working Hours” to enable the principal investigator to effectively manage the project assistant’s attendance. The system will automatically remind an employee about his or her irregular attendance so that he or she can take response measures accordingly. Such instances will also be reported to unit directors or principal investigators, who will ensure the employee completes the required leave application procedures.

Q3: Do employees have to apply in advance if they need to adjust their working hours?

A3: If an employee is required to have his or her working hours adjusted by the unit he or she works for, the employee shall apply using the Application Form for Working Hour Changes (Online Attendance System → Clock-in/out → Application Form for Working Hour Changes). On the application form, the employee shall provide the date from which the change is effective and the new working hours. In the “New working hours” box, please select one option from the drop-down list.

Q4: Are there any special regulations for the working hours of female employees?

A4: According to Article 49 of the Labor Standards Act, an employer shall not make female employees work between 22:00 and 06:00 of the next day. Therefore, for female employees of the university, overtime work before 06:00 and after 22:00 is not allowed.

※The English translation thereof is for reference only and the Chinese version shall always prevail in case of any inconsistency between the Chinese version and the English translation thereof.