

Overtime Regulations' Flaws under the Omani Labour Law

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Abstract

Bariş was employed by the Oman Aluminium Factory LLC. The agreed working hours in the employment contract were 40 hours per week; whereas the statutory maximum working hours under the Omani Labour Law is 45 hours per week. Bariş performed extra 10 hours as overtime work. The employer calculated the overtime hours based on the statutory maximum working hours and therefore deducting 5 hours from the extra hours Bariş has performed. Is the employer entitled to do so? Moreover, Bariş worked 50 hours a week during a period of 48 weeks. He claimed payment for overtime premium for the entire 48 weeks. However, the employer offered him payment for a period of 20 weeks only. The employer claimed that Bariş has obtained a written approval for the extra hours for a period of 20 weeks not 48 weeks, notwithstanding of the fact that Bariş has worked the extra hours during the whole 48 weeks. This issue raises the question of under what conditions the overtime work is allowed according to the Omani Labour Law and whether a prior approval by the employer constitutes a condition for compensating overtime work. The final issue will be discussed in this paper, is to what extent can the employer force the employee to perform overtime, in particular when the contractual working hours are less than the maximum statutory working hours. On the other hand, is it possible to require the employee to perform overtime work during the whole period of the employment contract? Does the Omani Labour Law permit this practice and if so, to what extent does this practice affect the health and safety of the employee?

Keywords: Overtime (definition, conditions, premium), compulsory work, health and safety.

I. INTRODUCTION

Bariş, an employee, contracted with the employer Oman Aluminium Factory LLC. (OAF). His employment contract provided that the working hours are 40 hours per week. During his first year of employment, his employee asked him to perform weekly extra 10 hours of overtime. The employer did not specify the length of period during which the overtime work will be performed. Bariş performed overtime work over a period of 48 weeks during his first year of employment. By the end of the mentioned year Bariş asked the OAF to pay him the overtime premium. The OAF allegedly relying on article (70) of the Omani Labour Law and compensated him for the extra 5 hours only instead of 10 hours. The OAF claimed that Bariş is entitled to overtime premium for those hours as provided in article (68)², which are the hours exceeding the 45 hours a week. Bariş denied this allegation and claimed that he is entitled to 10 hours of overtime. The wording of article (70) indeed may support the allegation of the OAF. However, as we will see later the matter is more complicated than adopting a superficial interpretation to the Omani Labour Law.

In addition, the OAF declined to pay Bariş an overtime premium for the first 20 weeks alleging that the employer did not provide Bariş with a written approval to perform the extra work during those weeks. The crucial question here is whether a written approval by the employer is a necessary requirement for allowing overtime. On the other hand, is it possible for the OAF to enforce Bariş to perform the overtime work? All these questions will be answered by studying the conditions of overtime work under the Omani Labour Law and other related Omani laws.

The OAF informed Bariş that it will pay him a fixed allowance for the overtime premium and that the payment will not be made until the end of the year. Does the Omani Labour Law provide a minimum rate for the overtime premium? Does it allow the form of fixed allowance in exchange to the overtime work, and if so, under what conditions? These issues will be addressed when analysing the regulations of payment for the overtime work under the Omani Labour Law.

Before analysing these issues, it will be useful to provide a background for the Omani Labour Law. The Omani Labour Law was issued in an Arabic³ language by Royal Decree No. 35/2003 which witnessed several amendments; hereinafter the Omani Labour Law and its amendments will be referred to as (OLL). It is noteworthy that this paper will use the English translation of the OLL which was prepared unofficially by the Ministry of Manpower in the Sultanate of Oman.

The OLL provided strict regulations for the statutory working hours in chapter three articles (68-74). It provided specifications for allowing the overtime work, its conditions and the basis for calculating the overtime

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² Those articles of the Omani Labour Law will be analysed deeply in this paper.

³ The Arabic language is the only authentic language of the OLL.

premium.

This paper will deeply analyse all the problematic issues mentioned above aiming at providing constructive recommendations to make necessary amendments to the OLL in order to achieve certainty in the relationship between the employee and the employer.

II. WHAT CONSTITUTE AN OVERTIME WORKING UNDER THE OMANI LABOUR LAW?

A. *Definition Of Overtime Work:*

Overtime has been given several definitions. It may refer to any work performed over the basic working hours included in the employment contract.¹ According to the International Labour Organisation, in practice overtime 'can be made up, for example, by the contractual working time, usual working time or statutory working time.'² There seems to be several scales in practice that are used to decide what may constitute overtime working hours. The first scale is to calculate overtime hours as compared with the contractual working hours agreed upon in the employment contract. The second scale is to calculate it based on the usual or 'normal working' time which refers to the maximum standard working time.³ The third scale that can be used is that of the statutory working time referring to the maximum hours of working set by the domestic law.

Following the good practice in drafting new laws, the OLL has provided definitions to the key terms in order to eliminate or reduce any future confusion. It defined overtime work in article (1/11) as follows '[T]he work is performed in hours which exceed the working hours prescribed by this law'. This definition needs to be read together with article (70) of the OLL, which was issued by the amendment to the OLL by the Royal Decree No. 113/2011, which provided the conditions of allowing overtime under the Omani law. The wording of article (70) seems to be more specific on what may constitute overtime by stating that: '[A]n employee may be required to work for more hours than those provided in article (68)...'. The mentioned article (68), which was also amended by the Royal Decree No. 113/2011, set the limits for statutory maximum working hours under the OLL where '[A]n employee may not be required to work for more than nine hours a day and for a maximum of forty-five hours a week ...'. The question arises here is which one of the above mentioned scales the OLL has adopted. To answer this question, each of the above mentioned scales will be compared with the wording of the OLL as follows.

First, the start will be the scale of statutory maximum working hours. To apply this scale to the OLL, an employee will not be considered as performing overtime work unless he works more than 45 hours per week regardless of any specification of his working hours in the employment contract. The language of the definition in article (1) referring to the 'hours prescribed by this law' is very common and does not necessarily refer to the statutory maximum hours. However, article (70) by referring to article (68) of the OLL seems to provide more specific determination to what can be considered as overtime. Therefore, a textual interpretation to those articles will render any provision related to the agreed working hours in each employment contract pointless. Besides, applying this scale would create several practical and legal problems. The practical problems appear when the contractual working hours are less than the statutory maximum working hours, the employee may refuse to perform overtime work if it is calculated against 45 statutory working hours.⁴ Moreover, the employee will get payment for the contractual hours agreed upon in the employment contract, in addition to the payment for the overtime hours in accordance to the OLL (the hours exceeding the 45 OLL maximum working hours). In this case, the hours falling between the contractual hours and the overtime hours will be left without payment. Bariş's above mentioned will explain this situation. Bariş's contractual hours are 40 working hours per week and the calculation of the overtime work is made against the statutory maximum working hours which are 45 hours per week. If Bariş is to perform overtime work, he will be paid for the 40 hours (as agreed in the contract) and he will get payment for the overtime hours, i.e. the hours exceeding 45 hours. In this scenario, there is 5 hours that fall between the contractual hours and the statutory maximum hours which will not be indemnified. If the OLL wanted to apply this scale, it would have had made some provisions to fill this gap similarly to the Turkish Labour Law (TLL)⁵. Article 41 of the TLL provides that:

1. Overtime work is work which, under conditions specified in this Act, exceeds forty-five hours a week...

¹ <https://www.nidirect.gov.uk/articles/overtime> (12/06/2016).

² International Labour Office Geneva, Overtime (Conditions of Work and Employment Programme-Social Protection Sector), Information Sheet No. WT-2, May 2004. In the USA, for example, overtime will be the hours over 40 hours per week. Tony McAdams, Nancy Neslund & Kristofer Neslund 'Law, Business and Society' 7th ed. McGraw Hill - Irwin, USA, 2004, p. 439.

³ International Labour Office Geneva, Overtime (Conditions of Work and Employment Programme-Social Protection Sector), Information Sheet No. WT-2, May 2004.

⁴ As we will see in the next chapter in accordance to article 70 of the OLL, the employee's consent is one of the required conditions for allowing overtime.

⁵ *Turkish Labor Law-4857, the full text in English can be found at <http://turkishlaborlaw.com/turkish-labor-law-no-4857/19-4857-labor-law-english-by-article> (24/05/2016).*

2. Wages for each hour of overtime shall be remunerated at one and a half times the normal hourly rate.
3. In cases where the weekly working time has been set by contract at less than forty-five hours, work that exceeds the average weekly working time done in conduction with the principles stated above and which may last only up to forty-five hours weekly is deemed to be work at extra hours. In work at extra hours, each extra hour shall be remunerated at one and a quarter times the normal hourly rate.

The TLL seems to be more precise in adopting the statutory hour's scale where the calculation of the overtime time hours is made against the 45 statutory maximum working hours. In addition, it recognises the gap of hours¹ between the hours that fall between the contractual hours and the statutory maximum hours and provided half the remuneration for such hours. For the above mentioned reasons, the author's point of view is that applying the statutory maximum working hours to the OLL would create problems and uncertainty in the employment relations and would put the employee in a disadvantageous situation prejudicing the main objective by securing the rights of the employee².

Another scale is to calculate overtime hours against the usual/normal working hours or the maximum standard working time. The term 'normal working' hours has not been mentioned in the OLL,³ however the term 'usual' hours was mentioned in defining the part-time worker who was defined as '[T]he worker whose usual hours or days of work are less than those prescribed by this law'.⁴ Had the OLL wanted to calculate overtime against the so called 'usual' hours, it would have used it in the definition of overtime hours just as it used this term in the definition of part-time worker. Therefore, it seems unlikely that OLL wanted to adopt this scale because of the confusion that may arise in calculating overtime based on this scale.

The final scale is to calculate the overtime hours against the contractual hours. The author supports the adoption of this scale to the OLL for the following reasons. First, applying this scale would preserve certainty in the employment relations. Furthermore, it fulfils the 'whole act rule'⁵ approach in the interpretation of laws. Further, reading article (70) together with article (6) of the OLL would lead to the application of this scale. Article (6) established a rule to the effect that any provision that is more beneficial to the employee would be applied even when it contradicts the provisions of the law. It provides that:

An employer may establish schemes by which his employees acquire benefits more generous than those awarded by this law, or may provide his employee with other benefits or may enter into agreements with them the conditions of which are more generous than those provided for in this law. If a condition in this law contradicts with any of the conditions in such schemes or agreements, the condition which is more generous to the employee shall be applicable.

Applying article's (6) rule to the overtime regulations indicates that the overtime hours would be calculated against the contractual not against the maximum statutory hours. In affirmation to this rule, the Labour Circle of the Supreme Court in the Sultanate of Oman decided that if the employment contract contains a condition that is more beneficial to the employee than the provisions of the OLL, the contractual condition would apply and it will become an earned income (acquired right) and an integral part of the employee's entitlements.⁶

B. Conditions Of Overtime Work:

The OLL provided a general rule in article (70) containing several conditions for allowing overtime. It was followed by providing a list of special cases in article (72) where the employer is exempted from complying with the statutory maximum hours and other provisions related to it.⁷ In this chapter, the general conditions will be analysed then the specific cases will be illustrated to show the connections, if any, between these two articles.

Article (70) provides that:

An employee may be required to work for more hours than those provided in Article (68) if the interest of work so dictates provided that the total original and extra work hours not exceed 12 (twelve) hours a

¹ These hours were called by some writers as the 'excessive hours' as compared to the 'overtime hours'. <https://www.hg.org/article.asp?id=24045> (24/05/2016).

² Henrietta Newton Martin, 'General Laws and Interpretation -Sultanate of Oman -Part I', Perspicuous Edition, BookRix, 2014, 2.

³ However, some unofficial sources used this term in referring to the allowed working hours per week which range between 40 and 48 hours. See for example the InterNations Organisation at <https://www.internations.org/oman-expats/guide/working-in-oman-15748/oman-pension-tax-working-conditions-3> (24/05/2016). The maximum hours here do not seem to be complying with the law as the OLL limited the maximum working hours by 45 hours per week.

⁴ Article (1/10) of the OLL.

⁵ For more information on statutory interpretation see Katharine Clark and Matthew Connolly 'A Guide to Reading, Interpreting and Applying Statutes', The Writing Center at GULC, April 2006.

⁶ Decision No. 119/2002.

⁷ It is noteworthy that article (77) of the OLL, juveniles are not allowed to perform overtime work under any circumstances. Article (77) provides that: 'In all circumstances juveniles shall not be required to work for additional hours, nor shall they be caused to stay in the workplace after the prescribed period or be required to work during the days of rest or public holidays'.

day... provided that the employee agrees in writing to the extra work and the return...

Three conditions were set under this article in order to allow overtime. The first condition is the written consent of the employee to both the performance of the overtime work and the remuneration for this work¹. The OLL did not require the employer's approval for the performance of the overtime. In reality, providing overtime work by the employee would benefit the employer and it cannot be imagined how an employee would perform overtime work in the absence of the employer's express or implied approval.

Moreover, the employer cannot force the employee² to perform overtime work. To that extent, the Labour Circle of the Supreme Court decided that the consent of the employee to the overtime remuneration whether in cash or in kind is a condition to allow the overtime and therefore, dismissing the employee for refusing to perform the overtime work is illegal and is considered a breach of the law and a violation to the provisions of the employment contract.³ According to this decision, the consent of the employee should extend to both the amount and the type of the overtime premium. For that reason, overtime work in all cases must be remunerated.

The second condition for permitting overtime is that the interest of the work must require such overtime work to be provided. A superficial interpretation implies that there is no need for inserting such a condition based on the fact that any extra work done will be for the interest of the work. However, the OLL may have intended by this condition to prove the existence of a specific type of interest. Indeed, applying the cardinal rule of statutory interpretation in interpreting the context of a law as a whole may help in determining the type of the required interest.⁴ The special cases provided for in article (72) imply that overtime is allowed if there is an urgent or extraordinary need or unusual pressure at work. The author believes that the interest of work that is mentioned in article (70) is better be interpreted in light of the temporary needs of the work. In all cases, requiring this condition is better be interpreted to protect the employee rather than the employer.

The third condition sets forth the maximum limit for the total hours that the employee is allowed to work which is 12 hours per day, including the 'extra hours' and the 'original hours'. Obviously, the OLL used the term 'extra hours' to refer to the overtime hours. However, it is not clear what does the phrase 'original hours', which was not defined anywhere in the law, refer to. Does it refer to the contractual hours agreed upon in the employment contract or to the maximum working hours set out in the OLL? If these hours are to refer to the statutory maximum limits, the employee is not allowed to work more than three overtime hours per day. A problem will arise if the contractual working hours are less than the statutory maximum hours. For example, if the agreed contractual hours are 7 hours per day added to the three hours allowed for overtime, this employee will not be allowed to work more than 10 hours. In order to eliminate such confusion, the author's view is that the interpretation of the 'original hours' in this article should refer to the contractual hours agreed upon in the employment contract.

It is noteworthy that the OLL provided a special rule on the hours that a woman employee may not perform the work which is between 9:00 pm and 6:00 am. Article (81) provides: 'Females shall not be required to work between nine p.m. and six a.m. save in cases, works, and occasions specified by a decision by the Minister'. The OLL did not specify whether these are the contractual hours or the overtime hours. The author's point of view is that these hours cover both the contractual and the overtime hours.

The final issue is related to this condition is that the OLL seems to provide a cap on the overtime work hours allowed each day. However, it did not provide cap on the number of days that the employee is allowed to perform overtime work.⁵ The OLL did not provide maximum limits for the length of time where overtime work is allowed. The question is can the employer agree with the employee in the employment contract that the latter will perform overtime work during all the contract period. If this is the case, providing statutory maximum hours will become pointless as the 12 hours will replace the 9 hours provided for in article (68). It will be more beneficial for the OLL to draw limits to the 12 hours' cap to a specific length of time or to adopt a similar provision to article (72). Article (72) provided four special cases for allowing the employer to divert from the regulations of the maximum statutory working and rest hours. Before analysing these cases, the relationship between article (70) and (72) will be examined.

The opening sentence of art (72) of the OLL provides that: '[T]he employer may not comply with the provisions set out in Section [68] and [69] of this law in the following cases...'. No reference whatsoever was made in this article to article (70). Does that mean that the three conditions provided for in article (70) are not

¹ Payment for overtime will be analysed in the following chapter.

² Compulsory or coercive work will be studied in details in chapter three of this article.

³ Decision No. 221/2006.

⁴ For more information on statutory interpretation see Larry M. Eig, *Statutory Interpretation: General Principles and Recent Trends*, Congressional Research Service, 2011. (<https://www.fas.org/spp/crs/misc/97-589.pdf>) (02/06/2016).

⁵ For example, laws in the UK provided limitation on the period during which the employee may perform overtime by no more than 17 weeks' period. Kathy Daniels 'Employment Law for HR and Business Students', Chartered Institute of personnel and Development (CIPD), London, 2004, p71.

required in the mentioned cases? The first condition discussed above is the consent of the employee. Is it possible for the employer to force the employee to perform overtime work in those special cases? From the conditions provided for in each of those cases, the consent of the employee seems to be no longer a requirement. However according to article (3Bis) of the OLL, the employer has no right to impose any form of compulsory or coercive work.¹ In addition, the OLL has replaced the consent of the employee with other factors in order to protect the latter. The other condition is related to the cap of 12 hours per day whether it applies to the special cases mentioned in article (72) of the OLL. By reading article (72), it appears that the OLL impliedly abolished the cap of 12 hours and replaced it with other limitations as we will see upon analysing each of these special cases in the following.

The first special case where the employer may not comply with the maximum working hours' limits was provided in article (72/1) which stated that:

At the time of annual inventory, preparation of the balance sheet, liquidation, closing of accounts and preparation for sale at discount. Provided that in such case the number of working days during which the worker works for more than the prescribed period of a working day shall not exceed fifteen days in a year unless the relevant directorate approves longer periods.

Two conditions must exist in order to allow overtime in this case. Firstly, the type of the work activity is limited to annual inventory, preparation of the balance sheet, liquidation, closing of accounts and preparation for sale at discount. Secondly, the period of performing overtime here is limited to 15 days per year, which can be extended by obtaining an approval from the relevant directorate.

The second and third special cases according to article (72/2) to allow overtime work occur 'if the work is for the prevention of an accident or reparation of the results thereof or the avoidance of a definite loss of perishable materials; if the work is intended to meet an unusual pressure'. It is noteworthy that overtime here is allowed in extraordinary circumstances such as accidents or unusual pressure. In addition to the notification of the relevant directorate within twenty-four hours specifying the emergency case; the additional work and the period required for completion of the work.

The Royal Decree No. 113/2011 provided a forth case of special cases of allowed overtime which is the seasonal works which are defined by a decision by the minister. The amendment here seems to restrict overtime work both in type and time of it is allowed. Overtime here is limited to the seasonal work types and apparently such works will be limited in time. An important condition to be fulfilled in this case is obtaining a decision by the Minister of Manpower which has the authority to define what constitute seasonal works.

III. PAYMENT FOR OVERTIME WORK UNDER THE OMANI LABOUR LAW

Overtime must be remunerated² under the OLL which provided two articles regulating payment for overtime and the minimum overtime premium rate. However, the OLL did not provide a rule on the time within which the employer must pay the overtime premium. The question here, is it open for the employer to pay the overtime premium at any time he or she decides? In this chapter, all issues related to the premium rate of overtime and the time required for making such payment, if any.

A. *The Premium Rate Of Overtime Work:*

The OLL provided that the minimum premium rate for the overtime work is 25%³ and there is no maximum rate.⁴ The general rule is that overtime remuneration must be a percentage based on the basic salary of the employee. However, overtime premium may be made in the form of a fixed allowance if the job takes place in the ports, vessels, ships, airports or aircrafts or any other place that the Ministry of Manpower may add provided that both the employee and the employer agree to such form of remuneration and the Ministry of Manpower approves such agreement in accordance to the second paragraph of article (70).⁵ Finally, the employee should agree in writing to the remuneration or he/she may take days off equal to the rest days or the official holidays

¹ For more explanation on forced work, see the final chapter of this paper.

² See for example, overtime in UK can be performed for free or it 'is payable when expressly agreed in the contract, or is customary. Where the overtime is expressed as obligatory the employer must provide overtime and the employee must serve it.' Keith Abbott, Norman Pendlebury, Kevin Wardman 'Business Law' 7th ed. Thomson, UK, 2002, p. 540. It is reported that 66% of workers in the UK are not paid for overtime they perform <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+IM-PRESS+20081215IPR44549+0+DOC+PDF+V0//EN&language=EN> (29/06/16).

³ Normally, overtime premium is time and one half in the USA. For more information of overtime regulations, see Tony McAdams, Nancy Neslund & Kristofer Neslund 'Law, Business and Society' 7th ed. McGraw Hill - Irwin, USA, 2004, p. 439

⁴ It is not necessarily that overtime is remunerated all the time in some national laws such as UK.

⁵ The second paragraph of article (70) of the OLL provides that: 'With regard to the work that takes place at ports, airports, on vessels, ships or aircrafts, the employer and the employee, may, after obtaining the approval of the Ministry, agree on payment of a fixed allowance for the employees in lieu of the overtime payments provided that an approval from the Ministry is obtained. However, the minister may add any other similar works'.

during which the overtime was performed¹. In the following, a detailed study of the overtime premium will be provided.

In relation to the general related to overtime remuneration, article (70)² provides the limits of the minimum payment for overtime by stating that:

The employer shall pay the employee overtime equal to his basic salary against the extra work hours plus at least 25% for day-time work and 50% for night work or grant the employee permission for the extra hours he did³ provided that the employee agree[s]⁴ in writing to the extra work and the return.

According to article (70), the overtime premium depends on the time of performing the work. If the work is performed during the daytime, the employee is entitled to a compensation equals to his basic salary added to it 25%, whereas if the work is performed during the night hours the percentage will become 50% added to the basic salary. Of course the OLL stipulated that these premiums are the minimum payment for the extra hours and both parties; the employee and the employer can agree on a higher premium.

Article (70) did not determine the required payment for overtime performed during the weekly rest days. It is not clear whether the rule which was provided in article (73) regarding the special cases of allowed overtime in article (72), as we will see later in this paragraph, will be applied here or some other rules would apply. The first possibility is that regardless of whether overtime is performed during the work days or the rest days; an employee would be compensated according to the above mentioned rates (25% for daytime work and 50% for night time work). This possibility is unlikely to be intended by the OLL which provided, in addition to those premiums, different premium rate for the overtime performed on the official holidays and rest days. It will be unfair and illogical to apply two different scales of payment of overtime work for the same days because of the change in the reasons for performing the extra work. Furthermore, the employee may legitimately refuse to work on such days as his consent is a condition to perform the overtime work in this case. The second possibility will be by granting the employee the above mentioned rates in addition to the payment for the rest day in accordance to article (71) of the OLL which provides that: ‘...The weekly rest shall, in all cases, be payable’. To apply this possibility, the employee will be paid for the overtime performed during the rest day two times and a quarter or two times and a half calculated as follows:

- the payment for the rest day in addition to his basic salary and the 25% for the daytime working hours and;
- the payment for the rest day in addition to his basic salary and the 50% for the night time working hours.

The third possibility can be inferred from the wording of article (71) by stating impliedly that except in the special cases provided for in article (72), it is not allowed for the employee to perform overtime work during the rest days. Article (71) provides that:

An employer must grant the employee not less than two consecutive days of rest per week after five continuous working days. Accumulation of weekly rest periods for not more than eight weeks may be permitted by the Minister in respect of certain places of work specified by the minister if the employer and the employee agree to this in writing...

The rule set out in article (71) is that the weekly rest which consists of two consecutive days is obligatory and cannot be abolished by either party. According to the general rule, no overtime will be allowed during those days. However, in case the employee performs overtime work on rest days, he will be offered compensatory time or time off from work in place of cash payment. In this case, the rest days would be accumulated provided that the following conditions exist:

- The period of accumulated rest days does not exceed eight weeks.
- Agreement in writing on this accumulation between the employee and the employer.
- Obtaining an approval of the Ministry of Manpower.
- The work is performed in certain places which are specified by the Ministry of Manpower.

Moreover, the OLL provided in article (65) that in case the official holiday overlaps with a weekly paid rest day, the worker shall be compensated therefore by another day. This article supports the view that the employee shall not work on his rest days. This possibility seems to be a strong one because of many reasons. The first reason is related to the position of this article. Chapter three of the OLL, which was headed the ‘Working

¹ Article (73) of the OLL which provides that: ‘...If such work (the overtime) is performed during the weekly rest day or during the official holidays the employee shall, unless compensated with another day, be entitled to double salary for such a day, unless he is granted another day in lieu thereof in agreement with the employee.’

² These provisions were issued by the amendment to the OLL by the Royal Decree No. 113/2011.

³ The general rules according to the Wages and Fair Labor Standards Act (FLSA) in the USA, offering the employee compensatory time (comp time) can be awarded only in certain circumstances and when it is allowed it will be awarded at the rate of one and one-half times the overtime hours worked and it must be taken during the same pay period that the overtime hours were worked. Shae Irving & Kathleen Michon ‘Nolo’s Encyclopedia of everyday Law’ 3rd edition, Nolo, USA, 2001, 4.4.

⁴ There is a grammatical mistake here from the source.

Hours', started with regulating the statutory maximum working hours in article (68); then article (69) regulated the hours of rest during the working day; followed by article (70) which provided a general rule of overtime then article (71) came to regulate the obligatory rest days. Article (71) separated between the general rule and conditions of overtime and the special cases for allowed overtime. As we have seen earlier in this paper, the general rule and its conditions do not apply to the special cases. Therefore, it is unlikely that the OLL intended to apply the payment premium rates of these special cases to the cases regulated by the general rule. The second reason is related to the wording of both articles (70) and (73). Unlike article (73) which regulated the payment for overtime for the special cases of article (72), rules for payment for overtime in article (70) did not refer to rest days. Furthermore, the wording of article (71) does not leave room for interpretation. Expressly, it provided an obligation on the employer to grant the employee two payable rest days which cannot be accumulated except in strict situations and under strict conditions. The final possibility is to apply the rule set forth in article (73) and the employee will get double his salary for performing work in the rest day. Article (73) provided that:

The employer shall grant the employee, in respect of the cases provided for in article (72), an extra payment equal to his basic salary against the extra work hours plus 25% at least for daytime working hours, and 50% for night time working hours. If such work is performed during the weekly rest day or during the official holidays the employee shall, unless compensated with another day, be entitled to double salary for such a day, unless he is granted another day in lieu thereof in agreement with the employee.

The question here is it possible to extend this rule to apply to the rest days even though they do not fall with those special cases. Clearly, the percentages of 25% and 50% match the ones mentioned in article (70). However, the problem in applying this payment premium is that article (73) expressly stated that its provisions are to be applied to the special cases mentioned in article (72). Therefore, there is a need for the legislator to revisit this issue to eliminate this confusion.

The author's point of view is to interpret these provisions in the light of the rule set forth in article (6) of the OLL by applying the more advantageous premium rate to the employee. Article 6 provides that:

The employer may establish schemes from which his workers may get advantages which are more beneficial than what is prescribed, or provide them with other benefits, or enter into agreements with them, the terms of which are more beneficial than the terms provided for in this law. If a condition in this law contradicts any of the conditions set out in such schemes or agreements, the condition which is more beneficial to the worker shall be applied.

Regarding overtime premium rate for work performed during the official holidays, the employee would be entitled to his gross salary in addition to 25% or a substitute day according to article (65) as follows:

The worker shall be entitled to his gross wage during holidays for festivals and other official occasions as may be specified by a decision of the Minister... If the official holiday falls during the period of annual leave, the worker shall not be entitled to any compensation therefor. The worker may be asked to work on an official holiday if the circumstances of the work so require, and in such a case the worker shall be entitled to receive his gross wage for such a day with an additional amount of not less than 25%, or to have a rest day as substitute therefor.

Apparently, calculating overtime premium rate during official holidays is treated in a different way. First, the payment is based on the gross not the basic salary which has been used in calculating all other overtime cases. In addition, the additional percentage that the employee will get in addition to his salary here is 25% whereas; it is 100% if the overtime time is performed in accordance to article (72). It is not clear why the OLL created two different methods in calculating the overtime premium rate for the overtime performed in the official holidays. It would have been better to use one premium rate in calculating it by unifying these rules.

B. The Time Required For Paying The Overtime Premium:

In the introduction of this paper the employer insisted on paying the overtime premium to Barış by the end of his first year of employment. Is this practice legal, in particular the OLL does not expressly provide a time limit for making such payment? To answer this issue, it is important to know the legal status of the overtime premium under the OLL. Article (1/13) of the OLL provided in defining the gross salary that it includes: 'The basic salary in addition to all other allowances payable to the employee in return for his work.' It did not specify the specific types of allowances that are included in the salary. Therefore, it can include all forms of allowances. Confirming this conclusion, the Labour Circle of the Supreme Court decided that the gross salary includes among other things the overtime payment.¹ Thus, all rules related to the payment of the salary would be applied to the

¹ Decision No. 194/2005 and Decision No. 225/2006. Some national laws expressly consider the overtime remuneration as part of the salary. See for example, Section 3(vi) of the Indian Payment of Wages Act, 1936, provides that: "Wages" ... include (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period'. For more details, see P.C. Tulsian 'Business and Industrial Law' Tata McGraw-Hill Publishing Company Limited, New Delhi, 2007, Chapter 15.

overtime allowance.

Regarding the time required for making the payments to be made to the employee, the OLL left the issue to be agreed between the parties in the employment contract. According to article (23) of the OLL provided that the employment contract must include, among other particulars, the method and time of payment of the agreed wage.¹ However, the OLL provided criteria for such payment depending on whether the employee is appointed on monthly, weekly or any other basis. Article (51) of the OLL provides that:

Wages shall be paid on a working day and at the workplace subject to the following provisions:

1. Workers who are appointed on monthly wages shall be paid their wages at least once every month.
2. If the wage is paid on the basis of the number of pieces produced and the work requires a period of more than two weeks, the worker shall get a weekly payment on an account proportionate to the work he has completed and the balance of the wage shall be paid to him in full during the week following the completion of the work assigned to him.
3. In cases other than the above-stated, the salaries of the employees shall be paid weekly. However, the salaries may be paid every two weeks or monthly if they agree in writing to such an arrangement and in all cases the salary must be paid within (7) seven days from the end of the period in which it becomes due.

First of all, it is noteworthy that the term 'salary' mentioned in article (51) should refer to all forms of payment that the employee is entitled to including the overtime premium. Secondly, regardless of what basis the employee is paid, there is a maximum time limit to make such payment. In all cases, this payment should be made during 7 days or a week from the entitlement to such payment. Therefore, the employer is in breach of law in case of delay in making such payment and the employee will be entitled for a compensation for any delay in paying his salary, which includes the overtime premium. This delay is considered according to the Supreme Court in Oman an arbitral dismissal and a fault committed by the employer who will be abusing the use of his rights.² Finally, based on the fact that the overtime premium enjoys the same legal protection given to the employee's salary, it will be treated as a priority debt according to article (54) of the OLL which provides that: 'The wages, rights, other benefits and all amounts payable to the worker or to his beneficiaries according to the provisions of this law shall have priority over all debts owed by the employer except the amount of alimony adjudicated by Sharia Courts.'

After examining the regulations related to the payment of overtime, this paper will study some important issues or problems that may be connected to overtime work in the next chapter.

IV. SOME CRUCIAL ISSUES RELATED TO OVERTIME PROVISIONS UNDER THE OMANI LAWS

In principle, the OLL allowed overtime work under particular conditions. One of these conditions, as mentioned above, is the consent of the employee to perform the overtime work. However, this consent is not expressly required in all cases where overtime work is allowed. Does that mean the employer can force the employee to perform overtime work? In addition, does the OLL by allowing overtime work maintain the health and safety issues of the employees? These issues will be analysed as follows.

A. *Forced (Compulsory) Work:*

Both articles (65) and (72) of the OLL did not require the consent of the employee to perform the overtime work. To the contrary, the wording of article (65) by stating '*the employee may be asked*' may give the impression that the employer may force the employee to perform an overtime work.³ To fill this gap, article (3/Biz) was added by an amendment to the OLL which was issued by the Royal Decree No. 74/2006 and provided that: 'The employer has no right to impose any form of compulsory or coercive work.' The same Royal Decree classified compulsory work to amount to a misdemeanour and imposed a punishment for breaching the provisions of article (3/biz). Article (123)⁴ provided that: 'Failure to observe "Article No. 3 [bis]" will result in imprisonment of a maximum of one month and a fine of R.O. 500/- or either of them. The penalty will be doubled in case of recurrence.' This amendment came to indorse the general principle set out by the Constitution of Oman⁵. One of the social principles guiding the policy of the Sultanate of Oman is that, except under strict conditions, compulsory work is prohibited by the Constitution. This principle is adopted as a form of

¹ Article (23/4) of the OLL.

² Labour Circle of the Supreme Court, Decision No. 64/2002.

³ In the USA under the FLSA, the employer can enforce the employee to work overtime and can fire him if he/she refuses to do so. Shae Irving & Kathleen Michon 'Nolo's Encyclopedia of everyday Law' 3rd edition, Nolo, USA, 2001, 4.4.

⁴ This article was added by the amendment to the OLL issued by the Royal Decree No. 74/2006.

⁵ The official title is given to the Omani Constitution is 'Basic Statute of the State' and was issued by Royal Decree No. 96/101 and amended by Royal Decree No. 2011/99.

protection to the employees. Article (12) of the Constitution provides that:

The State enacts laws for the protection of the employee and the employer and regulates the relationship between them ... It is not permissible to impose any compulsory work on anyone except by virtue of a law, for rendering a public service, and for a fair remuneration.

The principle of prohibiting compulsory work was emphasised in the Anti-Human Trafficking Law (AHTL)¹ in Oman. Illegal use of a person which includes serfdom and forced labour was considered as forms of exploitation. Thus overtime if not paid or if the employee is forced to perform it will be treated as exploitation and therefore, constituting a human trafficking crime according to article (2) of the AHTL. Article (2) provided that:

Any person shall be deemed committing a human trafficking crime if they intentionally or *for the purpose of exploitation*: a. Use, transfer, shelter, or receive a person by coercion, under threat, trick, exploitation of position or power, exploitation of weakness, by use of authority over that person, or by any other illegal means directly or indirectly.

According to the national plan for combating human trafficking, one of the factors that help recognizing victims of trafficking in persons occurs where 'the person concerned works for long hours contrary to the statement of labour law'.² 'The phrase *'statement of labour law'* is not a familiar term in the OLL. The author's point of view is that the intended hours refer to the maximum statutory working hours.

The AHTL classified this crime as a felony where the minimum³ punishment will be three to seven years of imprisonment. Article (8) of the AHTL stated that: 'Whoever commits a human trafficking crime shall be punished by imprisonment for not less than three years and not more than 7 years, and a fine of not less than five thousand Rials and not more than one hundred thousand Rials.' The AHTL recognised that the employer might be a juristic or legal person who will still be punished in addition to the person in charge of the management of such person if they knew about the crime. Article (10) of the AHTL provided that:

Where a human trafficking crime has been committed by a juristic person, the established punishment shall be imposed on the person in charge of management of the juristic person if their knowledge of the crime is verified. The juristic person shall be responsible for the crime if it occurs on their behalf and for their interest, and shall be punished by a fine of not less than ten thousand Rials and not more than one hundred Rials.

The AHTL did not only provide punishment for those who commits the crime, it also established a punishment for every person who is aware of the commitment of a crime of trafficking in persons and fails to inform the authorities even if they are in charge of job secrets according to article (11).⁴

To conclude, the employee's express consent is not required in all cases of allowed overtime. However, the employer cannot force the employee to perform overtime work.

The other issue to study is whether there is a potential health issue, if any, resulting from working overtime, in particular, the OLL did not provide a cap on the period during which the employee will perform overtime work. The relation between overtime and health and safety laws will be studied in the following.

B. The Relationship Between Overtime And Health And Safety Laws

Part 6 of the OLL⁵ provided regulations related to health and safety at work. These regulations did not mention any rule in relation to the working hours and overtime. Nor did the OLL provide a maximum number of weeks during which the overtime work may be performed. This matter raises the issue of the impact of performing prolong hours of work exceeding the maximum statutory working hours on the health and safety of the employees.

Indeed, excessive overtime work may be harmful to the health of the employee and it may lead to higher rates of injury and illness. However, there are few studies which have examined to what extent the number of hours of work per week, shift work, shift length and other characteristics of work schedules interact and relate to health and safety.⁶ Some studies concluded that the vast majority of employees may be able to work

¹ It was issued by Royal Decree No. 126/2008.

² National Committee for Combating Human Trafficking, Sultanate of Oman, Sep 2009, p 22.

³ This minimum punishment shall not be waived under any circumstances nor shall the execution of the punishment be suspended according to article (20) of the AHTL which provides that: 'No rule shall be arrest the execution of the punishment given on a person convicted in a crime of trafficking in persons. The minimum punishment shall not be commuted.'

⁴ Article (11) of the AHTL provides that: 'whoever is aware of the commitment of a crime of trafficking in persons and fails to inform the authorities even if they are in charge of job secrets, shall be punished by imprisonment for not less than six months and not more than three years, and a fine of not less than three hundred Rials and not more than one thousand Rials. The punishment may be waived if the person who fails to report the crime is the spouse, an ascendant or descendant of the culprit.'

⁵ Articles (87-90) of the OLL.

⁶ <https://www.cdc.gov/niosh/docs/2004-143/pdfs/2004-143.pdf> (27/06/16).

longer hours without jeopardizing their health and that the issue of health and safety on one hand and the overtime on the other hand is based on the type and the nature of the work, the sex and age of the employee.¹

According to the Australian Fair Work Ombudsman, an employer may request the employee to perform only reasonable overtime. Several factors that are to be taken into account to consider overtime as a reasonable one. Amongst these factors is, any risk to health and safety from working the extra hours.²

Besides, in order to ensure that citizens can achieve a good work/life balance, on 17/12/2008 the European Parliament has adopted the amendment on the abolition of the opt-out³(36) months after the entry into force of this Directive with 421 votes in favour 273 against and 11 abstentions.⁴ The legal basis for this amendment was mainly the health and safety of workers as overtime would foreseeably damage the employees' health.⁵ Overtime work may affect not only the employee; it may affect also those around him in some professions such as driving a vehicle or using a dangerous machinery.⁶

Finally, overtime may have several negative results such as a decline in productivity and creativity, it may contribute to illnesses and depression which cost the society a lot in economic terms, the reconciliation work and family life,

V. CONCLUSION

In this paper, we discussed the rules and regulations related to overtime regulations under the OLL. Despite the fact that most of these regulations are comparable to the international rules governing the overtime work, there are some flaws that exist and better be amended.

First of all, the definition of overtime under the OLL is better revisited in order to clarify what does exactly constitute overtime work. The present wording is not clear whether the extra time which amounts to overtime work is to be calculated against the 45 hours (statutory maximum hours) or against the contractual ones.

Furthermore, there is no cap on the number of days during which the employee may perform overtime work. It is not clear if the overtime hours can extend to cover the whole contract period. However, it is unlikely for the overtime work to cover the whole period of the employment contract because in this case it will be pointless for the OLL to impose the statutory maximum working hours of the 9 hours per day. Therefore, our recommendation is to clarify this issue by the Omani legislator to eliminate any confusion and to preserve certainty in employment relations.

Moreover, the OLL provided what seems to be a general rule for the overtime minimum payment rate in article (70) and in articles (72 &73) which provided 5 special cases for allowing overtime. It is not clear whether those special cases were mentioned as merely examples or on exclusive basis. It is not clear whether the conditions set out in article (70) are to be applied to those special cases or not. In addition, the OLL did not clarify whether overtime on rest days is allowed in general, as the article (70), which established the general rule, unlike article (73), did not provide regulations for the premium rate for the overtime performed on the rest days. Regarding overtime performed during the official holidays, the OLL provided two different payment premium rates. For the sake of certainty, it would be better to adopt one method for the overtime premium rate.

Besides, some cases of the overtime work do not expressly require the assent of the employee to perform this work. However, the Constitution of Oman, the Anti Human Trafficking law and the general provisions of the OLL explicitly forbid the employer from enforcing the employee to provide compulsory work. This rule applies to both the contractual and overtime works. Compulsory work is considered a crime and the punishment includes both imprisonment and a fine.

Finally, excessive overtime may jeopardise the health and safety of the employee. It would be more effective if the OLL takes the employee's health and safety issues into consideration while allowing the overtime work. In this regard, it may be more effective if some types of work be excluded from allowing overtime and limiting the maximum period of weeks during which the employee may perform overtime work.

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