

論「延長工作時間」或 「值日(夜)」之認定與區別： 以醫師助理／專科護理師 請求加班費一案為例

On the Identification of the Extended Working Hours
and Regular / Night Shift and Their Difference :
The Case of Claim for Overtime-Payment by Physician
Assistants and Nurse Practitioners as an Example

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摘 要

勞工之工作時間，若為延長工作時間，雇主則應依勞動基準法第24條之規定給付加班費；若為值日（夜），雇主應給付值日（夜）津貼，至於值日（夜）津貼之金額，則由勞雇雙方議定之。本文將介紹一則從事專科護理師工作內容之醫師助理，主張其值班乃屬延長工作時間，向雇主請求加班費，但雙方對值班屬延長工作時間或值日（夜）有所爭執之判決。本件之爭點涉及延長工作時間與值日（夜）等概念，本文擬藉此判決探討延長工作時間與值日（夜）之認定與區別。

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關鍵詞：延長工作時間（extended working hours）、值日（夜）（regular / night shift）、專科護理師（nurse practitioners）、護理勞動權益（nursing labor rights）

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If the working hours is extended, the employer should pay for overtime according to paragraph 24 Labor Standard Law. If it would be regular / night shift, the employer should pay allowance of it and it is agreed by both of the employee and the employer. A judgement is introduced in this article that physician assistants working as nurse practitioners claimed for overtime-payments which was based on shifts as extended working hours. However, there still was an argument about it. The legal issue is the concepts of extended working hours and of regular / night shifts. It would be discussed how they could be identified and be different.

壹、案例事實

乙、丙之工作職稱雖為醫師助理，實則從事專科護理師工作，其兩人之工作內容為：書寫病人照護情形、整理病歷、收集病人檢驗報告及影像學報告、會診資料並於主治醫師查房時向主治醫師報告。乙、丙於正常工作時間外，尚須依甲醫院之指示於夜間時段在醫院值班，值班時間自當日正常工作時間下班後（即17時30分）至隔日中午12時，醫院配置值班之乙、丙一支值班手機，嗣病人病況出現變化，護理人員始以手機聯繫乙、丙。乙、丙於值班期間並無特定或固定之工作內容，要做自己的事情或睡覺亦可，只要於病人病況出現變化時可供護理人員聯繫並處理病人病況即可¹。乙、丙於值班時間，甲醫院給付其兩人3,500~5,000元不等金額之值班費，惟乙、丙主張其兩人之夜間值班工作與白天工作無異，乃延續白班工作，甲

1 本件改編自臺灣高等法院臺中分院104年度勞上字第23號民事判決。