

Guidance on Extraordinary Circumstances & Swapping Days

The labour laws in most of the countries where we do business provide a definition or examples of what is meant by extraordinary, or unusual, circumstances. Typically, they refer to floods, earthquakes, fires, social upheaval (such as demonstrations or riots), and outbreaks of disease or ill health, i.e. events which are generally beyond anyone’s control. Recent examples would be COVID-19, the Asian tsunami, the severe typhoons which have been experienced in the Asia-Pacific region over the last few years, and factory breakouts of cholera and food poisoning. Extraordinary Circumstances does not include supply chain problems, non-delivery/late delivery of materials, delays caused by production or quality problems or break-downs of machinery, failure to accurately state real capacity, or other problems which are generally within the responsibility or control of, or could be prevented by, management.

In Extraordinary Circumstances, we expect that our suppliers will notify adidas Sourcing and SEA (or the relevant Business Unit which places the orders at the factory). As a good practice, Sourcing staff from the adidas or its business partners (e.g. agent, licensee, vendor, etc.), and SEA should share such information to ensure that all parties are kept up-to-date and can offer the supplier support.

Note: In relation to power shortages or outages, please see the case studies section below.

The factory must still provide one day off within every seven-day period. This means that a factory would be able to work a maximum of 12 consecutive days. Please see the example directly below.

Sun	Mon	Tues	Wed	Thurs	Fri	Sat
X	✓	✓	✓	✓	✓	✓
✓	✓	✓	✓	✓	✓	X
X	x	✓	✓	✓	✓	✓

Note: The Monday highlighted in green is the compensation day off for the Sunday worked highlighted in orange.

- The compensation day off must be provided within one month of the extra day worked, and preferably as early as possible after the extra day worked.
- The factory must not work more than 12 hours maximum per day or the legal daily maximum (i.e. follow the stricter standard).
- The factory must pay the correct overtime, weekend or holiday pay rates according to the local laws, as well as the compensation day off, i.e. the day not worked – this must not be deducted from the monthly wage.
- The factory must comply with any requirements of the local labour authorities in relation to work beyond the local legal limits. For example, the factory must obtain the local labour bureau’s ‘exemption’ or waiver for work in excess of the legal limits, the adidas requirements applies only where the law is silent, unclear or is less strict than the rules cited here. If the local legal requirements are stricter, than the local law prevails.

GOOD PRACTICE: Develop an approval system for work “outside” the factory’s usual schedule. For example, if work is required in excess of the 60-hour limit or on a rest day, the work request should be reviewed and approved by several levels of factory management. The approval for doing so must contain the conditions upon which requests for work outside the normal factory schedule will be granted, e.g. compensation days off must be provided, and/or additional work bonuses will be provided to workers.

- The factory must notify SEA of the production/holiday schedule and that the ‘one day off’ rule still applies.
- If the change in production schedule (resulting in ‘swapping days’) is in line with a government, industry or industrial zone sponsored practice to accommodate special religious or national holidays, then it is not necessary to pay the correct overtime premiums on any rest day or holiday swapped with a regular work day. Otherwise, the correct overtime premiums are applied.

ADVISORY: SWAPPING DAYS FOR EXTENDED HOLIDAYS

In many countries, it has become the practice to swap rest days with workdays in order to provide management and employees with extended holidays. Typically, this happens during Lunar New Year, Christmas, Idul Fitri and around labour days and other significant national holidays.


- Any overtime performed on a public holiday or ‘swapped rest day’ should be done voluntarily. Therefore, the factory must provide documentation which demonstrates a worker’s consent to such an arrangement, e.g. where there is a valid union in the workplace, the union may provide consent/agreement on behalf of its members. Where there is no valid worker representative organization in the factory, management must ensure that workers sign a collective agreement stating that the workforce has agreed to the change in production schedule to accommodate the holiday period, at the normal pay rates. Such cases will be verified by worker interviews and other monitoring.
- For public holidays or swapped rest days, which do not fall within the scheme described above, compensation rest days must be provided to workers who perform overtime on a public holiday or ‘swapped rest day’.
- In some cases, where the factory provides additional leave to workers, in conjunction with a scheduled factory closure, e.g. factory breaks Monday to Thursday, the factory decides to provide the Friday as leave also, and deducts this from the annual leave entitlement, with worker consent. See notes above regarding documentary evidence required.

Rest Day

- One full day (24 hours) of rest within every 7-day period.
- Establish the weekly rest day and arrange the work week schedule around the rest day.
- Ensure that employees with special work arrangements such as engineers, security guards and cooks receive a rostered day off within every 7-day period and that their total working hours do not exceed 60 hours each week.

Annual Leave/Public Holidays

- The purpose of annual leave is to ensure that employees have a reasonable period of rest and recreation following each year of employment to maintain work-life balance. Employees are normally expected to take their full annual holiday entitlement within the year following its accrual. The factory must encourage workers to use their annual leave entitlement instead of accepting monetary compensation in lieu of annual leave. Nonetheless, any unused annual leave must be paid out in full.
- Check the local legal requirements for annual leave, for all categories of workers. There may be different entitlements, depending on seniority and other factors.
(Note: Factories must not terminate employment to avoid certain benefits such as an increase in annual leave based on seniority.)
- The factory must have a proper annual leave policy in place, including an annual leave management scheme for new workers who, under law, have not completed the period of service necessary to start taking annual leave. The policy should include a procedure that defines the steps for workers to give notification in advance before taking annual leave. As soon as the workers become entitled to take leave as per law, they must be allowed to request and take the annual leave, unless the request is not sufficient in advance as per the legal requirements.

 **RED FLAG** – Check local laws or accepted industry practices that allows the factory to schedule the annual leave of workers by department, or at certain times of the year. Usually, it is necessary to consult with, and seek the approval of, any unions in the workplace, to ensure that there is no 'forced' annual leave. Alternatively, ensure that there is a systematic method for consulting workers and informing them of any scheduled factory breaks or rostered holidays in advance.

- Similarly, if national holidays are swapped with regular workdays to maximize scheduled annual leave or factory closures during national holidays, ensure that workers agree and that this agreement is recorded. (See the notes above on Swapping Days for Extended Holidays.)
- In those cases, directly above where annual leave is scheduled for a new worker who may not have accrued any leave under law, the factory may deduct this leave from the entitlement when it becomes available, or as good practice, may simply pay any new worker for that day since the holiday was not at the worker's request but scheduled by the factory.

GOOD PRACTICE: communication with workers is essential. Notify workers in advance of the weekly work schedule, annual leave rosters and factory closures, and if the factory intends to swap workdays with rest days or public holidays. An explanation should be provided, and consent received before the factory makes any changes or manages the extraordinary or emergency circumstances. In many cases, employees will provide valuable suggestions for managing the production problems.

- Other categories of paid leave available to workers, such as emergency leave or sick leave must not be deducted against annual leave.

- Attendance bonuses or other incentive schemes should not be affected by a worker exercising his or her right to take annual leave. For example, if a worker requests 1-2 days annual leave, the worker should not lose the attendance bonus for that month, due to absence on the days taken as annual leave.
- In cases where a worker resigns, or the employment contract is terminated by the factory, the factory may calculate on a pro-rated basis the number of days which should be taken as leave or pay out the unused leave.
- The factory must set up a leave record system whereby workers can properly track an individual record. As good practice, the annual leave balance may appear on the employee pay slip. However, it is the worker's responsibility to complete any leave application forms by themselves.

GOOD PRACTICE: the factory can adopt a proactive approach by distributing a quarterly annual leave tracking report for each worker, containing days of work in that quarter, accumulated annual leaves and any other leave/absenteeism in the quarter, enabling workers and supervisors to work together to ensure that any leaves are well planned and executed accordingly.

Power Failure Scenarios

ADVISORY: The scenarios below deal exclusively with power shortages/outages and rearrangement of production schedules.

<p>Scenario A</p> <p>The local government (usually the local power authority) gives advance notice that the factory will be subject to power shortages on a certain weekday (for example Thursday) 4 weeks in a row, or even longer. The factory wants to swap the Thursday 'no power days with the weekly rest day, i.e. Sunday.</p>	<ul style="list-style-type: none"> ✓ Acceptable. Factory to notify/provide supporting document to Sourcing and SEA or the relevant business unit which places the orders at the factory. ✓ Requires advance notice, and proposed schedule must clearly state which dates will be swapped. ✓ Payment – no change. Acceptable to swap Thursdays with Sundays with no impact on pay rates. Thursday will be considered the official rest day for the specified period. ✓ Schedule must be communicated very clearly (orally and in writing). Notice period: best practice = one month for workers, and one to two weeks for the adidas Group/buyer. ✓ Only applies in cases of 4 WEEKS or more.
<p>Scenario B</p> <p>Same case as above, but the notice is for 1, 2 or 3 Thursdays only.</p>	<ul style="list-style-type: none"> ✓ Follow the Swapping Days for Business Purposes requirements. ✓ <i>BUT NO COMPENSATION DAY NECESSARY</i>

	<ul style="list-style-type: none"> ✓ *This is an exception to the normal requirements, to take into account the fact that it is entirely impractical/impossible to grant the compensation day off under such power failure circumstances. 																																																																													
<p>Scenario C The local power authority provides no advance notice and there is a sudden power failure in the factory. Workers are sent home and the factory schedules the next Sunday as a workday to make up for the lost production time. What happens if workers are sent home: a) within 1 hour of arriving at the factory? b) after lunch?</p>	<ul style="list-style-type: none"> ✓ Same as scenario B, i.e. Swapping Days for Business Purposes requirements apply. ✓ Pay full wages for the 'power off day' (regardless of what time it happens/workers stop work or are sent home). ✓ Pay the proper rates on Sunday. 																																																																													
<p>Scenario D This is a real-life case presented to SEA. Due to power shortages, the factory planned to readjust the rest days as set out below:</p> <table border="1" data-bbox="256 1200 708 1541"> <thead> <tr> <th>Sun</th> <th>M</th> <th>T</th> <th>W</th> <th>Th</th> <th>F</th> <th>Sat</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> <td>5</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td>A</td> <td></td> <td></td> </tr> <tr> <td>6</td> <td>7</td> <td>8</td> <td>9</td> <td>10</td> <td>11</td> <td>12</td> </tr> <tr> <td></td> <td>B</td> <td></td> <td></td> <td></td> <td>A</td> <td></td> </tr> <tr> <td>13</td> <td>14</td> <td>15</td> <td>16</td> <td>17</td> <td>18</td> <td>19</td> </tr> <tr> <td></td> <td></td> <td>B</td> <td></td> <td></td> <td></td> <td>A</td> </tr> <tr> <td>20</td> <td>21</td> <td>22</td> <td>23</td> <td>24</td> <td>25</td> <td>26</td> </tr> <tr> <td></td> <td></td> <td></td> <td>B</td> <td></td> <td></td> <td></td> </tr> <tr> <td>27</td> <td>28</td> <td>29</td> <td>30</td> <td>31</td> <td></td> <td></td> </tr> <tr> <td>A</td> <td></td> <td></td> <td></td> <td>B</td> <td></td> <td></td> </tr> </tbody> </table> <p>* Blue font is power cut day; A is rest day; B is half-day work with 200% overtime rate.</p>	Sun	M	T	W	Th	F	Sat			1	2	3	4	5					A			6	7	8	9	10	11	12		B				A		13	14	15	16	17	18	19			B				A	20	21	22	23	24	25	26				B				27	28	29	30	31			A				B			<ul style="list-style-type: none"> ✓ Rejected by SEA on the basis that the most basic principle of a regular rest day was not observed. ✓ The factory is required to consult with SEA and Sourcing on a proper production schedule and rest day schedule.
Sun	M	T	W	Th	F	Sat																																																																								
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<p>Scenario E</p>	<ul style="list-style-type: none"> ✓ Neither Extraordinary Circumstances nor Swapping Days applies to this scenario. ✓ If SEA is to advise properly on the working hours arrangements during the summer period, field staff require full information from the factory management. For example: <ul style="list-style-type: none"> ▪ Is there any alternative energy sources/ will the factory install a generator? 																																																																													

The factory suffers power failures every four days, or so, for approx. four months each year, during the summer months when pressure on the electrical grid is highest. The factory operates three shifts. On the days where this is a power failure, day shifts A and B do not work, and only the night shift operates. This year, based on discussions with the SEA Team, the factory plans to manage this situation better, and to create a shift schedule and communicate it to the workforce one month early.

Sun	M	T	W	Th	F	Sat
		1	2	3	4	5
				A		
6	7	8	9	10	11	12
	B				A	
13	14	15	16	17	18	19
		B				A
20	21	22	23	24	25	26
			B			
27	28	29	30	31		
A				B		

- What does the complete work schedule/shift arrangement look like?
- Does it comply with the SEA Standards? Is there any H&S risk to workers?
- What are the local legal requirements regarding nights shifts?

Scenario F

Local government/power authority does not specify the day(s) on which the power will be cut. They only indicate that there is a range of days for possible black outs (similar to Scenarios A & B).

Sun	M	T	W	Th	F	Sat
			X	?	?	
			?	X	?	
			x	?	?	
			x	?	?	
			?	?	X	

- ✓ This is a highly specialized case.
- ✓ The clearest solution is to install a generator.
- ✓ It is not acceptable to have a different rest day every week with no prior notice to workers.

ADVISORY: *Summary of requirements table for Unusual Circumstances and Swapping Days (applies only where directed by SEA)*

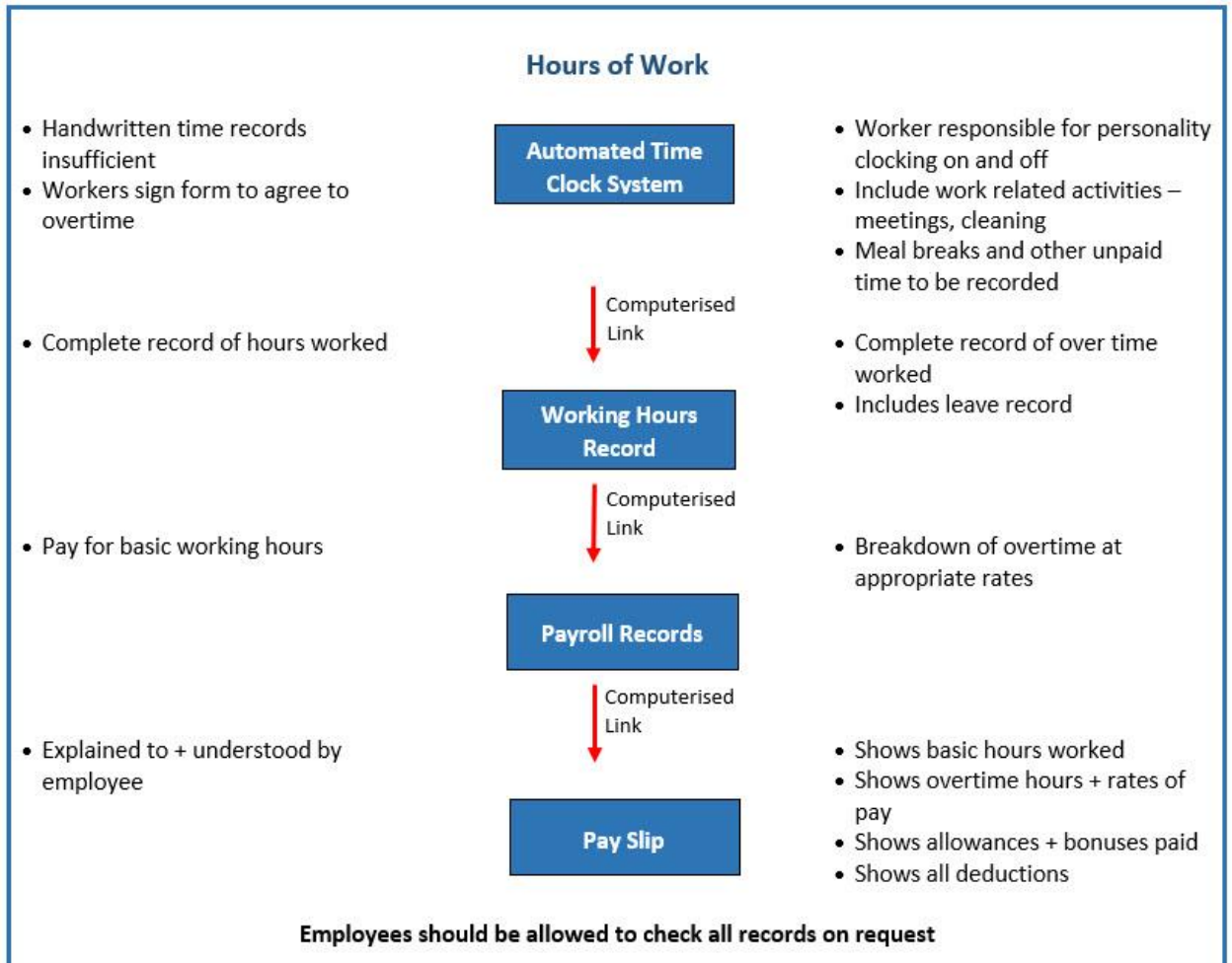
CASE	BASIC REQUIREMENTS
<p>1. UNUSUAL CIRCUMSTANCES (Events which are beyond anyone's control, e.g. flood, earthquake fire, riot, demonstration)</p>	<ul style="list-style-type: none"> ✓ CM Approval Form* ✓ One day off (12 days consecutive work possible) asterisk ✓ 12 hr daily max or legal limit ✓ Voluntary ✓ Pay correct OT, weekend and Holiday rates ✓ If work day swapped with rest day, no need to pay for the day not worked ✓ Comply with local labour authority requirement
<p>2. SWAPPING DAYS & OT (Circumstances which interfere with the prod. schedule & cause delays, e.g. no proper system mtrl delay, adidas practices contributes to the problem)</p>	<ul style="list-style-type: none"> ✓ CM Approval Form* ✓ One day off (12 days consecutive work possible) ✓ 12 hr daily max or legal limit ✓ Voluntary ✓ Compensation day off must be provided ✓ Weekly max: 66 hrs (FW); 72 hrs (APP, A&G) ✓ Pay correct OT, weekend and Holiday rates ✓ Comply with local labour authority requirement
<p>3. NATIONAL HOLIDAYS (Practice to swap rest day with work days in order to provide management & employees with extended holidays)</p>	<ul style="list-style-type: none"> ✗ No need CM Approval, but notify SEA ✓ One day off (12 days consecutive work possible) ✓ IF in line with govt/industry/zone practice, no need to pay correct weekend or holiday rates ✓ Voluntary ✓ Doc. Process ✓ Possible to deduct additional leave days provided from annual leave with worker consent

Guidance on Time Recording

In addition to all basic requirements detailed in local laws and adidas' Employment Guidelines, which should be observed by factories in their treatment of *all* workers, below are additional key areas of concern, and actions which factories should take in relation to the Time Recording, use of Finger printing and Scanning system.

- Ensure that there is a direct link between electronic or automated time recording systems and the payroll. In the event that there is no automated time recording system, the factory must demonstrate that there is a system for transferring data from work hour records to the payroll, and a system for double-checking the regular and overtime work hours.
- Ensure that no double timecard or payroll systems are used.
- Any departments on shift work must ensure that employees are not working multiple shifts.
- Maintain hourly records and payroll in good condition and on site for at least three years or where the period is more than three years, in accordance with local law.
- Establish production targets and productivity levels which are based on a regular work week and not excessive overtime.
- Encourage workers to keep their own daily working hour records. Print out a statement of the working hours for workers to check before they receive their pay.

Management Flowchart for the process to accurately reflect the working hours and compensation.



SPECIAL NOTE ON TIME RECORDING

The current requirement is for 4-6 'punches' (mechanical time cards) or 'swipes' (electronic recording).

Morning 1'	Lunch 1'	End Lunch 1'	Finish 1'		
Morning 1'	Lunch 1'	End Lunch 1'	Dinner 1'	Start OT 1'	Finish 1'

Why?

- Transparent time records
- Monitoring by SEA
- Monitoring by Independent External Monitor (IEM)
- Ensure that workers are not working during lunch or dinner breaks
- Ensure no before-work or after-hours work, meetings, etc.

Problems

- 4-6 punches do not really guarantee that there is no work-related activity during breaks or outside working hours
- Some complaints from workers (shortens their lunch break)
- Factory management often disagrees with requirement

Recommendation

- If no OT, 2 'punches' are okay
- If OT, then a dinner time punch is still required, i.e. 3 punches in total

Morning 1'	Lunch	End Lunch	Finish 1'		
Morning 1'	Lunch	End Lunch	Dinner 1'	Start OT	Finish 1'

Note: The dinner time punch is necessary because not all workers do OT, not all workers do the same amount of OT, and not all workers will take their dinner break at the same time.

If factories want to implement this recommendation, the conditions for doing so are set out below

- ✓ The factory must have implemented an electronic time recording system which is linked to the payroll.
- ✓ For small scale factories with 20 or fewer workers, using a mechanical time clock, i.e. punch card system, is acceptable. However, the factory must demonstrate that there is a system for transferring data from time records to the payroll, and a system for double checking the regular and overtime work hours. For example, the use of manual/handwritten time records for cross-checking purposes.

- ✓ For those types of work that require the employee to start earlier or later than he or she can access the time recording system, handwritten records showing the workers signature are acceptable. (For instance, drivers who start work and pick up employees before arriving at the factory and 'clocking in')
- ✓ The factory must have a fixed lunch schedule which is clearly understood by all workers.
- ✓ No meetings, catch-up, cleaning to be done before or after hours, or during breaks.
- ✓ A '15-minute window' is allowed in which all employees must 'clock on' or 'clock off'. This is a reasonable amount of time for workers to enter the factory, record their time of entry and attend the production area. Any times recorded outside the '15-minute window' are to be regarded as records of time worked outside the regular schedule and paid at the appropriate overtime rates.
- ✓ The factory must have enough time-recording machines in proper locations. Staggering dinner times for different departments is another alternative to allow workers to clock out and back in more quickly and not lose break time.
- ✓ **Factories which cannot comply with the conditions, must continue to use the previously set requirement of 4-6 punches.**