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## Achieving decent work in China: a case study of decent working time

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## 5.1 INTRODUCTION

This chapter assesses China's progress towards the substantive aspects of decent working time in terms of the ILO benchmarks discussed in Chapter 4. In accordance with the periodisation of the development of Chinese labour legislation in Chapter 1, the main body of this chapter is divided into three parts: the period before the transition (1949-1978); the transition period (1978-2007); and the period after the transition (2008-2020). Each part has a similar format conducted in three steps. First, it identifies the relevant legal instruments addressing working time in China. Five types of legal instrument at the national level are specifically examined, namely: the Constitution, laws, administrative regulations, departmental rules, and normative documents, all of which are positive laws that may directly set substantive working time standards – but with different levels of legal authority.<sup>1</sup> Together, they provide a complete picture of the substantive aspects of decent working time in China at the national level. Second, this chapter evaluates China's substantive working time standards in the identified legal instruments against the ILO benchmarks. Third, it provides an analysis and evaluation of the extent to which China is achieving decent working time regarding the substantive aspects. The three parts are followed by an overall evaluation of the three periods.

The sources used in this chapter embrace both the ILO benchmarks and Chinese legal texts. The ILO benchmarks are enumerated in Chapter 4 (see table 4.5). The Chinese legal texts can be found in two legal databases. The first is the National Database of Laws and Regulations developed by the highest legislature of China, the National People's Congress (NPC) (LRD-NPC). This database is the largest authentic access source to information on Chinese legal texts, and is mainly in Chinese but may be also available in English translation.<sup>2</sup> The second is the Laws and Regulations Database of Chinalawinfo Database developed by Peking University (PKU) (LRD-PKU), which provides users with access to a wide range of China-related

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1 For a more detailed introduction of the sources of Chinese labour laws, see: Chapter 1 and Appendix 1: Profile of China.

2 'National Database of Laws and Regulations (in Chinese: 全国法律法规数据库)' <<https://flk.npc.gov.cn/>> accessed 31 December 2021.

legal information, mostly both in Chinese and English.<sup>3</sup> The assessment of China's substantive working time standards against the ILO benchmarks in this chapter could produce to a new database, ILO-DWT-China database, on the extent to which China is achieving decent working time regarding the substantive aspects, to be found in Appendix 5.

## 5.2 THE PERIOD BEFORE THE TRANSITION (1949-1978)

### 5.2.1 Identification of China's legal instruments dealing with working time (1949-1978)

Based on the legal databases of LRD-NPC and LRD-PKU, a full list of China's legal instruments dealing with working time in the period before the transition (1949-1978) can be identified in table 5.1. In general, we can see that the no 'law' dealing with working time can be found in this period; instead, the majority of legal instruments are to be found in 'normative documents', which have the lowest legal status in the Chinese legal system. Sections 5.2.1.1 to 5.2.1.4 examine these types of legal instruments regarding working time in detail, respectively.

Table 5.1 *The legal instruments dealing with working time in China (1949-1978)*

Types	Legal instruments	Legal indicators covered	Effective period
Constitutions	The 1949 Common Programme	Working time duration (daily limit)	1949-1954
	The 1954 Constitution	Working time in general	1954-1975
	The 1975 Constitution	Working time in general	1975-1978
Administrative Regulations	Measures on Public Holidays for Annual Festivals and Memorial Days of 1949	Other legal indicators (public holidays)	1949-1999
	Labour Insurance Regulation of 1951 (amended in 1953)	Care-related leave (maternity leave)	1951-present (partly expired)*
	Interim Regulation on Living Conditions of State Functionaries during Sick Leave of 1952 (Revisions in 1954 and 1955)	Other legal indicators (sick leave)	1952-1981
	Interim Regulation on Home Leave and Wages Benefits of Workers of 1957	Other legal indicators (home leave)	1957-1978

3 'Chinalawinfo Database: Laws and Regulations Database (in Chinese: 北大法宝: 法律法规数据库)' <<https://www.lawinfochina.com/search/SearchLaw.aspx>> accessed 31 December 2021.

<b>Departmental rules</b>	<b>Measures on Handling Dangerous Goods of 1951</b>	Working time duration (daily limit); other legal indicators (daily break)	1951-2008
<b>Normative Documents</b>	<b>Decisions on Employment Issues of 1952</b>	Working time duration (daily limit, overtime limit, overtime work arrangement); working time organisation (standard working time arrangement)	1952-1987
	<b>Notice on Maternity Leave for Female Workers of 1955</b>	Care-related leave (maternity leave)	1955-1988
	<b>Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work, and Performing State and Social Obligations of 1956</b>	Working time organisation (standard working time arrangement, overtime work arrangement)	1956-present
	<b>Provisions on Eight Working Hours in the Construction Sector of 1956</b>	Working time duration (daily limit); working time organisation (standard working time arrangement)	1956-2000
	<b>Provisions on Working Conditions of Loading, Unloading, and Handling Workers of 1956</b>	Other legal indicators (daily break)	1956-present
	<b>Opinions on Wage Benefits for Workers during Overtime, Personal Leave, Sick Leave, and Suspension from Work of 1959</b>	Working time duration (overtime limit); working time Organisation (overtime work arrangement); other legal indicators (personal leave, sick leave, wedding and funeral leave)	1959-present
	<b>Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works of 1965</b>	Working time duration (daily limit, paid annual leave)	1965-present

*Note.* The provisions on maternity leave contained in this regulation were terminated due to the adoption of the Regulation on Labour Protection of Female Workers in 1988.

### 5.2.1.1 The Constitution

The first form of regulation of working time in this period is found in the Common Programme, which was adopted by the Chinese People's Political Consultative Conference (CPPCC) in 1949 and served as the interim Constitution of China from 1949 to 1954. It set a general rule of 'eight to

ten hours working day', applying to both public and private enterprises.<sup>4</sup> The first formal Constitution, adopted by the National People's Congress (NPC) in 1954, explicitly stipulated that 'workers have the right to rest' and 'the State shall regulate hours of work and holidays, and expands the facilities for rest and recuperation of workers in order to enable them to exercise such right'.<sup>5</sup> The 1954 Constitution was replaced by the 1975 Constitution, born in the context of the Cultural Revolution.<sup>6</sup> The latter legitimised the Cultural Revolution and reduced many provisions that should be stipulated explicitly in the Constitution.<sup>7</sup> Most strikingly, the 1975 Constitution eliminated the stipulation that 'citizens are legally equal' contained in the 1954 Constitution.<sup>8</sup> The regulation of working time was simplified as 'workers have the right to rest'.<sup>9</sup>

### 5.2.1.2 Administrative Regulations

The first administrative regulation regarding working time was adopted by the State Council in 1949, namely, the Measures on Public Holidays for Annual Festivals and Memorial Days.<sup>10</sup> It recognised four types of public holidays in China: (a) holidays for all citizens (seven days in total); (b) holidays for certain groups (half-day for women, youth, children, and military personnel); (c) holidays for ethnic minorities (shall be regulated by local governments); and (d) memorial days without leave.<sup>11</sup>

Next was the Labour Insurance Regulation, adopted by the State Council in 1951 and amended in 1953, dealing with maternity leave. It identified maternity leave as part of labour insurance to protect the health of paid workers and ease special difficulties in their livelihood.<sup>12</sup> It entitled female workers to a leave period of fifty-six days with full payment of the wage, an additional fourteen days in cases of a difficult delivery or the birth of twins, and a leave period of thirty days to those who have had a miscarriage.<sup>13</sup>

4 The Common Programme 1949, art 32.

5 The Constitution 1954, art 92.

6 The Cultural Revolution (in Chinese: 文化大革命) was a socio-political movement in China from 1966 to 1976. During the Cultural Revolution, all political science and law institutes were basically closed. As many scholars have pointed out, it was a ten-year disaster for legal studies. See: Sean Cooney, Sarah Biddulph and Ying Zhu, *Law and Fair Work in China* (Routledge 2013) 25; Dong Yan, 'In Search of Chinese "Labour Law"' in Alan C. Neal (ed), *Cross-Currents in Modern Chinese Labour Law* (Wolters Kluwer 2014) 26.

7 The 106 articles contained in the 1954 Constitution were reduced to 30 articles in the 1975 Constitution.

8 The Constitution 1954, art 85.

9 The Constitution 1975, art 27.

10 In general, a legal instrument titled with 'measures' often leads to a 'department rule' or 'normative document' in China, but there are a few exceptions, such as the current one. See Appendix 1: Profile of China.

11 Measures on Public Holidays for Annual Festivals and Memorial Days 1949, ss 1-4.

12 Labour Insurance Regulation 1951 (amended in 1953), art 1.

13 Labour Insurance Regulation 1951 (amended in 1953), art 16.

In 1952, a regulation dealing with sick leave was adopted, the Interim Regulation on Living Conditions of State Functionaries during Sick Leave. It was subsequently revised to a new version in 1954 and 1955. The 1955 Regulation on Sick Leave was designed for State Functionaries and other workers who had made great contributions to society.<sup>14</sup> It entitled such workers to a relatively long period of sick leave (within six months or above six months) with payment, depending on the years of work.<sup>15</sup>

The last major administrative regulation regarding working time in this period was the Interim Regulation on Home Leave and Wages Benefits of Workers, adopted by the State Council in 1957. This regulation was designed for workers who have worked for a whole year in public enterprises and institutions while living far away from their families.<sup>16</sup> It entitled these workers to a period of leave of two to three weeks, depending on the distance between workplace and home where their family members live.<sup>17</sup>

### 5.2.1.3 Department Rules

Only one department rule in relation to working time was formed in this period, the Measures on Handling Dangerous Goods, which was adopted by the Ministry of Labour in 1951. It stipulated that the daily working hours of workers handling toxic substances shall be limited to six to eight hours.<sup>18</sup> In addition, it clarified that these workers shall not work continuously for more than two hours, shall enjoy an adequate break between each work shift, and shall enjoy a higher payment of 115 per cent to 150 per cent more than workers handling regular substances.<sup>19</sup>

### 5.2.1.4 Normative Documents

The majority of legal instruments dealing with working time in this period were found in normative documents (see table 5.1). The first normative document was the Decisions on Employment Issues, adopted by the State Council in 1952 in accordance with the 1949 Common Programme. It was relatively comprehensive, covering various legal indicators, such as daily limit, overtime limit, overtime work arrangement, and standard working time arrangement.<sup>20</sup> It identified that the purpose of the regulation of working time was to protect workers' health, improve their working productivity,

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14 Interim Regulation on Living Conditions of State Functionaries during Sick Leave 1955, arts 1, 3.

15 Interim Regulation on Living Conditions of State Functionaries during Sick Leave 1955, art 3.

16 Regulation on Home Leave and Wages Benefits of Workers 1957, art 1.

17 Regulation on Home Leave and Wages Benefits of Workers 1957, art 2.

18 Measures on Handling Dangerous Goods 1951, art 4.

19 Measures on Handling Dangerous Goods 1951, arts 4, 5.

20 Decisions on Employment Issues 1952, s 1.

and promote employment.<sup>21</sup> It also elaborated upon the rule of ‘eight to ten hours working day’ set forth in the 1949 Common Programme. Specifically, first, in general, an eight- to ten-hour working day shall apply across the country; second, an eight-hour working day shall apply to the industry, mining, and transportation sectors, as well as to public enterprises in big and medium-sized cities; third, a less than eight-hour working day shall apply to activities that are detrimental to workers’ health; and fourth, overtime work shall be closely restricted in both public and private enterprises.<sup>22</sup>

Next, the Notice on Maternity Leave for Female Workers was adopted by the State Council in 1955. It was a relatively short normative document, applying to female workers in public institutions.<sup>23</sup> It set four rules consistent with maternity leave provisions contained in the 1951 Labour Insurance Regulation: (a) childbirth: a total of fifty-six days of leave shall apply to female workers before and after childbirth, with an additional fourteen days in cases of a difficult delivery or the birth of twins; (b) miscarriage: in the event of a miscarriage before the seventh month of pregnancy, a period of leave of up to thirty days shall apply to female workers, based on the advice of a medical practitioner; (c) during maternity leave (including Sundays and statutory holidays), wages shall be paid as usual; and (d) if a female worker still needs to rest at the expiration of her maternity leave due to illness, such leave shall be treated as sick leave.<sup>24</sup>

In the following year, three normative documents concerning working time were adopted, the Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work and Performing State and Social Obligations, by the Ministry of Labour, Provisions on Eight Working Hours in the Construction Sector by the State Council, and Provisions on Working Conditions of Loading, Unloading and Handling Workers by the Ministry of Labour. Specifically, the first document recognised ‘Sunday’ as ‘public day’ in the industry, mining, infrastructure construction, and transportation sectors.<sup>25</sup> In other words, a six-day workweek from Monday to Saturday was confirmed in these sectors. In addition, it clarified the rate of overtime payment, specifically: (a) 150 per cent on the regular wage if workers were required to work on Sunday, and (b) 200 per cent on the regular wage if workers were required to work on public holidays.<sup>26</sup> The second specifically confirmed an eight-hour working day in the Construction Sector.<sup>27</sup> The

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21 *ibid.*

22 *ibid.*

23 Notice on Maternity Leave for Female Workers 1955.

24 *ibid.*

25 Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work and Performing State and Social Obligations 1956, s 1(2).

26 Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work and Performing State and Social Obligations 1956, s 1(1).

27 Provisions on Eight Working Hours in the Construction Sector 1956.

third provided a set of technical rules with regard to handling-related activities, and clarified that workers shall have a break of at least ten minutes after two continuous hours of work.<sup>28</sup> It also cited that the rules for workers engaged in handling toxic substances shall refer to the special regulation, the 1951 Measures on Handling Dangerous Goods, as mentioned in section 5.2.1.3.

In 1959, the Opinions on Wage Benefits for Workers during Overtime, Personal Leave, Sick Leave and Suspension from Work was adopted by the Ministry of Labour, dealing with overtime payment, personal leave, and wedding and funeral leave.<sup>29</sup> It provided three rules: (a) formal workers in public enterprises are not entitled with paid personal leave since they are entitled to overtime payment; (b) administrative, engineering, technical, and cooking workers and other odd-job persons are entitled to paid personal leave of within two days as they are not entitled to overtime payment; and (c) all workers in public enterprises are entitled to a paid wedding or funeral leave of at most three days.<sup>30</sup>

The last normative document regarding working time in this period was the Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works, adopted by the Ministry of Health in 1965. It provided for a less than eight-hour working day and an annual leave of two to four weeks, specifically designed for workers in radioactive-related work.<sup>31</sup>

## 5.2.2 Assessment of China's substantive working time standards against the ILO benchmarks

This section assesses China's substantive working time standards against the ILO benchmarks for the period before the transition (1949-1978). Table 5.2 provides a full overview of the qualitative data of the assessment, while the full coding results with legal texts can be found in the ILO-DWT-China database in Appendix 5. As shown in table 5.2, not all legal indicators identified in the ILO benchmarks were regulated by Chinese legislation in this period. The qualitative data on the aspect of 'topic' ('0' or '1') give a first indication. While the legal indicators covered ('topic' coded as '0') consist of daily limit, overtime limit, weekly rest, paid annual leave, standard working time arrangement, overtime work arrangement, and maternity leave, while the legal indicators not covered (i.e., 'topic' coded as '0') consist of weekly limit, variable working time arrangement, night work, part-time work, and parental leave. As elaborated in Chapter 3, these legal indica-

28 Provisions on Working Conditions of Loading, Unloading and Handling Workers 1956.

29 It is worth noting that although 'sick leave' appeared in the title of this normative document, it was not dealt with in the content of this document. See: Opinions on Wage Benefits for Workers during Overtime, Personal Leave, Sick Leave and Suspension from Work 1959.

30 *ibid.*

31 Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works 1965.

tors are organised into three groups, working time duration, working time organisation, and care-related leave, to be explained in more detail in sections 5.2.2.1 to 5.2.2.3, respectively. Other legal indicators not governed by the ILO benchmarks can be found in Chinese legislation, identified in table 5.1 (see section 5.2.1), such as daily break, public holidays, sick leave, home leave, personal leave, and wedding and funeral leave, to be examined in section 5.2.2.4.

*Table 5.2 Results of the assessment of China's substantive working time standards against the ILO benchmarks (1949-1978)*

Legal indicators		Topic	Aim/ purpose	Scope of application	Material content
Working time duration	Daily limit	1	1	1	1
	Weekly limit	0	0	0	0
	Overtime limit	1	0	0	0.5
	Weekly rest	1	0	0.5	0.5
	Paid annual leave	1	0.5	0.5	0.5
Working time organisation	Standard working time arrangement	1	1	1	0.5
	Variable working time arrangement	0	0	0	0
	Overtime work arrangement	1	0	0	1.5
	Night work	0	0	0	0
	Part-time work	0	0	0	0
Care-related leave	Maternity leave	1	0.5	0.5	0.5
	Parental leave	0	0	0	0
Other legal indicators	Daily break, public holidays, home leave, personal leave, sick leave, and wedding and funeral leave				

### 5.2.2.1 Working time duration

Five legal indicators are concerned with the duration of working time: daily limit, weekly limit, overtime limit, weekly rest, and paid annual leave. As shown in table 5.2, with the exception of weekly limit, all the other four legal indicators were regulated in China in this period.

As found in the 1949 Common Programme and 1952 Decisions on Employment Issues, the daily hours of work was limited at eight to ten hours in general.<sup>32</sup> Additionally, the 1952 Decisions stipulated that an eight-hour work day shall apply to the industry, mining, and transportation sectors as well as to public enterprises in big and medium-sized cities and a less than eight-hour working day shall apply to activities that are detrimen-

<sup>32</sup> The Common Programme 1949, art 32; Decisions on Employment Issues 1952, s 1.

tal to workers' health.<sup>33</sup> These rules were elaborated upon in the 1951 Measures on Handling Dangerous Goods (e.g., six- to eight-hour working day), 1956 Provisions on Construction Sector (e.g., eight-hour working day), and 1965 Opinions on Radioactive Works (e.g., shorter than eight-hour working day).<sup>34</sup> As such, the daily limit of work hours in this period was generally established around eight as set by the ILO benchmarks, resulting in a coding of '1' on the material content of daily limit. The purpose of the regulation of daily limits was also provided in these legal instruments, mainly serving to protect workers' health and to improve their working productivity.<sup>35</sup> This incentive was consistent with the ILO benchmarks that aim to safeguard the health and well-being of workers and serve needs related to production.<sup>36</sup> Hence, a coding result of '1' was given to the aim/purpose of daily limit. Regarding the scope of application, the 1949 Common Programme and 1952 Decisions covered both public and private enterprises, which were also consistent with the ILO benchmarks that apply to both public and private industrial undertakings, commerce, and office sectors.<sup>37</sup> A coding result of '1' was thus also given to the scope of application of this legal indicator.

Compared to the daily limit that was fully regulated in this period, the overtime limit was only regulated based on the material content with no indications of the aim/purpose and scope of application. In fact, only a very brief stipulation of 'overtime work shall be strictly restricted in both public and private enterprises' was stipulated in the 1952 Decisions.<sup>38</sup> No other provisions on overtime limit can be found. Compared to the ILO benchmarks that call for a 'reasonable' limit on the number of overtime hours, Chinese legislation provided lower standards on material content.<sup>39</sup> Hence, a coding result of '0.5' was given to this aspect.

Weekly rest was regulated on the material content and scope of application with no indication of the aim/purpose. However, compared to the ILO benchmarks in which weekly rest is fleshed out in detail in two specific Conventions, only one legal instrument related to weekly rest can be found in China, the 1956 Notice on Wage Issues.<sup>40</sup> This instrument specifies 'Sunday' as 'public day' in the industry, mining, infrastructure construction and transportation sectors, implying one day of weekly rest.<sup>41</sup> This resulted in

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33 Decisions on Employment Issues 1952, s 1.

34 Measures on Handling Dangerous Goods 1951, art 4; Provisions on Eight Working Hours in the Construction Sector 1956; Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works 1965

35 Decisions on Employment Issues 1952, s 1.

36 See: table 4.5 in Chapter 4 and Appendix 5.

37 *ibid.*

38 Decisions on Employment Issues 1952, s 1.

39 See: table 4.5 in Chapter 4 and Appendix 5.

40 *ibid.*

41 Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work and Performing State and Social Obligations 1956, s 1(2).

a coding result of '0.5' on both material content and scope of application of weekly rest.

Similar to the daily limit, paid annual leave was fully regulated on three aspects in this period. However, compared to the ILO benchmarks that provide all employed persons, except seafarers, with at least three working weeks of paid annual leave for one year of service in order to protect their health and well-being, allow them to be with their families, help them be more productive, and limit working time over the year, Chinese legislation provided lower standards on all three aspects.<sup>42</sup> Only one normative document dealing with paid annual leave can be found in this period, the 1965 Opinions on Radioactive Works, which provided workers involved with radioactive-related works annual rest of two to four weeks to protect their health and prevent disease.<sup>43</sup> A coding result of '0.5' was given to all three aspects of paid annual leave.

### 5.2.2.2 Working time organisation

Five legal indicators are concerned with the organisation of working time: standard working time arrangement, variable working time arrangement, overtime work arrangement, night work, and part-time work; however, as shown in table 5.2, only two of them were regulated in China in this period, standard working time arrangement and overtime work arrangement.

Based on the ILO benchmarks, the standard working time arrangement is built upon the regulation of daily and weekly limits of hours of work and weekly rest. It is defined as the fixed working hours each day for a fixed number of days, usually an eight-hour working day and a forty-hour workweek (Monday to Friday) or a longer workweek than forty hours (Monday to Saturday).<sup>44</sup> It aims to safeguard the health and well-being of workers and to serve needs related to production, applying to both public and private industrial undertakings, commerce, and office sectors.<sup>45</sup> In this Chinese context, however, due to the lack of weekly limit, the standard working time arrangement was generally simplified as an eight-hour working day. Although 'Sunday' was specifically recognised as a 'public day', it merely appeared in a normative document applying to certain sectors.<sup>46</sup> Hence, Chinese legislation provided lower standards than the ILO benchmarks on the material content. A coding result of '0.5' was given to this aspect. The aim/purpose and scope of application of the standard working time arrangement are consistent with daily and weekly limits of hours of

42 See: table 4.5 in Chapter 4; Appendix 5.

43 Opinions on Working Hours and Rest for Workers Engaged in the Radioactive Works 1965.

44 See: table 4.5 in Chapter 4; Appendix 5.

45 *ibid.*

46 Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work and Performing State and Social Obligations 1956, s 1(2).

work and weekly rest. As examined in section 5.2.2.1, because these two aspects of daily limit in Chinese legislation were consistent with the ILO benchmarks, a same coding result of '1' was given to these two aspects of the standard working time arrangement.

The overtime work arrangement, much like the overtime limit examined in section 5.2.2.1, was only regulated on the material content with no indications of the aim/purpose and scope of application. As provided in the ILO benchmarks, the material content of overtime work arrangement is confined to overtime payment. While the ILO benchmarks provide that overtime payment shall not be less than 125 per cent of the regular wage, Chinese legislation stipulated that the overtime payment shall be 150 to 200 per cent of the regular wage depending on the days workers were required to work.<sup>47</sup> Hence, Chinese legislation provided higher standards than the ILO benchmarks on the material content. A coding result of '1.5' was given to this aspect.

### 5.2.2.3 Care-related leave

Two legal indicators are concerned with care-related leave: maternity leave and parental leave. As shown in table 5.2, while maternity leave was regulated on all three aspects in this period, parental leave was completely overlooked.

As found in the 1951 Labour Insurance Regulation, maternity leave was considered part of labour insurance to protect the health of paid workers and ease any special difficulties in their livelihood.<sup>48</sup> Compared to the ILO benchmarks, which aim to promote the equality of all women in the workforce; protect the health and safety of the mother and child; and recognise diversity in economic and social development and in enterprises applying to all employed women – including those in atypical forms of dependent work, Chinese legislation had lower standards for the aim/purpose and scope of application.<sup>49</sup> A coding result of '0.5' was given to these two aspects. In terms of the material content, while the ILO benchmarks provide a period of maternity leave of no less than fourteen weeks, including a compulsory leave period of six weeks after childbirth, both the 1951 Labour Insurance Regulation and 1955 Notice on Maternity Leave provided a leave period of fifty-six days and an additional fourteen days in cases of a difficult delivery or the birth of twins.<sup>50</sup> Chinese legislation thus provided lower standards than the ILO benchmarks. A coding result of '0.5' was given to this aspect.

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47 Notice on Wage Issues for Workers in Industry, Mining, Infrastructure Construction and Transportation Sectors during Working on Holidays, Overtime Work and Performing State and Social Obligations 1956, s 1(2).

48 Labour Insurance Regulation 1951 (amended in 1953), art 1.

49 See: table 4.5 in Chapter 4; Appendix 5.

50 Labour Insurance Regulation 1951 (amended in 1953), art 16.

5.2.2.4 Other legal indicators

In addition to the twelve legal indicators identified in the ILO benchmarks, other legal indicators can be found in the Chinese legal instruments as identified in section 5.2.1, such as daily break, public holidays, sick leave, home leave, personal leave, and wedding and funeral leave. However, due to the lack of relevant ILO benchmarks, they are not coded in the ILO-DWT-China database (see Appendix 5). Nevertheless, they also played an important role in achieving decent working time in China, at least for certain groups of workers. For instance, a relatively long period of sick leave with payment was provided to State Functionaries and other workers who had made a great contribution to the society, which helped to promote healthy working time.<sup>51</sup> Home leave was considered a means of resolving the problem for workers who have worked for a whole year in public enterprises and institutions and meanwhile live far away from their families, which helped to promote family-friendly working time.<sup>52</sup>

5.2.3 Analysis of achieving decent working time in China: Substantive aspects (1949-1978)

This section moves to an analysis and evaluation of achieving decent working time regarding the substantive aspects in China. While table 5.2 provides a full overview of the qualitative data of the assessment for the period before the transition (1949-1978), figure 5.1 features the same information, but shows more clearly where China met the ILO benchmarks, on which indicators it was falling short, and on which indicators China was outperforming the ILO benchmarks.

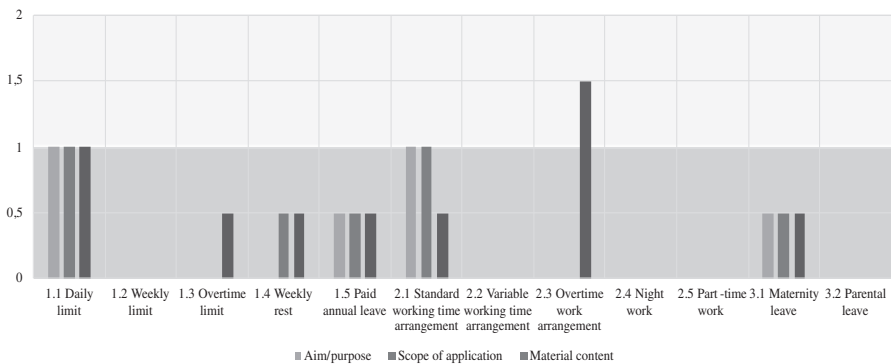


Figure 5.1 Evaluation of achieving decent working time in China: Substantive aspects (1949-1978)

51 Interim Regulation on Living Conditions of State Functionaries during Sick Leave 1955.

52 Regulation on Home Leave and Wages Benefits of Workers 1957.

As figure 5.1 makes clear, China was far from reaching any of the ILO benchmarks in this period, with the exception of daily limit, the aim/purpose and scope of application of standard working time arrangement, and the material scope of overtime work arrangement. This shortcoming was due to China's lack of a comprehensive and specific law governing working time in this period. Most attention was paid to the daily limit, whereas for five of the twelve legal indicators nothing at all was regulated, including weekly limit, variable working time arrangement, night work, part-time work, and parental leave. Notably, however, China exceeded the ILO benchmarks on the material content of overtime work arrangement because Chinese legislation provided a higher rate of overtime payment than what the ILO benchmarks set.

A second remarkable point is that, although the legal indicators of paid annual leave and maternity leave were fully regulated on three aspects, none of them provided similar-to-higher standards than the ILO benchmarks because paid annual leave merely derived from a normative document dealing with radioactive works. It was expressed as an 'annual rest' confined to such workers. Maternity leave was found in an administrative regulation dealing with labour insurance, and a normative document specifically applying to public institutions. However, both legal instruments provided lower standards than the ILO benchmarks.

A third point is that, although the legal indicators of overtime limit and weekly rest were regulated, they were only regulated on the material content with little or no indication of the aim/purpose and being limited in the scope of application. While overtime limit was only found in a very brief stipulation that overtime work shall be rigorously restricted in both public and private enterprises, weekly rest was stipulated through the recognition of 'Sunday' as a 'public day' in certain sectors. No further elaboration on these two legal indicators can be observed.

### 5.3 THE TRANSITION PERIOD (1978-2007)

#### 5.3.1 Identification of China's legal instruments dealing with working time (1978-2007)

Based on the legal databases of LRD-NPC and LRD-PKU, a full list of China's legal instruments dealing with working time in the transition period (1978-2007) appears in table 5.3. As this table shows, substantial changes took place in the legal instruments dealing with working time in this period. It became more common to use laws and regulations to set substantive working time standards. Normative documents appeared to interpret or elaborate upon the legislative provisions enshrined in the laws and regulations. Sections 5.3.1.1 to 5.3.1.4 examine such legal instruments dealing with working time in detail, respectively.

Table 5.3 The legal instruments dealing with working time in China (1978-2007)

Types	Legal instruments	Legal indicators covered	Effective period
<b>Constitution</b>	<b>The 1978 Constitution</b>	Working time in general	1978-1982
	<b>The 1982 Constitution (amended in 1988, 1993, 1999, 2004, and 2018)</b>	Working time in general	1982-present
<b>Laws</b>	<b>Law on the Protection of Women's Rights and Interests of 1992 (amended in 2005 and 2018)</b>	Care-related leave (maternity leave)	1992-present
	<b>The 1994 Labour Law (amended in 2009 and 2018)</b>	Working time duration (daily limit, weekly limit, overtime limit, weekly rest, paid annual leave); working time organisation (standard working time arrangement, overtime work arrangement, night work); care-related leave (maternity leave); other legal indicators (public holidays)	1995-present
<b>Administrative regulations</b>	<b>Regulation on Home Leave of Workers of 1981</b>	Other legal indicators (home leave)	1981-present
	<b>Regulation on Living Conditions for State Functionaries during Sick Leave of 1981</b>	Other legal indicators (sick leave)	1981-present
	<b>Regulation on Labour Protection of Female Workers of 1988</b>	Working time organisation (night work); care-related leave (maternity leave)	1988-2012
	<b>Regulation on Working Time of Workers of 1994</b>	Working time duration (daily limit, weekly limit, weekly rest); working time organisation (standard working time arrangement)	1994-1995
	<b>Regulation on Working Time of Workers (1995 Revision)</b>	Working time duration (daily limit, weekly limit, weekly rest); working time organisation (standard working time arrangement)	1995-present
	<b>Measures on Public Holidays for Annual Festivals and Memorial Days (1999 Revision)</b>	Other legal indicators (public holidays)	1999-2007

<b>Departmental rules</b>	<b>Measures on Examination and Approval of Irregular Working Hours System and Comprehensive Working Hours System of Enterprises of 1994</b>	Working time organisation (variable working time arrangement)	1995-present
	<b>Measures of the Ministry of Labour on the Implementation of the &lt;Regulation on Working Time of Workers&gt; of 1995</b>	Working time duration (daily limit, weekly limit, weekly rest); working time organisation (standard working time arrangement)	1995-present
	<b>Measures of the Ministry of Personnel on the Implementation of the &lt;Regulation of on Working Time of Workers&gt; in State Departments and Public Institutions of 1995</b>	Working time duration (daily limit, weekly limit, weekly rest); working time organisation (standard working time arrangement)	1995-present
	<b>Measures of the Ministry of Posts and Telecommunications on the Implementation of Working Time Provisions of 1995</b>	Working time duration (daily limit, weekly limit, overtime limit, weekly rest, paid annual leave); working time organisation (standard working time arrangement, variable working time arrangement, overtime work arrangement)	1995-present
	<b>Measures of the Ministry of Transport on the Implementation of Working Time Provisions of 1995</b>	Working time duration (daily limit, weekly limit, overtime limit, weekly rest, paid annual leave); working time organisation (standard working time arrangement, variable working time arrangement overtime work arrangement)	1995-present
<b>Normative documents</b>	<b>Notice on Wedding and Funeral Leave for Workers in the State-own Enterprises of 1980</b>	Other legal indicators (wedding and funeral leave)	1980-present
	<b>Opinions on the Implementation of &lt;Regulation on Home Leave of Workers&gt; of 1981</b>	Other legal indicators (home leave)	1981-present
	<b>Notice on the Restriction regarding the Excessive Overtime Payments of 1982</b>	Organisation (overtime work arrangement)	1982-present

<i>Normative documents</i>	<b>Interpretation on Issues regarding &lt;Regulation on Labour Protection of Female Workers&gt; of 1989</b>	Working time organisation (night work arrangement); care-related leave (maternity leave)	1989-present
	<b>Interpretation on Certain Provisions of &lt;Labour Law&gt; of 1994</b>	Working time duration (daily limit, weekly limit, overtime limit, weekly rest, paid annual leave); working time organisation (standard working time arrangement, overtime work arrangement, night work); care-related leave (maternity leave)	1994-present
	<b>Interpretation on the Issues regarding the &lt;Regulation on Working Time of Workers&gt; of 1995</b>	Duration (daily limit, weekly limit, weekly rest); Organisation (standard working time arrangement)	1995-present
	<b>Opinions on the Issues regarding the Implementation of &lt;Labour Law&gt; of 1995</b>	Working time duration (daily limit, weekly limit, overtime limit, weekly rest, paid annual leave); working time organisation (standard working time arrangement, overtime work arrangement, night work); care-related leave (maternity leave)	1995-present
	<b>Reply to Working Time Issues of Workers of 1997</b>	Working time duration (daily limit, weekly limit, overtime limit, weekly rest, paid annual leave); working time organisation (standard working time arrangement, overtime work arrangement)	1997-present
	<b>Opinions on Part-time Work Issues of 2003</b>	Working time organisation (part-time work arrangement)	2003-present

5.3.1.1 *The Constitution*

The 1978 Constitution was China’s third Constitution, adopted by the NPC at the end of the Cultural Revolution.<sup>53</sup> It restored several provisions contained in the 1954 Constitution but were deleted in the 1975 Constitution, including the provisions on working time. Specifically, Article 49 of the 1978 Constitution stipulated that ‘workers have the right to rest’, and ‘the State

53 The 1978 Constitution was the third version of Chinese Constitution. Because of the limitations of the historical conditions at that time, this Constitution failed to tackle the flaws of the 1975 Constitution. It was short-lived, working only up to 1982, when a new Constitution was adopted, which is the current 1982 Constitution. See Appendix 1: Profile of China.

shall regulate hours of work and holidays, and expand the facilities for rest and recuperation of workers in order to enable them to exercise such right', which was consistent with the 1954 Constitution. Four years later, a fourth Constitution was adopted by the NPC in 1982, which is the current Constitution and provides the same provisions regarding working time contained in the 1978 and 1954 Constitutions.<sup>54</sup> The 1982 Constitution was amended several times, but the provisions on working time have never been changed.

### 5.3.1.2 Laws

The first law in relation to working time was the Law on the Protection of Women's Rights and Interests, adopted by the NPC in 1992, dealing with maternity leave. It identified maternity leave as part of women's rights and in the interests of labour and social security, serving the overall purpose of this law to 'protect women's lawful rights and interests, promote equality between men and women, and allow full play to women's role in socialist modernisation'.<sup>55</sup> Additionally, it stipulated that women be under special protection during menstrual, pregnancy, obstetrical and nursing periods, and their labour contracts cannot be terminated by reasons of marriage, pregnancy, maternity leave, or baby-nursing.<sup>56</sup>

The most important law dealing with working time was the Labour Law, which was adopted by the NPC Standing Committee in July 1994 in accordance with the 1982 Constitution, and came into effect in January 1995. It was a comprehensive law governing labour in China, representing a milestone for Chinese labour legislation.<sup>57</sup> The purpose of this law is to 'protect workers' lawful rights and interests, adjust labour relationship, establish and safeguard the labour system suiting to the socialist market economy, and promote economic development and social progress'.<sup>58</sup> It has a broad application to workers who have established a labour relationship with the 'employing unit', including enterprises and individual businesses, State departments, public institutions, and social groups within the boundary of China.<sup>59</sup> The content of this law is also very broad, consisting of 107 articles divided into thirteen chapters, dealing with labour matters such as employment promotion, labour contract, working time, wages, occupational health and safety, special protection for female and juvenile workers, vocational training, social insurance and welfare, and labour disputes.<sup>60</sup>

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54 See: The Constitution 1982, art 43.

55 Law on the Protection of Women's Rights and Interests 1992, art 1.

56 Law on the Protection of Women's Rights and Interests 1992, arts 26–27.

57 Sean Cooney, Sarah Biddulph, and Ying Zhu, *Law and Fair Work in China* (Routledge 2013) 51; Junling Jia and Qian Wei, 'The Evolution and Development of China's Labour Law 1994' in Alan C. Neal (ed), *Cross-Currents in Modern Chinese Labour Law* (Wolters Kluwer 2014) 49.

58 Labour Law 1994, art 1.

59 Labour Law 1994, art 2.

60 Labour Law 1994.

A set of substantive standards in Chapter 4 of the 1994 Labour Law elaborated upon working time. Specifically, this law provides for an eight-hour working day, an average workweek of forty-four hours, and at least one day off per week.<sup>61</sup> It also provides provisions that enable an organisation to 'opt out' of these standards. Article 39 of this law stipulates that 'if the employer cannot follow those standards on daily and weekly limits of working hours and weekly rest, it may adopt other standards with the approval of the local labour department'. The detailed standards are not elaborated in this law; instead, they are specifically dealt with in a department rule adopted by the Ministry of Labour in 1994, namely, the Measures on Examination and Approval of Irregular Working Hour System and Comprehensive Working Hour System of Enterprises, to be examined in section 5.4.1.4, where department rules are concerned.

The 1994 Labour Law also regulates overtime due to the requirement of the production of enterprises, which is allowed limited to one hour per day in general, three hours per day for special reasons, and thirty-six hours per month, after the consultation between the employer and trade unions and workers concerned.<sup>62</sup> The 'requirement of the production of enterprises' is not elaborated in this law; instead, it is clarified in a normative document adopted by the Ministry of Labour in 1994, that is, the Interpretation on Certain Provisions of <Labour Law>, to be examined in section 5.3.1.5, where normative documents are concerned. The 1994 Labour Law also sets the rate of the overtime payment, covering three circumstances: (a) 150 per cent of the regular wage if workers are required to work longer hours in general; (b) 200 per cent of the regular wage if no compensation rest can be arranged afterwards for workers required to work on days of rest; and (c) 300 per cent of the regular wage if workers are required to work on public holidays.<sup>63</sup> Additionally, this law provides that overtime is not subject to restriction under three circumstance: (a) an emergency threatening the life and health of workers or the safety of property; (b) where urgent repairs are needed to production facilities; and (c) other circumstances stipulated by laws and administrative regulations.<sup>64</sup>

Public holidays and paid annual leave are also covered in the 1994 Labour Law. Article 40 identifies five paid national public holidays (i.e., New Year's Day, Spring Festival, International Labour Day, National Day, and other holidays stipulated by laws and regulations). This provision is supplemented by an administrative regulation, Measures on Public Holidays, which was originally adopted by the State Council in 1949 and revised in 1999. This regulation will be examined in section 5.4.1.3, where administrative regulations are concerned. In terms of paid annual leave, Article 45 of the 1994 Labour Law stipulates that workers who have worked

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61 Labour Law 1994, arts 36, 38.

62 Labour Law 1994, art 41.

63 Labour Law 1994, art 44.

64 Labour Law 1994, art 42.

for one successive year or more are entitled to paid annual leave. However, such a provision is an enabling one that requires the State Council to adopt specific rules. The national rules were passed by the State Council with the Regulation on Paid Annual Leave of Workers in 2007 and took effect in 2008. This will be examined in the next period in section 5.4.

Maternity leave and night work as special protections for female workers are also covered in the 1994 Labour Law. While Article 62 provides female workers with maternity leave of no less than ninety days, Articles 61 and 63 prohibit night work for female workers who are pregnant for seven months or are breastfeeding babies of less than one year old. The more detailed standards can be referred to an administrative regulation adopted by the State Council in 1988, the Regulation on Labour Protection of Female Workers, to be examined later in section 5.4.1.3, where administrative regulations are concerned.

#### 5.3.1.3 Administrative Regulations

The first two administrative regulations concerning working time in this period were adopted in 1981, the Regulation on Home Leave of Workers and the Regulation on Living Conditions for State Functionaries during Sick Leave. Both were new versions that replaced old interim regulations examined in the first period. The former replaced the 1957 Interim Regulation on Home Leave.<sup>65</sup> The major development in this regulation concerns the clarification of three types of home leave, namely: (a) a thirty-day leave each year is entitled to workers to visit their spouses; (b) a twenty-day leave each year is entitled to unmarried workers to visit their parents, or a forty-five-day leave every two years may be granted to workers if their employing units are unable to provide him with the leave in the given year due to the work needs or if workers wish to visit their parents once every other year; and (c) a twenty-day leave is entitled to married workers to visit their parents once every four years.<sup>66</sup> The latter replaced the 1955 Interim Regulation on Sick Leave.<sup>67</sup> The major development in this regulation concerns the clarification of the rules for sick leave: (a) within two months: the wage shall be paid as usual; (b) exceed two months but no more than six months: ninety per cent of the wage shall be paid for workers who have worked for less than ten years; and the wage shall be paid as usual for workers who have worked for ten years; and (c) more than six months: seventy per cent of the wage shall be paid for workers who have worked for less than ten years; eighty per cent of the wage shall be paid for workers who have worked for ten years; and ninety per cent of the wage shall be paid for workers who participated in revolutionary work before 1945.<sup>68</sup>

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65 Regulation on Home Leave of Workers 1981, art 9.

66 Regulation on Home Leave of Workers 1981, art 3.

67 Regulation on Living Conditions for State Functionaries during Sick Leave 1981, art 11.

68 Regulation on Living Conditions for State Functionaries during Sick Leave 1981, arts 1–3.

Next was the Regulation on Labour Protection of Female Workers, adopted by the State Council in 1988, dealing with maternity leave and night work. It replaced maternity leave provisions contained in the 1953 Labour Insurance Regulation and 1955 Notice on Maternity Leave, examined in the first period.<sup>69</sup> This regulation aimed to 'safeguard the lawful rights and interests of female workers, reduce and resolve the special difficulties they encountered during work due to their physiological characteristics, and protect their health and promote socialist modernisation'.<sup>70</sup> It had the same scope of application as the Labour Law of China, to be adopted in 1994.<sup>71</sup> Some basic rules contained in this regulation were incorporated into the 1994 Labour Law, such as a ninety-day maternity leave and the prohibition of night work for female workers who are pregnant for seven months or are breastfeeding their babies. In addition, this regulation stipulated that the ninety days of maternity leave shall include fifteen days of antenatal leave; an additional fifteen days shall be granted in case of dystocia; an additional fifteen days shall be granted for each additional baby born for those who have born more than one child in a single birth; and a certain period of leave shall be granted for those who have a miscarriage according to a certificate from a medical department.<sup>72</sup> This regulation also stipulated that during the pregnancy, maternity leave, and breastfeeding period of female workers, their basic wage shall not be reduced and their labour contracts cannot be terminated.<sup>73</sup>

The most comprehensive administrative regulation governing working time was the Regulation on Working Time of Workers, which was first adopted by the State Council in 1994, and then revised by a new version in 1995. The 1995 Regulation came one year after the adoption of the 1994 Labour Law and holds the same scope of application but with several developments regarding content. In particular, it adjusts the forty-four-hour workweek contained in the 1994 Labour Law to forty hours, leading to a reduction of weekly limit of hours of work in China.<sup>74</sup> It also explicitly expresses the eight-hour working day and forty-hour workweek as the standard working hours system in China and identifies Saturday and Sunday as weekly rest days in the State departments and public institutions.<sup>75</sup> In other words, an eight-hour working day from Monday to Friday and a two-day weekly rest from Saturday and Sunday is recognised in China, which is the typical form of the so-called standard working hours system there. Like the 1994 Labour Law, this regulation has provisions enabling organisations to opt out of the standard working hours system, leading to the non-standard

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69 Regulation on Labour Protection of Female Workers 1988, art 19.

70 Regulation on Labour Protection of Female Workers 1988, art 1.

71 Regulation on the Labour Protection of Female Workers 1988, art 2.

72 Regulation on the Labour Protection of Female Workers 1988, art 8.

73 Regulation on the Labour Protection of Female Workers 1988, art 4.

74 Regulation on Working Time of Workers 1995, art 3.

75 Regulation on Working Time of Workers 1995, art 7.

working hours system.<sup>76</sup> As mentioned in section 5.3.1.2, the non-standard working hours system is specifically dealt with in a department rule to be examined in section 5.3.1.4.

The last administrative regulation, as shown in table 5.3, was the 1999 Revision of the Measures on Public Holidays. This regulation provided four types of public holidays, but with an extension from seven to ten days on the first type, and from one half-day to one full day for children within the second type, namely: (a) holidays for all citizens (ten days in total); (b) holidays for certain groups (half-day for women, youth, and military personnel; one day for children); (c) holidays for ethnic minorities (shall be regulated by local governments); and (d) memorial days without leave.<sup>77</sup>

#### 5.3.1.4 Department Rules

The most important department rule governing working time was the Measures on Examination and Approval of Irregular Working Hours System and Comprehensive Working Hours System of Enterprises, adopted by the Ministry of Labour in December 1994 and actualised in January 1995. It serves as a supplement to Article 39 of the 1994 Labour Law and Article 5 of the 1995 Regulation on Working Time, applying to all enterprises in China that cannot follow the standard working hours system due to special characteristics of production.<sup>78</sup> It provides two types of non-standard working hours systems: the irregular working hours system and the comprehensive working hours system. The first deals with unfixed working hours applying to three circumstances: (a) whose work cannot be measured according to the standard working hours system (e.g., senior managers, field workers, sales personnel, guards, etc.); (b) whose work requires great flexibility (e.g., transport personnel, taxi drivers, loaders, stevedores, warehouse workers, etc.); and (c) other workers who are more suited for irregular hours of work due to the nature of their production activity or work.<sup>79</sup> The second deals with the calculation of working hours on a weekly, monthly, quarterly, or yearly basis, also applying to three circumstances: (a) whose work has to be conducted continuously due to the special nature of work (e.g., transportation, railway, postal and telecommunication services, water transport, aviation, fishery, etc.); (b) whose work is limited by seasonal or natural conditions (e.g., geological and resource exploration, construction, salt-making, sugar-making and tourism, etc.); and (c) other workers who are more suited

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76 Regulation on Working Time of Workers 1995, art 5.

77 Measures on Public Holidays for Annual Festivals and Memorial Days (1999 Revision) arts 2–5.

78 Measure on Examination and Approval of Irregular Working Hour System and Comprehensive Working Hour System of Enterprises 1994, arts 2–3.

79 Measure on Examination and Approval of Irregular Working Hour System and Comprehensive Working Hour System of Enterprises 1994, art 4.

for comprehensive hours of work.<sup>80</sup> Additionally, this department rule stipulated that the application of non-standard working hours system in enterprises shall be built upon the protection of workers' health and safety and their opinions.<sup>81</sup> Such application requires approval by the relevant labour departments.<sup>82</sup>

In addition to the 1994 Measures, other departmental rules in relation to working time were adopted in this period. However, as shown in table 5.3, they were mainly adopted by the internal departments of the State Council, such as the Ministry of Labour, the Ministry of Personnel, the Ministry of Posts and Telecommunications, and the Ministry of Transport, as a response to the implementation of working time provisions contained in the 1994 Labour Law, 1995 Regulation, and/or 1994 Measures. Except for providing more technical rules for certain sectors, nothing changed with regard to the concrete working time provisions contained in these legal instruments.

### 5.3.1.5 Normative Documents

The first normative document concerning working time in this period was the Notice on Wedding and Funeral leave for Workers in the State-owned Enterprises, which was adopted by the State Labour Bureau and the Ministry of Finance in 1980. It provided workers in public enterprises with one- to three-day paid leave to attend their own wedding, or the wedding or funeral of an immediate relative (i.e., parents, spouse, or children).<sup>83</sup>

In 1981, the National Labour Bureau adopted Opinions on the Implementation of <Regulation on Home Leave of Workers>, a normative document interpreting the 1981 Regulation on Home Leave. This document clarified the scope of application for home leave for formal workers, excluding apprentices, trainees, and interns.<sup>84</sup> It also clarified that the term 'parents' refers to those who have brought up the worker and are now supported by this worker, excluding parents-in-law.<sup>85</sup>

In the following year, the Notice on Restriction of Excessive Overtime Payments was adopted by the State Council, dealing with overtime work. It clarified situations in which overtime work was allowed in order to restrict excessive overtime payments in public enterprises.<sup>86</sup> This implementation

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80 Measure of Examination and Approval for Irregular Working Hour System and Comprehensive Working Hour System in Enterprises 1994 art 5.

81 Measure of Examination and Approval for Irregular Working Hour System and Comprehensive Working Hour System in Enterprises 1994, art 6.

82 Measure of Examination and Approval for Irregular Working Hour System and Comprehensive Working Hour System in Enterprises 1994, art 7.

83 Notice on Wedding and Funeral leave for Workers in the State-owned Enterprises 1980.

84 Opinions on the Implementation of <Regulation on Home Leave of Workers> 1981, para 2.

85 Opinions on the Implementation of <Regulation on Home Leave of Workers> 1981, para 1.

86 Notice on the Restriction regarding the Excessive Overtime Payment 1982.

occurred when many public enterprises were using overtime work as a way of increasing wages even when overtime work was not necessary.<sup>87</sup>

Four interpretative normative documents were subsequently adopted by the Ministry of Labour, namely: the 1989 Interpretation on the Issues regarding <Regulation on Labour Protection of Female Workers>, the 1994 Interpretation on Certain Provisions of <Labour Law>, the 1995 Interpretation on the Issues regarding <Regulation on Working Time of Workers>, and the 1995 Opinions on the Issues regarding the Implementation of <Labour Law>. As interpretative documents, they do not directly set substantive working time standards, but rather provide information on the precise meaning and scope of the provisions contained in the relevant laws and regulations. For instance, while the 1988 Regulation prohibited night work for female workers seven or more months pregnant or breastfeeding, its 1989 Interpretation clarified 'night work' as 'work performed from 10 p.m. to 6 a.m.'.<sup>88</sup> Notably, the 1989 Interpretation is the only legal instrument explicitly defining night work in China.<sup>89</sup> While the 1994 Labour Law provides that overtime work is allowed according to the requirements of production enterprises, its 1994 Interpretation clarifies such a requirement as 'the situations where materials and commercial enterprises are required to complete the urgent tasks, such as acquisition, transportation and transportation of agricultural and side-line products during the peak season'.<sup>90</sup> Further, the 1995 Interpretation and the 1995 Opinions clarify that overtime denotes additional hours to the standard working hours system (i.e., eight-hour working day and forty-hour workweek), the consultation of enterprises and workers and trade unions is a process of determining overtime work, and workers have the rights to refuse overtime work if the enterprise violates relevant labour laws and regulations.<sup>91</sup>

Next was the Reply to Working Time Issues of Workers, adopted by the Ministry of Labour in 1997. The 1994 Labour Law and the 1995 Regulation provided for a forty-four-hour workweek and forty-hour workweek, respectively; however, having two standards of weekly limit created some confusion. The 1997 Reply clarifies that China takes the forty-hour workweek as the applicable standard of weekly limit of hours of work.<sup>92</sup>

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87 *ibid.*

88 Interpretation on the Issues regarding <Regulation on Labour Protection of Female Workers> 1989, para 7.

89 Although many Chinese labour law textbooks mentioned that night work shall be reduced to one hour per shift compared to the eight-hour working day. Unfortunately, none of them provided a source of reference; the author has not been able to find other legal instruments regulating night work. E.g., Kai Chang and others (eds), *Labour Law* (Higher Education Press 2011) 392; Huai Guan and Jia Lin (eds), *Labour Law* (5th edn, Renmin University of China Press 2015) 144.

90 Interpretation on Certain Provisions of <Labour Law>, art 41.

91 Interpretation on the Issues regarding <Regulation on Working Time of Workers> 1995, para 1; Opinions on the Issues regarding the Implementation of <Labour Law> 1995, para 71.

92 Reply to Working Time Issues of Workers 1997, paras 1–2.

The last normative document as shown in table 5.3 was the Opinions on Part-time Work Issues, which adopted by the Ministry of Labour and Social Security (MoLSS) in 2003 to meet the requirements of working time flexibility of employers and the freely chosen employment of workers, and to promote employment and protect workers' lawful rights and interests.<sup>93</sup> It refers to 'part-time work' as 'a form of employment where payments are calculated on an hourly basis' and 'workers generally work for no more than five hours per day on average and thirty hours per week in total for the same employer'.<sup>94</sup> Additionally, this document stipulates that a worker engaged in part-time work can establish a labour contract with one or more employers, and their payment shall not be lower than the minimum hourly wage stipulated by the local government.<sup>95</sup>

### 5.3.2 Assessment of China's substantive working time standards against the ILO benchmarks

This section provides an assessment of China's substantive working time standards against the ILO benchmarks for the transition period (1978-2007). While table 5.4 provides a complete overview of the qualitative data of the assessment, the full coding results with legal texts can be found in the ILO-DWT-China database in Appendix 5. As shown in table 5.4, with the exception of parental leave, all legal indicators identified in the ILO benchmarks were regulated by China in this period. These legal indicators are organised into three groups: working time duration, working time organisation, and care-related leave, to be explained in more detail in sections 5.3.2.1 to 5.3.2.3, respectively. In addition, similar to the first period, other legal indicators that are not governed by the ILO benchmarks remained in China, such as daily break, public holidays, home leave, personal leave, sick leave, and wedding and funeral leave, examined in section 5.3.2.4.

*Table 5.4 Results of the assessment of China's substantive working time standards against the ILO benchmarks (1978-2007)*

Legal indicators		Topic	Aim/ purpose	Scope of application	Material content
Working time duration	Daily limit	1	1	1	1
	Weekly limit	1	1	1	1.5
	Overtime limit	1	1	1	1.5
	Weekly rest	1	1	1	1.5
	Paid annual leave	1	0.5	0.5	0.5

93 Opinions on Part-time Work Issues 2003, preamble.

94 Opinions on Part-time Work Issues 2003, para 1.

95 Opinions on Part-time Work Issues 2003, paras 1, 7.

Working time organisation	Standard working time arrangement	1	1	1	1
	Variable working time arrangement	1	0.5	1.5	1.5
	Overtime work arrangement	1	1	1	1.5
	Night work	1	0.5	0.5	0.5
	Part-time work	1	0.5	0.5	0.5
Care-related leave	Maternity leave	1	1	1	0.5
	Parental leave	0	0	0	0
Other legal indicators	daily break, public holiday, home leave, personal leave, sick leave, and wedding and funeral leave				

### 5.3.2.1 Working time duration

All five legal indicators concerned with the duration of working time were regulated in China in this period. With the exception of paid annual leave, China provided similar-to-higher standards than the ILO benchmarks regarding all aspects of all legal indicators.

As found in the 1994 Labour Law, the working day was limited to eight hours, the workweek was limited to forty-four hours on average, and at least one day off per week was required.<sup>96</sup> The 1995 Regulation on Working Time also ordered an eight-hour working day, but adjusted the workweek to forty hours.<sup>97</sup> As interpreted by the 1997 Reply to Working Time Issues, the forty-hour weekly limit is the applicable standard in China.<sup>98</sup> Additionally, the 1995 Regulation specified Saturday and Sunday as the days of weekly rest for the State departments and public institutions, and its 1995 Interpretation and 1997 Reply further emphasised that enterprises, as far as possible, shall implement the standard working hours system of an eight-hour work day and forty-hour work week with two days of weekly rest.<sup>99</sup> As such, Chinese legislation provided consistent standards on the material content of daily limit, and higher standards on the material content of weekly limit and weekly rest, compared to what the ILO benchmarks require.<sup>100</sup> A coding result of '1' and '1.5' were thus given to the material content of daily limit, and weekly limit and weekly rest, respectively. In addition, Chinese legislation regulated the aim/purpose and scope of application of the regulation of working time, including these three legal indicators. In particular,

96 Labour Law 1994, arts 36, 38.

97 Regulation on Working Time of Workers 1995, art 3.

98 Reply to Working Time Issues of Workers 1997, paras 1–2.

99 Regulation on Working Time of Workers 1995, art 7; Interpretation on the Issues regarding <Regulation on Working Time of Workers> 1995, para 1; Reply to Working Time Issues of Workers 1997, para 1.

100 See: table 4.5 in Chapter 4 and Appendix 5.

according to the 1995 Regulation, the purpose of the regulation of daily limit, and weekly limit and weekly rest, was to ensure a reasonable working time arrangement for workers and to safeguard their right to rest, promote working efficiency, and promote socialist modernisation.<sup>101</sup> Although such purpose failed to identify the protection of workers' health and well-being as set by the ILO benchmarks, this regulation explicitly expressed the need to protect workers' right to rest. Hence, Chinese legislation was generally in line with the ILO benchmarks regarding the aim/purpose of these three legal indicators. A coding result of '1' was thus given. As for the scope of application, Chinese legislation covered the enterprises and individual businesses, State departments, public institutions, and social groups, which were also consistent with the ILO benchmarks.<sup>102</sup> A coding result of '1' was given to this aspect.

Overtime limit was also regulated in this period. According to the 1994 Labour Law, overtime was limited to one hour per day in general, three hours per day for special reasons, and thirty-six hours per month.<sup>103</sup> This limit provided clearer standards than the ILO benchmarks as the latter only calls for a 'reasonable' limit of overtime.<sup>104</sup> A coding result of '1.5' was given to the material content of overtime limit. In addition, as a limit to the extension of normal hours of work, overtime limit serves the same purpose as those on the daily and weekly limits of hours of work.<sup>105</sup> Such purpose applies to both the ILO benchmarks and Chinese working time standards. Similar to the legal indicators of daily and weekly limits, a coding result of '1' was given to the aim/purpose of overtime limit. With respect to the scope of application, as found in the ILO benchmarks, this aspect is not about personal scope or sectors covered, but rather refers to the circumstances on which overtime work can be conducted.<sup>106</sup> According to the 1994 Labour Law and its 1994 Interpretation, overtime work applied to both the circumstance related to the requirement of production of enterprises and permanent exceptions such as an emergency threatening the life and health of workers or the safety of property and where urgent repairs are needed to production facilities.<sup>107</sup> Such a stipulation was consistent with the ILO benchmarks where both temporary and permanent exceptions are identified.<sup>108</sup> A coding result of '1' was thus given to the scope of application of overtime limit.

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101 Regulation on Working Time of Workers 1995, art 1.

102 See: table 4.5 in Chapter 4 and Appendix 5.

103 Labour Law 1994, art 41.

104 See: table 4.5 in Chapter 4 and Appendix 5.

105 *ibid.*

106 *ibid.*

107 Labour Law 1994, arts 41–42; Interpretation on Certain Provisions of <Labour Law> 1994, arts 41–42.

108 See: table 4.5 in Chapter 4 and Appendix 5.

Paid annual leave was officially introduced in this period. As found in the first period, the regulation of paid annual leave was confined to an 'annual rest' for workers engaged in the radioactive works based on the 1965 Opinions on Radioactive Works. In this period, the 1994 Labour Law explicitly stipulated that workers who have established a labour relationship with their employers shall be entitled to paid annual leave after working for more than one year continuously.<sup>109</sup> However, the law failed to elaborate on this legal indicator, instead only calling for the State Council to provide more specific rules.<sup>110</sup> It was not until 2007 that national rules were adopted by the State Council with the Regulation on Paid Annual Leave of Workers. Since this regulation came into effect in 2008, it will be further discussed in section 5.4. Hence, in this period, Chinese legislation provided lower standards than the ILO benchmarks, which flesh out the details of paid annual leave.<sup>111</sup> A coding result of '0.5' was given to all three aspects of paid annual leave.

#### 5.3.2.2 Working time organisation

All five legal indicators concerned with the organisation of working time were regulated in China in this period, but China provided similar-to-higher standards on all three aspects for only two of them (i.e., standard working time arrangement and overtime work arrangement).

According to the 1994 Labour Law and the 1995 Regulation as well as their interpretative documents, the standard working hours system, or the so-called standard working time arrangement, was expressed as an eight-hour working day and a forty-hour workweek with at least one day off per week in general, and an eight-hour working day and a forty-hour workweek (Monday to Friday) with two days of weekly rest (Saturday to Sunday) in specific.<sup>112</sup> This arrangement was consistent with the ILO benchmarks.<sup>113</sup> A coding result of '1' was thus given to the material content of this legal indicator. In addition, since it is built upon the regulation of daily and weekly limits of hours of work and weekly rest, the standard working time arrangement has the same purpose and scope of application of those legal indicators. Hence, like the discussion in section 5.3.2.1, a coding result of '1' was given to these two aspects of the standard working time arrangement.

Both the 1994 Labour Law and the 1995 Regulation provided provisions that enable enterprises to 'opt out' the standard working hours system, leading to the non-standard working hours system in China. Two types

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109 Labour Law 1994, art 45.

110 Given the lack of national rules, paid annual leave was decided by the policies of individual localities and enterprises. See: Sean Cooney, Sarah Biddulph, and Ying Zhu, *Law and Fair Work in China* (Routledge 2013) 63.

111 See: table 4.5 in Chapter 4 and Appendix 5.

112 Interpretation on Certain Provisions of <Labour Law> 1994, art 36; Regulation on Working Time of Workers 1995, art 7; Reply to Working Time Issues of Workers 1997, paras 1–2.

113 See: table 4.5 in Chapter 4 and Appendix 5.

of non-standard working hours systems were specifically regulated in the 1994 Measures on Working Time: irregular working hours system and comprehensive working hours system. This non-standard working hours system relates to the variable working time arrangement defined by the ILO benchmarks – ‘the adjustments in the distribution of hours of work, particularly consisting of averaging normal weekly hours of work over a defined period, to allow the extension of working hours beyond their normal length on certain days, and their shortening on other days, without resorting to overtime’.<sup>114</sup> Compared to the ILO benchmarks, the 1994 Measures provided a clearer scope of application and more favourable rules on the material content of the variable working time arrangement.<sup>115</sup> In particular, it used the forty-hour weekly limit as the reference of the averaging, presenting a shorter weekly limit of forty-eight hours provided in the ILO benchmarks.<sup>116</sup> A coding result of ‘1.5’ was given to the scope of application and material content of variable working time arrangement. In terms of the aim/purpose, however, compared to the ILO benchmarks that serve both the requirements of the production of enterprises and the specific needs of workers, Chinese legislation only identified one purpose of meeting the special characteristics of the production of enterprises.<sup>117</sup> A coding result of ‘0.5’ was given to the aim/purpose of variable working time arrangement.

Overtime work arrangements had the same aim/purpose and scope of application of overtime limit as examined earlier in section 5.3.2.1. A coding result of ‘1’ was given to these two aspects. In terms of the material content, the 1994 Labour Law stipulated that overtime payments shall be 150 to 300 per cent of the regular wage depending on which days workers are required to work, providing higher standards than the ILO benchmarks that provide for no less than 125 per cent of the regular wage.<sup>118</sup> A coding result of ‘1.5’ was thus given to this aspect.

Unlike the absence of the regulation of night work in the first period, both the 1988 Regulation on Female Protection and the 1994 Labour Law explicitly prohibited night work for female workers who are at least seven-months pregnant in order to provide special protection to female workers.<sup>119</sup> Additionally, the interpretative document to the 1988 Regulation clarified ‘night work’ as ‘work performed from 10 p.m. to 6 a.m.’.<sup>120</sup> However, compared to the ILO benchmarks in which night work is explicated in great detail – in particular applying to all employed persons except those employed in agriculture, stock raising, fishing, maritime transport,

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114 *ibid.*

115 *ibid.*

116 *ibid.*

117 Labour Law 1994, art 45.

118 See: table 4.5 in Chapter 4 and Appendix 5.

119 Regulation on Labour Protection of Female Workers 1988, art 1; Labour Law 1994, art 58.

120 Interpretation on the Issues regarding <Regulation on Labour Protection of Female Workers> 1989, para 7.

and inland navigation, Chinese legislation provided lower standards on the aim/purpose, scope of application, and material content.<sup>121</sup> A coding result of '0.5' was thus given to all three aspects.

Part-time work was also regulated in this period. According to the 2003 Opinions on Part-time Work, the purpose of the regulation of part-time work was to meet the flexible working time requirements of employers and the freely chosen employment of workers, and to promote employment and protect workers' lawful rights and interests.<sup>122</sup> Such provision had lower standards than the ILO benchmarks as the latter explicitly identify an additional purpose of assisting workers with family responsibilities.<sup>123</sup> A coding result of '0.5' was given to the aim/purpose of this legal indicator. In terms of the scope of application and material content, the 2003 Opinions defined 'part-time work' as 'a form of employment where payments are calculated on an hourly basis', and asserted that 'workers generally work for no more than five hours per day on average and thirty hours per week in total for the same employing unit'.<sup>124</sup> Such a stipulation led to a relatively narrow understanding of part-time work compared to the ILO benchmarks, which define 'part-time work' as 'the work in which the normal hours of work are less than comparable full-time work'.<sup>125</sup> In fact, it seems to be more reasonable to term 'part-time work' 'casual work' in Chinese legislation, or conclude that 'part-time work' was mainly confined to 'casual work'. Hence, Chinese legislation provided lower standards on the scope of application and material content than the ILO benchmarks. A coding result of '0.5' was given to these two aspects.

### 5.3.2.3 Care-related leave

While maternity leave remained regulated on all three aspects in this period, parental leave was still totally absent.

As found in the 1953 Labour Insurance Regulation in the first period, maternity leave was merely considered part of labour insurance serving the objective of protecting the health of paid workers and easing the special difficulties in their livelihood. In this period, the purpose of the regulation of maternity leave was mentioned in the 1988 Regulation, the 1992 Women's Protection Law, and the 1994 Labour Law. In particular, according to the 1988 Regulation, the regulation of maternity leave was to safeguard the lawful rights and interests of female workers, to reduce and resolve the special difficulties they encountered, to protect their health, and to promote socialist modernisation.<sup>126</sup> This regulation was generally in line with the

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121 See: table 4.5 in Chapter 4 and Appendix 5.

122 Opinions on Part-time Work Issues 2003, preamble.

123 See: table 4.5 in Chapter 4 and Appendix 5.

124 Opinions on Part-time Work Issues 2003, para 1.

125 See: table 4.5 in Chapter 4 and Appendix 5.

126 Regulation on Labour Protection of Female Workers 1988, art 1.

ILO benchmarks. A coding result of '1' was thus given to the aim/purpose of this legal indicator. In terms of the scope of application and material content, both the 1988 Regulation and 1994 Labour Law provided for a period of leave of ninety days in general, applying to all female workers. This guideline was consistent with the ILO benchmarks on the scope of application, but lower than those on the material content of no less than fourteen weeks. Coding results of '1' and '0.5' were given to the scope of application and material content of this legal indicator, respectively.

5.3.2.4 *Other legal indicators*

In addition to the twelve legal indicators as identified in the ILO benchmarks, other legal indicators – as found in the Chinese legal instruments identified in tables 5.1 and 5.3 – can still be observed such as daily break, public holidays, sick leave, home leave, personal leave, and wedding and funeral leave. Some of these indicators underwent development in this period. For instance, both the 1955 Interim Regulation on Sick Leave and 1957 Interim Regulation on Home Leave found in the first period were replaced by new formal Regulations.

5.3.3 Analysis of achieving decent working time in China: Substantive aspects (1978-2007)

Similar to the first period, while table 5.4 provides a full overview of the qualitative data of the assessment for the transition period (1978-2007), figure 5.2 presents the same information, but shows more clearly where China meets the ILO benchmarks, on which indicators it was falling short in this period, and on which indicators China was outperforming the ILO benchmarks.

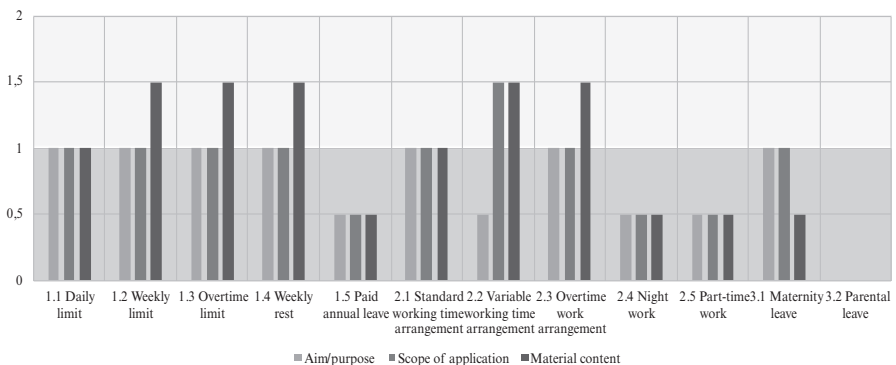


Figure 5.2 Evaluation of achieving decent working time in China: Substantive aspects (1978-2007)

A first point that stands out in figure 5.2 is that China reached most of the ILO benchmarks in this period, mainly because of the 1988 Regulation on Labour Protection of Female Workers, the 1994 Labour Law, the 1994 Measures on Examination and Approval of Irregular Working Hours System and Comprehensive Working Hours System of Enterprises, and the 1995 Regulation on Working Time of Workers. Together, they established a comprehensive set of working time standards in China, providing similar-to-higher standards than the ILO benchmarks regarding all three aspects of the legal indicators of daily limit, weekly limit, overtime limit, weekly rest, standard working time arrangement, and overtime work arrangement, and two aspects of the legal indicators of variable working time arrangement (i.e., scope of application and material content) and maternity leave (i.e., aim/purpose and scope of application). When it comes to the aim/purpose of variable working time arrangement, Chinese legislation only identified one purpose of meeting the special characteristics of the production of enterprises, which failed to meet the requirements of both the production of enterprises and the specific needs of workers as provided in the ILO benchmarks. Regarding the material content of maternity leave, Chinese legislation only provided for a period of leave of ninety days, which was a bit shorter than the fourteen weeks required by the ILO benchmarks.

A second remarkable point is that, although the legal indicators of paid annual leave, night work, and part-time work were fully regulated on all three aspects, none of them provided similar-to-higher standards than the ILO benchmarks, mainly because Chinese legislation failed to elaborate on the operational rules on paid annual leave, only regulated that night work was prohibited for female workers at least seven months pregnant, and provided a relatively narrow understanding of part-time work compared to the ILO benchmarks.

#### 5.4 THE PERIOD AFTER THE TRANSITION (2008-2020)

##### 5.4.1 Identification of China's legal instruments dealing with working time (2008-2020)

Based on LRD-NPC and LRD-PKU legal databases, table 5.5 shows a full list of China's legal instruments dealing with working time in the period after the transition (2008-2020). Notably, most of the legal instruments adopted in the transition period remain effective in this period. In other words, much has remained the same with regard to the legal framework of working time since the transition period. Nevertheless, some new legal instruments dealing with certain legal indicators can still be found, as will be examined in detail in sections 5.4.1.1 to 5.4.1.3.

Table 5.5 The legal instruments dealing with working time in China (2008-2020)

Types	Legal instruments	Legal indicators covered	Effective period
Laws	Labour Contract Law of 2007 (amended in 2012)	Working time organisation (part-time work); care-related leave (maternity leave)	2008-present
Administrative Regulations	Regulation on Paid Annual Leave of Workers of 2007	Working time duration (paid annual leave)	2008-present
	Measures on Public Holidays for Annual Festivals and Memorial Days (2007 Revision)	Other legal indicators (public holidays)	2008-2013
	Special Regulation on Labour Protection of Female Workers of 2012	Care-related leave (maternity leave)	2012-present
	Measures on Public Holidays for Annual Festivals and Memorial Days (2013 Revision)	Other legal indicators (public holidays)	2014-present
Departmental Rules	Measures on the Implementation of Paid Annual Leave of Workers of Enterprises of 2008	Working time duration (paid annual leave)	2008-present
Normative documents	Notice on the Application of Non-standard Working Hours System in the Outsourcing Service Enterprises of 2009	Organisation (variable working time arrangement)	2009-present
	Reply to the Issues regarding the <Measures on the Implementation of Paid Annual Leave of Workers of Enterprises> of 2009	Working time duration (paid annual leave)	2009-present

#### 5.4.1.1 Laws

The Labour Contract Law was adopted by the NPC Standing Committee in June 2007, and came into effect in January 2008. While this law deals with labour contract-related matters, it also contains provisions on part-time work and maternity leave. In terms of part-time work, this law has much in common with the provisions contained in the 2003 Opinions on Part-time Work as examined in the transition period, but it reduced the hours of work of part-time work from ‘no more than five hours per day on average and thirty hours per week in total’ to ‘no more than four hours per day on aver-

age and twenty-four hours per week for the same employer'.<sup>127</sup> Additionally, this law prohibits the termination of female workers' labour contracts if they are in the pregnancy, maternity leave, or breastfeeding period.<sup>128</sup>

#### 5.4.1.2 Administrative Regulations

The Regulation on Paid Annual Leave of Workers was adopted by the State Council in accordance with the 1994 Labour Law in December 2007 and came into effect in January 2008. The purpose of this regulation is to safeguard workers' rights to take rest and leave and to promote their working efficiency.<sup>129</sup> It provides workers who have continuously worked for one year or more in public institutions, social groups, enterprises, private non-enterprise entities, and individual businesses with a period of paid leave of five to fifteen days, namely: (a) five days for workers who have continuously worked for one to ten years, (b) ten days for workers who have continuously worked for ten to twenty years, and (c) fifteen days for workers who have continuously worked for twenty years or more.<sup>130</sup>

In the same year, the Measures on Public Holidays was revised by a new version and came into effect in January 2008. This regulation was further revised by a new version in 2013. According to the latest 2013 Measures, four types of public holidays are identified in China: (a) holidays for all citizens (eleven days in total); (b) holidays for certain groups (half-day for women, youth, and military personnel, and one day for children); (c) holidays for ethnic minorities (shall be regulated by local governments); and (d) memorial days without leave.<sup>131</sup>

The Special Regulation on Labour Protection of Female Workers was adopted by the State Council in 2012, which replaced the 1988 Regulation on Labour Protection of Female Workers as found in the transition period.<sup>132</sup> This regulation resembles the provisions contained in the 1988 Regulation, but extends the period of maternity leave from ninety days to ninety-eight days, and provides an annex on the scope of prohibited labour for female workers.<sup>133</sup>

#### 5.4.1.3 Departmental Rules

Only one department rule concerning working time was found in this period, the Measures on the Implementation of Paid Annual Leave of Workers of Enterprises, which was adopted by the Ministry of Human Resources

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127 Labour Contract Law 2007, art 68.

128 Labour Contract Law 2007, art 43(4).

129 Regulation on Paid Annual Leave of Workers 2007, art 1.

130 Regulation on Paid Annual Leave of Workers 2007, arts 2, 3.

131 Measures on Public Holidays for Annual Festivals and Memorial Days (2013 Revision) arts 2–5.

132 Special Regulation on Labour Protection of Female Workers, art 16.

133 Special Regulation on Labour Protection of Female Workers, art 7, annex.

and Social Security (MHRSS) in 2008. It provides clearer and more technical rules for implementing the 2007 Regulation on Paid Annual Leave of all enterprises in China.<sup>134</sup>

#### 5.4.1.4 Normative Documents

Two normative documents concerning working time were found in this period. The first is the Notice on the Application of Non-standard Working Hours System in the Outsourcing Service Enterprises, which was adopted by the MHRSS and the Ministry of Business. It did not set new substantive working time standards, but simply clarified that outsourcing service enterprises may apply the standard working hours system.<sup>135</sup>

The second is the Reply to the Issues regarding the <Measures on the Implementation of Paid Annual Leave of Workers of Enterprises>, adopted by the MHRSS in 2009. As an interpretative document to the 2007 Regulation, it mainly clarified that “a worker has worked continuously for more than twelve months” includes both cases where the worker has worked continuously for more than twelve months for the same employer and cases where the workers has worked continuously for more than twelve months for different employers’.<sup>136</sup>

#### 5.4.2 Assessment of China’s substantive working time standards against the ILO benchmarks

This section provides an assessment of China’s substantive working time standards against the ILO benchmarks for the period after the transition (2008-2020). While table 5.6 provides a full overview of the qualitative data of the assessment, the full coding results with legal texts can be found in the ILO-DWT-China database in Appendix 5. It should be noted that the current legal framework of working time mainly took shape in the transition period, and that much has remained the same with regard to the twelve legal indicators identified by the ILO benchmarks and other legal indicators not covered in this period. Since 2008, the major developments of the legal indicators are confined to paid annual leave, variable working time arrangement, part-time work, maternity leave, and public holidays.

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134 Measures on the Implementation of Paid Annual Leave of Workers of Enterprises 2008, arts 1–2.

135 Notice on the Application of Non-standard Working Hours System in the Outsourcing Service Enterprises 2009.

136 Reply to the Issues regarding the <Measures on the Implementation of Paid Annual Leave of Workers of Enterprises> 2009.

Table 5.6 Results of the assessment of China's substantive working time standards against the ILO benchmarks (2008-2020)

Legal indicators		Topic	Aim/ purpose	Scope of application	Material content
Working time duration	Daily limit	1	1	1	1
	Weekly limit	1	1	1	1.5
	Overtime limit	1	1	1	1.5
	Weekly rest	1	1	1	1.5
	Paid annual leave	1	0.5	0.5	0.5
Working time organisation	Standard working time arrangement	1	1	1	1
	Variable working time arrangement	1	0.5	1.5	1.5
	Overtime work arrangement	1	1	1	1.5
	Night work	1	0.5	0.5	0.5
	Part-time work	1	0.5	0.5	0.5
Care-related leave	Maternity leave	1	1	1	1
	Parental leave	0	0	0	0
Other legal indicators	daily break, public holiday, home leave, personal leave, sick leave, and wedding and funeral leave				

#### 5.4.2.1 Working time duration

Five legal indicators are concerned with the duration of working time. With the exception of paid annual leave, all other legal indicators (i.e., daily limit, weekly limit, overtime limit, and weekly rest) have remained unchanged since the transition period. However, although a new regulation – the 2007 Regulation on Paid Annual Leave of Workers – specifically dealing with paid annual leave has taken effect since 2008, it still has lower standards than the ILO benchmarks on all three aspects of paid annual leave. This outcome is due to the fact that this regulation still failed to identify a purpose of work-family balance as set forth in the ILO benchmarks, excludes workers who have worked less than one year, and only provides a range of five- to fifteen-day paid annual leave. In other words, a coding result of '0.5' was still given to all three aspects of this legal indicator.

#### 5.4.2.2 Working time organisation

Five legal indicators are concerned with the organisation of working time. While the variable working time arrangement and part-time work saw new developments, the other three legal indicators (i.e., standard working time arrangement, overtime work arrangement, and night work) have remained unchanged since the transition period. However, the variable working time

arrangement was covered by a normative document, which only clarified that the outsourcing service enterprises may apply the standard working hours system.<sup>137</sup> Because no further elaboration on this legal indicator was found, the coding result remained the same as it was during the transition period.

Part-time work was specifically regulated by the 2007 Labour Contract Law, but it remains to be defined as ‘a form of employment where payments are calculated on an hourly basis’, as provided in the 2003 Opinions on Part-time Work examined in the transition period. The major new development was that the 2007 Labour Contract Law reduced the hours for part-time work from ‘no more than five hours per day on average and thirty hours per week in total’ contained in the 2003 Opinions to ‘no more than four hours per day on average and twenty-four hours per week for the same employer’.<sup>138</sup> No further elaboration on this legal indicator was found; as such the coding result remained the same.

#### 5.4.2.3 *Care-related leave*

While maternity leave saw significant development in this period, parental leave remained totally absent. A new regulation dealing with maternity leave was adopted, the Special Regulation on Labour Protection of Female Workers, which replaced the 1988 Regulation on Labour Protection of Female Workers. It has the same purpose and scope of application as the 1988 Regulation, but provides stronger protection for female workers regarding material content. In particular, it extends the period of maternity leave from ninety days to ninety-eight days and specifies the scope of prohibited labour for female workers, both of which are consistent with the ILO benchmarks.<sup>139</sup> A coding result of ‘1’ was thus given to the material content of this legal indicator.

#### 5.4.2.4 *Other legal indicators*

With the exception of reorganising public holidays in this period, all ‘the other legal indicators’ found in the Chinese legal instruments identified in the transition period remain effective in this period, and no new developments can be found.

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137 Notice on the Application of Non-standard Working Hours System in the Outsourcing Service Enterprises 2009.

138 Labour Contract Law 2007, art 68.

139 See: table 4.5 in Chapter 4 and Appendix 5.

### 5.4.3 Analysis of achieving decent working time in China: Substantive aspects (2008-2020)

Like the first two periods, while table 5.6 provides a full overview of the qualitative data of the assessment for the period after the transition (2008-2020), figure 5.3 shows the same information, but more clearly indicates where China meets the ILO benchmarks, on which indicators it was falling short in this period, and on which indicators it was outperforming the ILO benchmarks.

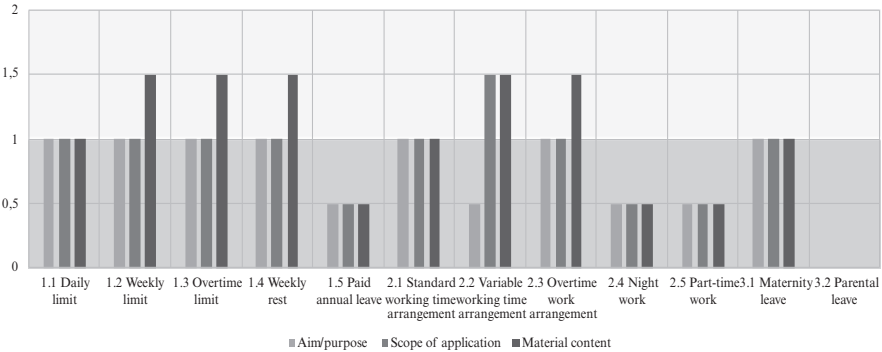


Figure 5.3 Evaluation of achieving decent working time in China: Substantive aspects (2008-2020)

Figure 5.3 shows that, compared to the second period, nothing changed, with the exception of maternity leave because the current legal framework of working time in China mainly took shape in the transition period. Most of the legal instruments adopted in the transition period remained effective in this period. However, a major development occurred with regard to the material content of maternity leave. This change was a result of new regulations on female protection, the 2012 Special Regulation on Labour Protection of Female Workers, which extended the period of leave from ninety days to ninety-eight days, consistent with the fourteen weeks provided in the ILO benchmarks.

A second point is that, although the assessment results of both paid annual leave and part-time work are unchanged, both underwent development. In terms of paid annual leave, an administrative regulation specifically dealing with paid annual leave was adopted at the end of the second period and came into effect at the beginning of this period, the Regulation on Paid Annual Leave of Workers. Unfortunately, this regulation still has lower standards than the ILO benchmarks regarding all three aspects. Part-time work was further regulated by the 2007 Labour Contract Law that has taken effect since 2008. However, except for reducing the hours of part-time work from ‘no more than five hours per day on average and thirty hours per week in total’ stipulated in the 2003 Opinions adopted in the transition

period to ‘no more than four hours per day on average and twenty-four hours per week for the same employer’, nothing at all changed. In other words, similar to the transition period, Chinese legislation still provides a relatively narrow understanding of part-time work compared to the ILO benchmarks.

5.5 CONCLUSION: AN OVERALL EVALUATION OF ACHIEVING DECENT WORKING TIME IN CHINA: SUBSTANTIVE ASPECTS

Based on analysis and evaluation of China’s substantive working time standards against the ILO benchmarks for each of the three periods, figure 5.4 presents an overall evaluation of the development of China towards decent working time regarding the substantive aspects. As figure 5.4 shows, most legal indicators have seen significant development from the first period to the third period. Chinese legislation is increasingly providing similar-to-higher standards than the ILO benchmarks regarding most of the twelve legal indicators. The major issues that failed to reach the floor of decent working time set by the ILO benchmarks are paid annual leave, night work, part-time work, and parental leave. In other words, to achieve decent working time regarding the substantive aspects in China, Chinese legislation would have to improve the substantive standards on paid annual leave, night work and part-time work, and introduce parental leave for workers.

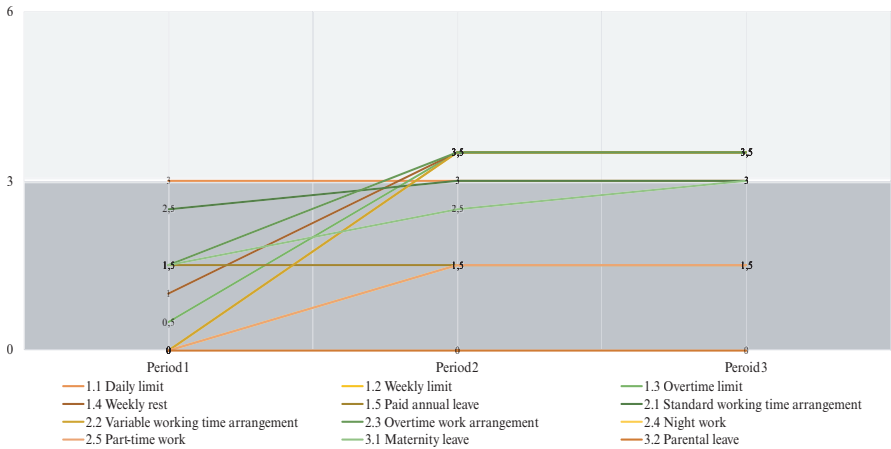


Figure 5.4 Developments of China towards decent working time: Substantive aspects (three periods, 1949-2020)