

## Whether a Study Room Manager's Working Hours can be recognized as Full-time Work

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### I. Introduction

On July 27, 2022, a Study Room (SR) manager in Seoul filed a lawsuit claiming unpaid wages against the study room's owner, alleging that they did not receive overtime pay and severance pay after they resigned, for their service of 1 year and 2 months. The employee (SR manager) applied for the job after seeing a job advertisement on an online recruitment site that stated, "Looking for a manager for a study room who can work and study at the same time." The terms of employment were from 6 p.m. to 2 a.m. seven nights a week and involved managing the study room, with one day off per month. Specifically, the employee worked as manager of the study room for 2 hours each day and received a monthly salary of 685,000 won as compensation.<sup>1</sup> The duties of the SR manager included handling new member registrations, card payments for monthly fees, visitor guidance and phone inquiries, simple snack preparation and equipment management, facility maintenance and cleaning, and other miscellaneous tasks.

Although the employment contract of the SR manager stated a daily working time of 2 hours, their actual required presence time was 8 hours per day, during which they were free to study but confined to the study room's waiting area. The SR manager was required to perform related tasks whenever requested by users and potential customers. The employee argued that this waiting time be considered actual working hours, totaling 8 per day. Based on this calculation, the employee demanded additional payment of 19,108,000 won for the additional 6 hours per day and claimed a severance pay of 2,706,563 won as they had worked for more than a year.

The main points of contention were:

- (i) Whether the study room should recognize only the stated 2 hours of work per day as the SR manager's actual working hours, or if the entire 8-hour period spent studying and waiting should be considered working hours.
- (ii) Whether evidence exists to consider the 6 hours, excluding the 2 hours of work, as break time, even though the SR manager was obligated to be present for 8 hours.

### II. Arguments of the Parties

#### 1. Employee's Claim:

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<sup>1</sup> The monthly salary of the employee was 550,000 won. The employer intended to subsidize the individual seat usage fee to the amount of 135,000 won, but the employee chose to receive the seat usage fee in cash and instead used the study room office. Therefore, the employee received a monthly salary of 685,000 won, which included compensation for not using a regular study seat.

The SR manager stated that they applied for the position of manager in the study room through an online job advertisement, with the intention of saving money while preparing for the police officer exam. The terms of employment were to study while being on standby 8 hours a day, and receive a monthly salary of 685,000 won. The study room was 230 square meters in size and held 70 seats. The SR manager would study and be on standby in the study room from 6 p.m. to 2 a.m. the next day, spend about 30 minutes cleaning, and then leave. The employer claimed that the SR manager's actual working hours were no more than 2 hours per day, with 30 minutes allocated for cleaning, 30 minutes for new member management, and 60 minutes for other tasks. However, the SR manager argued that tasks such as cleaning, managing residents and visitors, answering phone calls, preparing snacks, organizing equipment, and facility management required more than 2 hours of work per day. They claim that as they were always on standby, the entire 8 hours should be considered working hours. Therefore, the employee demanded unpaid wages, holiday allowances, and a severance pay totaling 26,630,000 won, along with compensation for the delay.

## **2. Employer's Argument:**

(1) The study room hired the SR manager through an internet job advertisement, clearly stating that they were looking for someone to work as a manager while studying. A written employment contract was signed, which stated that the actual work would be 2 hours per day, 7 days a week from Monday to Sunday, with one day off per month. During the interview, the employee stated that they were preparing to become a police officer and applied for the position to reduce study costs and earn pocket money. The employer encouraged and supported the SR manager, hoping that they would succeed in their studies, and provided sufficient study time within the 6 hours of standby each day.

(2) The SR manager's tasks as manager of the study room amounted to only about 2 hours per day, and the rest of the time was spent on personal study. The employee had the freedom to engage in personal duties during working hours, and was able to leave for personal matters without affecting their work obligations, as long as they left a forwarded phone number. The employer argued that the SR manager's actual work amounted to a maximum of 2 hours per day, with the remaining 6 hours open to personal study or personal tasks without supervision from the employer. Therefore, the employer claims that there were no unpaid wages for the employee, and there was no severance pay as the employee had actually worked very few hours.

## **III. Relevant Criteria and Precedents**

1. Relevant Precedent: A ruling stated, in the context of the *Labor Standards Act*, that “rest time” refers to the period during which an employee is completely liberated from the employer's directives and is guaranteed the freedom to use their time as they wish during working hours.<sup>2</sup> The rest time discussed in this precedent refers to a time separated from the employer's management and supervision, indicating a private time with guaranteed freedom of use for the employee.

2. Relevant Precedent: Another ruling stated that the term "working hours" under the *Labor Standards Act* refers to the time when an employee provides labor under the direction and supervision of the employer as stipulated in the employment contract. Even if an employee is not actively engaged in work during working hours, such as during waiting, rest, or sleep time, if it is effectively under the control and supervision of the employer, it is considered part of the working hours, not as rest time with guaranteed freedom of use.<sup>3</sup>

The SR manager in this study room is obligated to stay for 8 hours, but since the purpose of the stay is 2 hours for official duties and 6 hours for personal study, it can be considered as time in between rest time and waiting time. However, it is deemed difficult to categorize the SR manager's time purely as waiting time for work, as the contract explicitly states that the SR manager may provide labor intermittently while studying as needed.

3. Relevant Precedent: A further ruling stated that, considering that the employer (defendant or Dormitory) did not predefine specific times for the rest time available to the employee (dormitory manager), and the fact that visitors or new residents could arrive at any time, requiring the dormitory manager to remain in place and be ready to respond without specific time constraints, and taking into account that the employer provided ad-hoc work instructions without specific time constraints, and the employee complied with the employer's spontaneous work instructions, even if the employee spent their time resting or studying, it is reasonable to view that the time falls under waiting time for work rather than rest time completely liberated from the employer's directives.<sup>4</sup>

The wage dispute in the dormitory manager's case revolved around the determination of whether the dormitory manager's waiting time should be considered rest time. In other words, the dormitory declared all the time as waiting time because the dormitory manager did not specify rest time. The key difference with the current study room manager's situation is that the employment contract for the current study

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<sup>2</sup> Supreme Court ruling on Apr. 14, 1992, 91da20548.

<sup>3</sup> Supreme Court ruling on Nov. 23, 2006, 2006da41990.

<sup>4</sup> Seoul District Court ruling on June 23, 2017, 2017da922.

room explicitly states 6 hours of rest time for study during rest breaks, and that there is a difference in the information in the hiring notice and the actual use of rest time for studying.

## VI. Court's Judgment and Implications for Working Hour Disputes

### 1. Court's Judgment<sup>5</sup>

(1) It is acknowledged that the defendant employee (hereinafter referred to as the SR manager) and the plaintiff (study room) entered into an employment contract on March 10, 2019, agreeing for the SR manager to work 2 hours each day as an overnight SR manager from 18:00 to 02:00, receiving a monthly wage of 685,000 won, and that the SR manager worked until May 9, 2020.

(2) The SR manager argues that, as he worked or waited for work from 18:00 to 02:00 daily, the entire 8 hours during this time constitute working hours. Therefore, based on these working hours, the SR manager claims that the employer should have the obligation to pay a total of 19,108,560 won, deducting 685,000 won paid each month, for the period until the resignation date after June 11, 2019, in accordance with the minimum wage set by the *Minimum Wage Act*.

However, the agreed working hours of the SR manager were 2 hours, assuming personal study time, and there is no evidence to support the claim that the SR manager worked beyond the agreed-upon hours or that there was a need for additional work beyond the claimed hours. There is also no evidence to suggest that the SR manager needed to wait for work without being able to engage in personal tasks or outings during the study room's operations. Therefore, the SR manager's claim on this matter is deemed unsubstantiated.

(3) The SR manager asserts that the study room is obligated to pay severance pay of 2,706,563 won. However, due to the reasons stated in paragraphs 1 and 2, the SR manager falls under the category of a worker who does not qualify as a designated beneficiary of the severance pay system according to Article 4, Paragraph 1, Subparagraph of the *Labor Standards Act*. This is because the SR manager is in the category of workers with an average weekly working hours of less than 15 over a 4-week period. Therefore, the SR manager's claim on this matter is without merit.

### 2. Lessons Learned

(1) Waiting time for work is considered part of working hours when calculating working hours (Article 50, Paragraph 3 of the *Labor Standards Act*). The time when

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<sup>5</sup> Seoul Eastern District Court ruling on Dec. 21, 2023, 200gaso29648.

the study room manager is under the supervision of the employer is considered waiting time for work, and this falls within the working hours. However, this study room manager had the flexibility to adjust cleaning or equipment management during the manager's 8-hour stay. Nevertheless, considering that situations such as the entry of study room users or inquiries about study room usage occur irregularly, the SR manager must respond to such occurrences during the designated working hours. Despite this, the study room intentionally stated, from the hiring stage, that it was looking for individuals who could manage the study room while studying. The employment contract also explicitly limited the working hours to 2 within the 8-hour confinement period. Moreover, the actual time the SR manager provided labor amounted to only about 2 hours. Therefore, it can be argued that the study room manager's confined time includes rest time and working hours.

(2) In the dispute over the study room manager's working hours, only 2 hours within the 8-hour confinement period were recognized as working hours, while the remaining 6 hours were considered rest time. According to the *Labor Standards Act*, Article 54, "① If the number of working hours equals 4 hours, the employer must provide a rest time of at least 30 minutes during working hours. If there are 8 working hours, the rest time must be at least 1 hour. ② Rest time must be provided during working hours, and the worker must be able to use it freely." Rest time must be provided during working hours, and the worker must be able to use this time freely; it is excluded from the calculation of working hours. The specific determination of rest time depends on (1) whether the worker is away from actual work and (2) whether the worker can use the time freely.<sup>6</sup> When applying these legal principles to the case, the study room manager could sufficiently engage in their own studies during the specified rest time. Additionally, considering that they could autonomously determine their actual work hours, it is plausible to consider that, even within the 8-hour confinement period, the actual working time may be considered as 2 hours.

(3) To avoid such disputes as this one involving the study room manager, it is necessary to obtain recognition from the Ministry of Employment and Labor for the exclusion of surveillance-type workers from the application of working hours, as per Article 63, Paragraph 3 of the *Labor Standards Act*. In so doing, the study room manager's working hours could have been adjusted to 2 hours within the 8-hour confinement period, and this arrangement could have been formalized in a revised employment contract, potentially preventing the current dispute.

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<sup>6</sup> Do, Jae-Hyeong, 'Legal Aspects of Waiting Time,' *Ewha Womans University Law Journal*, Vol. 16, No. 3 (March 2012), pp. 253.