Professional Autonomy and Working-Time Protection: Reconstructing Taiwan's Article 84-1 in Comparative Perspective

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ABSTRACT

Article 84-1 of Taiwan's Labor Standards Act permits designated workers to depart, through a written agreement approved by the local competent authority, from selected rules on working hours and days off. The official English text includes 'professional workers with designated responsibility,' yet workplace discourse often treats professional status, a fixed salary, or individual consent as a general exemption. This article asks when professional discretion can justify differentiated working-time regulation, what follows when statutory conditions are not met, how occupational-health evidence should inform review, and what Taiwan can learn from Japan's discretionary labor systems after the 2024 reforms. It uses doctrinal analysis of legislation, constitutional interpretation, six purposively selected published judgments, and a functional comparison with Japan. It also synthesizes international legal, organizational, and occupational-health research. The article makes three contributions. It separates professional discretion from working-time risk; converts that distinction into an administrable two-axis test; and connects eligibility, approval, recordkeeping, health protection, and civil remedies in one framework. The evidence shows that control over method or schedule can improve work–life fit but may coexist with work intensification, permanent connectivity, and employer control exercised through workload, deadlines, and digital systems. Professional autonomy therefore cannot substitute for enforceable floors governing rest, remuneration, records, and health. The proposed regime requires substantive discretion, informed and revocable consent, representative participation, records of actual hours, risk-based approval with periodic review, and express consequences for noncompliance.

Keywords: Professional Autonomy; Working-Time Regulation; Article 84-1; Overtime Pay; Discretionary Labor; Occupational Health; Taiwan; Japan

INTRODUCTION

Working-time law allocates health risks, temporal sovereignty, and the costs of organizational flexibility. Limits on normal and overtime work respond to unequal bargaining power by restricting the extent to which minimum protection can be traded away through individual consent. Yet knowledge-intensive and project-oriented work does not always fit a rigid clock-time model. The legal challenge is therefore to recognize genuine professional flexibility without converting competence, status, or output accountability into a reason for regulatory abandonment.

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Taiwan's principal statutory response is Article 84-1 of the Labor Standards Act (LSA). The official English translation refers to 'professional workers with designated responsibility,' together with managers and supervisors, monitoring or intermittent workers, and other workers whose work is of a special nature. For eligible workers, an employer and employee may agree separately on selected working-time matters, but only through a written instrument approved by the local competent authority. This article uses 'discretionary professionals' as an analytical shorthand; it does not replace the statutory category or imply a general exemption.

The statutory design nevertheless creates a persistent interpretive problem. Four heterogeneous forms of work are placed in one exceptional clause, although the reasons for differentiated regulation are distinct. Managers may exercise employer-like authority; monitoring or intermittent work may involve low-intensity waiting; other special work may be shaped by operational necessity; and professional work may require discretion over method and temporal allocation. When these rationales are collapsed, occupational title, salary level, non-compete obligations, or project accountability may be mistakenly treated as sufficient proof of exemption.

The problem has concrete distributive consequences. An employee may work twelve-hour days under a monthly salary said to 'include all overtime,' while the employer keeps no reliable record because the worker is assumed to manage his or her own time. If the Article 84-1 agreement was never approved, litigation then turns on reconstructed email, access, communication, or output records. The employer's failure to preserve information can paradoxically increase the employee's evidentiary burden. Judicial Yuan Interpretation No. 726 corrected part of this imbalance by holding that local-government approval is a mandatory legal condition for departure from ordinary working-time rules.

This article asks four questions. First, which substantive indicators distinguish a discretionary professional from an employee who is merely accountable for results? Second, how should the approval requirement and the civil consequences of an unapproved agreement be understood after Interpretation No. 726? Third, what does international evidence on long hours and work-time control add to the statutory command that special arrangements must not impair health and well-being? Fourth, which elements of Japan's discretionary labor systems, particularly the safeguards strengthened in 2024, can inform reform in Taiwan without mechanical transplantation?

The central claim is that professional discretion and working-time risk are analytically separate. Control over method or schedule may reduce some forms of strain, but it can coexist with excessive workload, deadline pressure, digital availability, and employer influence exercised through targets and staffing. This separation yields a two-axis model: eligibility depends on real discretion, while the intensity of protection depends on independently assessed temporal and health risks.

The article makes three contributions. First, it positions Taiwan's debate within international labor-law scholarship on autonomy, non-waivability, consent, time recording, and digital control. Second, it replaces title-based reasoning with administrable indicators derived from statutes, judgments, and empirical research. Third, it links occupational eligibility, approval, recordkeeping, health safeguards, and civil consequences within a single regulatory design. This is narrower than claiming that comparative or health evidence resolves every doctrinal question; the aim is to show how those sources can discipline legal judgment.

Scholarly Context and Analytical Contribution

Taiwanese scholarship has identified much of the doctrinal terrain. Chen (2013) questioned the rationality of so-called responsibility-based work; Hou (2020, 2022) compared high-level white-collar exceptions and assessed practice after Interpretation No. 726; Peng and Hsu (2020) examined Taiwan's exemption rules in operation; and Hsu (2022, 2024) analyzed Japan's working-time reforms and their implications for Taiwan. Legislative research has likewise highlighted uncertainty in the scope of responsibility-based work (Chen, 2024). This literature establishes that designation, writing, and approval matter and that Japan supplies a relevant comparator.

A remaining gap lies in the relationship among four bodies of analysis that are usually separated: the meaning of professional discretion, the non-waivable character of working-time protection, the evidentiary consequences of time recording, and the health effects of long or digitally extended work. Existing Taiwanese debate is predominantly doctrinal, while much international empirical research does not address the legal design of occupational exceptions. The present article connects these literatures and updates the comparison to include Japan’s 2024 safeguards and post-reform evidence.

International labor-law scholarship rejects the assumption that contractual choice alone legitimates the removal of protective standards. Davidov (2020) explains non-waivability as a response to structural and public interests, while Niezna and Davidov (2023) show why consent in employment requires attention to dependency and institutional context. In working-time law, Glowacka (2021) demonstrates that flexibility must remain compatible with health and security, and Kártyás (2025) shows that nominally autonomous schedules can remain subject to decisive employer influence. Together, these studies support a functional inquiry into actual control rather than a status proxy.

Digital work sharpens the point. Employers may loosen direct supervision while retaining control through targets, ratings, response windows, communication systems, and data-driven evaluation. Research on algorithmic management therefore emphasizes collective regulation and context-specific safeguards (Adams & Wenckebach, 2023; Adams-Prassl et al., 2023). Albin (2025) identifies a structural deficit where labor law and data protection fail to constrain employer power, while Katsabian (2025) warns that time-tracking can erode privacy and dignity. These insights create a genuine design tension: actual hours must be knowable, but recording should be proportionate, transparent, and separated from continuous productivity surveillance.

The epidemiological evidence is substantial. Bannai and Tamakoshi (2014) associate long hours with adverse mental and physical health outcomes. Kivimäki et al. (2015) report increased risks of stroke and coronary heart disease among people working very long weeks, while the WHO/ILO analyses estimate a considerable global burden of ischemic heart disease and stroke attributable to long hours (Li et al., 2020; Pega et al., 2021). Overtime and extended shifts are also associated with occupational injury and safety incidents (Dembe et al., 2005; Matre et al., 2021). These findings justify preventive regulation even though effect sizes vary across populations and definitions.

Mental health and recovery are equally relevant. Long hours have been associated with major depressive episodes, depressive symptoms, and cognitive impairment (Rugulies et al., 2021; Virtanen et al., 2009, 2012, 2018; Watanabe et al., 2016). Workplace telepressure can prevent psychological detachment even outside formal work time (Barber & Santuzzi, 2015). Wong et al. (2019) similarly show that the consequences of overtime extend across physical health, mental health, and health-related behavior. Legal analysis focused exclusively on overtime premiums therefore misses the cumulative effects of lost recovery.

Autonomy is protective only under certain conditions. Karasek’s (1979) demand-control model predicts strain when high demands coincide with low decision latitude. Reviews of work-time control find benefits for work–nonwork balance and some health outcomes, but access, need, and actual use must align (Nijp et al., 2012, 2015). Yang et al. (2023) similarly find that job autonomy can moderate some well-being effects of overtime, but it does not make overtime harmless. Flexible arrangements may intensify work (Kelliher & Anderson, 2010), perpetuate connectivity through an autonomy paradox (Mazmanian et al., 2013), and produce uneven institutional and gender effects (Lott, 2015; Putnam et al., 2014). Organization-level interventions work better when schedule control is paired with supervisor support and cultural change (Kelly et al., 2014; Moen et al., 2016).

The source and predictability of flexibility are also material. Worker-controlled adjustments are generally more favorable than variability imposed by the organization (Costa et al., 2006), while Japanese evidence indicates that job resources can buffer some psychological distress associated with overtime (Hino et al., 2015). Ganster et al. (2018) accordingly caution that long-hours effects must be interpreted with workload, choice, recovery, and individual differences rather than hours alone. These qualifications support risk-sensitive review; they do not justify dispensing with minimum protection.

The analytical implication is not that flexibility should be rejected. It is that discretion and risk must be evaluated separately. A worker may score highly on method discretion but remain exposed to high workload and insufficient recovery; another may have low professional discretion but relatively ordinary hours. Only the former raises a plausible case for tailored working-time rules, and neither case justifies abandoning health, records, or remuneration.

MATERIALS AND METHODS

The study uses a qualitative doctrinal and functional-comparative design. Primary Taiwanese materials were reviewed through 31 July 2026: the LSA and its Enforcement Rules in the Laws and Regulations Database of the Republic of China; central labor-authority designations and guidance; Judicial Yuan Interpretations Nos. 726 and 807; and published judgments in the Judicial Yuan database. Chinese search terms included 'Labor Standards Act Article 84-1,' 'professional workers with designated responsibility,' 'approval,' 'written agreement,' and 'overtime pay.' English-language searches combined 'working-time autonomy,' 'professional exemption,' 'discretionary labor,' 'long working hours,' 'work-time control,' 'time recording,' and 'right to disconnect.'

The judgment analysis is purposive rather than exhaustive. Six published decisions were selected because each supplies a distinct proposition needed for the reconstruction: occupational classification, the difference between approval and passive filing, the effect of non-approval, treatment of an alleged inclusive monthly salary, the insufficiency of high pay as a substitute for approval, and the ordinary calculation of overtime after the exception fails. The unit of analysis is therefore the legal proposition and the facts treated as probative, not the frequency of judicial outcomes. This bounded claim replaces any suggestion of a comprehensive empirical survey of all Article 84-1 litigation.

The Japanese comparison is functional. It examines the professional-type and planning-type discretionary labor systems under Articles 38-3 and 38-4 of Japan's Labor Standards Act, Ministry of Health, Labour and Welfare guidance effective from 1 April 2024, and recent empirical studies. The comparison is organized around common regulatory questions: occupational scope, allocation of time, worker representation, individual consent and withdrawal, administrative supervision, actual-hours knowledge, health measures, and legal consequences.

International journal literature was selected to test three propositions embedded in the legal argument: whether autonomy reliably protects health; whether long hours and loss of recovery create measurable risk; and whether digital management can preserve employer control despite nominal flexibility. Priority was given to systematic reviews, meta-analyses, longitudinal studies, peer-reviewed labor-law research, and Japan-specific evidence. The method is integrative rather than a systematic review, so the article does not estimate pooled effects or claim causal certainty beyond the underlying studies.

For citation clarity, secondary scholarship follows an author–date system and is listed alphabetically with DOI links. Statutes, constitutional interpretations, administrative materials, and judgments are identified by institution and official citation in a separate legal-authorities list. This division preserves retrievability without forcing domestic legal sources into an unsuitable journal-reference format.

Two limitations should be explicit. First, the study does not audit all local-government approval files and therefore treats inconsistent administration as a structural risk generated by decentralized review, not as a measured empirical finding. Second, Japan is used as a problem-oriented comparator, not as a model whose institutional components can be transplanted without adjustment for Taiwan's administrative and industrial-relations context.

The Legal Architecture of Article 84-1

Article 84-1 establishes a conditional and itemized departure from ordinary working-time standards. It permits separately agreed arrangements concerning working hours, regular days off, rest days, and national holidays for designated categories of workers. The agreement must be in writing, must be submitted to the local competent authority for approval, must refer to statutory standards, and must not impair health and well-being. Provisions not enumerated in Article 84-1—including wage protection, occupational safety and health, workers' compensation, and dismissal protection—continue to apply.

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Three cumulative controls structure the provision. The first is occupational designation by the central competent authority. Designation confines the gateway and prevents employers from manufacturing exemptions. The second is an identifiable written agreement. Writing makes the scope of deviation, agreed normal hours, overtime, leave, remuneration, and protective measures reviewable. The third is substantive approval by the local authority. Approval introduces a public-law check on unequal individual bargaining and on risks that neither party is well positioned to assess at the moment of contracting.

These controls perform different functions and are not substitutes. A designated occupation does not prove that every worker bearing that title performs qualifying work. A signed agreement does not dispense with approval. Administrative receipt does not cure a contract that obscures hours or undermines health. Eligibility must be tested against actual duties, and approval must assess the content and circumstances of the proposed arrangement.

The Enforcement Rules define a responsibility-based professional employee as a person who uses specialized knowledge or technology to complete a task and assumes responsibility for its success or failure. 'Responsibility for success or failure' must be read narrowly. It concerns professional responsibility for the quality, judgment, and delivery of an identifiable assignment; it does not transfer the employer's market risk, staffing decisions, client volatility, or general business failure to the worker. Every employee is expected to perform assigned work; if ordinary accountability were sufficient, the exception would swallow the rule.

Professional threshold and discretion must be assessed separately. A role may require advanced expertise but still be tightly controlled by standard operating procedures, algorithmic scheduling, real-time supervision, or mandatory response windows. Conversely, a worker may enjoy some scheduling flexibility without specialized responsibility. The strongest case for differentiated regulation exists only when the work demands non-routine professional judgment and the worker has meaningful control over method, sequence, priority, resource allocation, and the timing of performance.

Time discretion is more than permission to leave late or work remotely. A qualifying worker should be able to adjust starting and finishing times, organize rest, reject unreasonable additions, renegotiate infeasible deadlines, and disconnect outside agreed availability windows without retaliation. An employer who fixes deliverables, staffing, response times, meeting attendance, and all interim deadlines has retained temporal control even if no time clock is used. The law should examine the worker's capacity to alter workload and timing, not the absence of physical attendance records.

Salary, bargaining sophistication, non-compete clauses, professional licenses, and access to confidential information may be supporting facts, but none independently establishes substantive discretion. A fixed monthly wage may reflect scarcity or may simply pre-purchase unpredictable overtime. A professional license proves competence, not control. A non-compete clause protects business interests, not working-time autonomy. Courts and authorities should resist status proxies that are easy to document but weakly connected to the statutory rationale.

Interpretation No. 807 also affects the current reading of Article 84-1. It invalidated the former sex-based restriction on women's night work under Article 49(1) as inconsistent with equality. Other protections associated with pregnancy and maternity remain legally distinct. Special working-time agreements should therefore not reproduce an obsolete gender classification, but must continue to accommodate pregnancy, breastfeeding, and occupational-health protections that rest on different constitutional and statutory grounds.

Table 1. Cumulative controls under Article 84-1

Control	Legal requirement	Regulatory function	Consequence if absent
Occupational scope	Central designation and consistency between actual duties and the designated category	Prevents employer-created occupational exemptions	Ordinary working-time rules remain applicable

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Individual agreement	An identifiable written agreement specifying hours, leave, remuneration, and protections	Enables information, proof, and individualized bargaining	No contractual basis for deviation
Administrative approval	Substantive review by the local competent authority	Controls unequal bargaining and health risks	Under Interpretation No. 726, the agreement cannot exclude ordinary statutory protection

Note. Compiled by the authors from the LSA, its Enforcement Rules, and Judicial Yuan Interpretation No. 726.

Judicial Application, Civil Effect, and Overtime

Approval has sometimes been described as a passive filing or a form of administrative endorsement. Neither description captures its protective function. The authority must determine whether the employee belongs to a designated category, whether the writing contains the necessary terms, whether the agreed arrangement refers to legal standards, and whether health and well-being are protected. The distinction drawn in administrative case law between a mere record and legally effective approval confirms that Article 84-1 contemplates an evaluative administrative act.

Interpretation No. 726 classifies approval as a mandatory rule within the meaning of Civil Code Article 71. An agreement that has not been approved cannot exclude the limits contained in LSA Articles 30, 32, 36, 37, and the then-relevant Article 49. When a civil dispute arises, a court must calculate wages by reference to the ordinary regime, including overtime and holiday-pay provisions. The constitutional reasoning is important: designation and approval are safeguards against the erosion of minimum conditions through private agreement where bargaining power is unequal.

The consequence is best described as non-exclusion, rather than automatic nullity of the entire employment contract. An unapproved arrangement cannot give the employer the disadvantageous benefit of departing from statutory minima. Provisions that are independent, more favorable to the employee, or consistent with ordinary law may remain operative under general principles of severability and favorability. This reading reconciles the protective purpose of Interpretation No. 726 with stability of the employment relationship.

Overtime disputes require a two-stage inquiry. The employer must first establish that the occupation, actual duties, written agreement, and approval satisfy Article 84-1. Only after that threshold is met should a court interpret the special allocation of normal and overtime hours. If any threshold condition is missing, ordinary hours and wage rules govern. A monthly salary cannot be divided by an employer-selected long-hours assumption to manufacture proof that overtime was already paid.

Even an approved agreement does not automatically extinguish overtime pay. Current labor-authority guidance emphasizes that Article 84-1 is not a complete working-time exemption. If agreed normal hours exceed forty per week, the wage base must be adjusted proportionally to satisfy minimum-wage requirements, and work beyond the agreed normal hours still attracts overtime pay under Article 24. A lawful agreement must therefore distinguish normal hours, extended hours, rest arrangements, wage components, and the formula for additional remuneration.

Proof rules should reflect information asymmetry. Employers control payroll, attendance systems, access records, work platforms, and managerial communications. A party claiming the benefit of an exceptional regime should bear the burden of proving its conditions and the payments made. Where the employer unlawfully fails to preserve working-time records, courts should accept a worker's prima facie account supported by emails, system logs, messages, calendars, deliverables, or ordinary experience and require the employer to rebut a reasonable inference. Non-recording should not become a litigation advantage.

Table 2. Proposition-based synthesis of selected Taiwan judgments

Decision	Question and material facts	Proposition used in this article
Taipei District Court, 103 Labor Su No. 13 (2014)	Information-services section chief responsible for planning, security, equipment, and budgets	Classification turns on the substance of specialized tasks and responsibility, not title alone
Supreme Administrative Court, 99 Pan No. 1243 (2010)	Legal character of an authority's response to a submission	Approval entails review and legal effect; it is distinct from passive receipt for record
Taiwan High Court, Taichung Branch, 105 Labor Shang-Yi No. 27 (2016)	Alleged inclusive salary and extra hours without written, approved terms	Non-approved terms cannot displace ordinary overtime protection after Interpretation No. 726
Kaohsiung High Administrative Court, 105 Su No. 527 (2016)	Employer relied on worker consent without prior local approval	Consent alone is insufficient; approval is a condition of exclusionary effect
Taipei High Administrative Court, 106 Su No. 1165 (2017)	Chairperson's driver received allegedly above-market pay but the schedule was unapproved	High pay does not substitute for statutory approval or ordinary hour and holiday rules
Taichung District Court, 111 Labor Su No. 288 (2022)	Control-room worker worked twenty twelve-hour days per month; employer alleged salary included overtime	When the exception fails, normal hours and overtime are recalculated under the ordinary statutory regime

Note. The sample is purposive and proposition-based; it is not a frequency study of all Article 84-1 litigation. ROC case years are followed by Gregorian years for international readers.

Read together, the decisions disclose a coherent sequence even though they arise in different procedural settings. Courts first identify the actual work and designated category; they then ask whether an identifiable written arrangement exists and whether the local authority approved it. Salary and consent become relevant only after those gateway conditions. If the gateway fails, the court returns to ordinary hours and wage rules rather than asking whether the employee subjectively accepted a long schedule.

The cases do not, however, supply a sufficiently granular test for professional discretion or a uniform approach to digital evidence of hours. That is where the comparative and empirical materials add value. They do not override the judgments; they specify which facts should matter when courts and authorities decide whether professional autonomy is genuine and whether a proposed arrangement remains compatible with health and well-being.

Table 3. Substantive indicators of discretionary professional work

Dimension	Indicators supporting application	Indicators against application
Professional threshold	Specialized knowledge, credentials, or sustained training; work not readily substitutable	Internal title inflation, routine tasks, or fully standardized work
Task integrity	An identifiable assignment evaluated primarily by professional quality, judgment, or output	Open-ended workload continuously enlarged by management
Method discretion	Real control over method, sequence, priority, and resources	Detailed instructions, rigid SOPs, algorithmic control, or constant monitoring

Time discretion	Authority to alter timing, rest, deadlines, and availability and to reject unreasonable additions	Only the ability to work later; no right to disconnect or adjust workload
Risk and bargaining position	Compensation, information, and voice sufficient to support genuine autonomy while business risk remains with the employer	A fixed salary is used to buy unlimited hours or staffing risk is shifted to the worker

Note. The indicators are cumulative and functional. No occupational title or salary threshold is independently determinative.

Japan's Discretionary Labor Systems and the 2024 Reforms

Japan provides a useful functional comparator because it separates professional-type discretionary work under Labor Standards Act Article 38-3 from planning-type discretionary work under Article 38-4. Neither system simply declares workers exempt from all working-time regulation. Both use deemed hours for specified work while retaining rules concerning overtime procedures and premiums, rest, holidays, late-night work, health protection, and actual working conditions.

The professional-type system applies to legally enumerated work whose performance methods and allocation of time must largely be left to the worker's discretion. The employer and a majority labor union, or a representative of a majority of workers where no union exists, conclude a labor-management agreement specifying eligible work, deemed hours, limits on concrete directions, health and welfare measures, complaint procedures, duration, and record retention. The agreement is filed with the Labor Standards Inspection Office.

The planning-type system concerns white-collar work involving planning, proposal development, research, and analysis in business operations. Because the category is functionally defined and potentially expansive, the procedure is more demanding. A labor-management committee with equal representation must adopt the required resolution by a four-fifths majority and file it with the inspection office. The committee addresses scope, evaluation, wage treatment, health measures, complaints, and operational review.

From 1 April 2024, Japan strengthened individual choice across the discretionary systems. The professional-type system now requires the employer to explain the system and obtain the individual worker's consent, while the agreement must establish a procedure for withdrawing that consent. Workers may not suffer disadvantageous treatment because they do not consent or withdraw. Consent and withdrawal records must be preserved. The reform responds to a fundamental legitimacy problem: if individual discretion justifies deemed hours, the worker must be able to reassess participation after experiencing the actual workload.

The 2024 changes also reinforced the role of health and welfare measures and complaint handling. In the planning-type system, committee procedures must address consent withdrawal, wage and evaluation systems, implementation, and periodic reporting. These elements recognize that collective procedure, administrative filing, and individual choice serve different purposes. Representation improves institutional design, filing enables public supervision, and revocable consent protects personal agency.

Recent evidence clarifies why legal classification must follow actual discretion. Izumi et al. (2025) find that exempt workers in Japan work longer hours and earn more on average, but that adverse health effects emerge when exemption is applied to workers who lack discretion over how and when they work. Takahashi et al. (2025) report that Japan's broader work-style reform reduced working hours and affected organizational outcomes, although the effects were not uniform. Yanagihara and Koga (2023) likewise show that information and communication technologies can support autonomy while requiring systems that make working time visible. These studies support procedural reform, but they also caution against treating formal coverage as proof of substantive autonomy.

Taiwan should not copy deemed hours without its safeguards. Japan's systems remain contested, and formal discretion can coexist with organizational pressure. The relevant lesson is regulatory differentiation: professional discretion, planning discretion, managerial authority, and intermittent work should not share one undifferentiated exception. Each departure from general law should correspond to a demonstrable functional need and a tailored protective response.

The comparison also exposes gaps in Taiwan. Article 84-1 lacks a general statutory right to withdraw, an express prohibition on adverse treatment for refusal or withdrawal, a mandatory workplace-level representative process for professional employees, uniform disclosure duties, and a nationally integrated reporting mechanism. Administrative approval supplies an important public safeguard, but the statute does not specify common data, risk indicators, or occupational-health capacity for every reviewing authority, thereby creating an institutional risk of variation.

Table 4. Functional comparison of Taiwan and Japan

Dimension	Taiwan: LSA Article 84-1	Japan: professional type	Japan: planning type
Legal technique	Itemized departure by separate agreement	Deemed hours under a labor-management agreement	Deemed hours under a committee resolution
Scope	Central occupational designation plus review of actual duties	Enumerated professional work requiring substantial discretion	Planning, proposal, research, and analysis requiring substantial discretion
Collective procedure	Not a universal statutory condition	Majority union or majority representative agreement	Labor-management committee; four-fifths majority
Individual choice	Written agreement, but no general express withdrawal right	Consent, withdrawal procedure, and protection against adverse treatment strengthened in 2024	Consent and withdrawal; enhanced committee oversight in 2024
Administrative control	Local-government approval	Agreement filed with Labor Standards Inspection Office	Resolution filed and implementation periodically reported
Health governance	General command not to impair health and well-being	Specified health, welfare, complaint, and record measures	Committee-determined health, welfare, complaint, evaluation, and review measures

Note. Compiled by the authors from Taiwan's LSA, Japan's Labor Standards Act, and the Japanese Ministry of Health, Labour and Welfare's 2024 implementation materials.

A Two-Axis Evaluation of Professional Flexibility

The doctrinal and empirical materials support a two-axis evaluation. Axis A measures substantive professional discretion: specialized judgment, control over method and sequence, capacity to alter timing, and practical authority to renegotiate workload or deadlines. Axis B measures working-time risk: actual and expected hours, night and holiday work, consecutive days, rest intervals, workload volatility, digital availability, and the worker's ability to disconnect and recover.

The axes answer different questions. A high score on discretion may justify flexibility in the allocation of work, but it does not demonstrate low health risk. Conversely, a low-risk schedule does not transform routine or tightly controlled work into discretionary professional work. Eligibility should therefore require high substantive discretion; protection should then be calibrated to the independent risk assessment. Some safeguards—accurate remuneration, accessible records, occupational safety, and protection against retaliation—remain applicable in every quadrant.

This model improves review in three ways. It makes the statutory rationale falsifiable because the employer must identify the decisions actually left to the worker. It prevents salary, title, or remote-work status from doing the work of a legal test. And it turns the health-and-well-being clause into an operational inquiry rather than a conclusory statement. The model is a framework for structured judgment, not a numerical score that mechanically determines legal status.

Table 5. Two-axis decision matrix

Configuration	Legal assessment	Required response
High discretion / lower measured risk	Strongest case for tailored allocation of working time	Approve only specified departures; retain records, pay, rest, and periodic review
High discretion / high risk	Professional status may be genuine, but health justification is weak	Narrow hours, require recovery and workload controls, shorten approval, or refuse
Low discretion / lower measured risk	Ordinary or flexible scheduling, not a professional exception	Use general LSA rules and ordinary flexible-work mechanisms
Low discretion / high risk	Exception is both conceptually and protectively unjustified	Refuse or revoke; restore ordinary rules and investigate underpayment or safety risk

Note. Discretion determines eligibility; risk determines the intensity of safeguards. The matrix does not displace statutory designation, writing, or approval.

Structural Deficits in Taiwan's Current Regime

Heterogeneous rationales and nominal autonomy

The first deficit is the aggregation of heterogeneous work in one exceptional clause. Managers, professional employees, monitoring workers, intermittent workers, and other special workers pose different regulatory questions. A single list of excluded provisions encourages authorities and employers to treat exception as a status rather than to connect each deviation to necessity. Professional discretion over performance does not logically require the simultaneous removal of every listed protection concerning rest days, holidays, and extended hours.

The second deficit is the equation of autonomy with absence of risk. Work-time control can be beneficial, but autonomy may be merely procedural. A worker may decide when to complete a task while lacking power over workload, staffing, deadlines, or availability. The autonomy-paradox and work-intensification literatures show why those who can work anywhere may find it harder to stop working. Approval that records only job title, signature, and a maximum monthly number of hours cannot determine whether autonomy is genuine or health risk is controlled.

Approval quality and temporal change

Third, the decentralized approval structure creates a risk of variation because Article 84-1 does not itself prescribe a detailed national evidentiary floor, common risk classification, or uniform reasons template. This article has not audited municipal approval outcomes and therefore does not assert a measured disparity. The narrower point is institutional: individualized review remains necessary, but transparent national indicators would make similar cases more comparable and decisions more auditable.

Fourth, approval is often concentrated at the initial contracting stage and may not reflect later organizational change. A project peak, merger, staffing reduction, international time-zone coverage, new performance system, or digital monitoring technology can transform a once-reasonable arrangement into a high-risk one. Without expiration, renewal, and material-change rules, approval becomes a permanent pass disconnected from the facts that originally justified it.

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Remedies, records, and exit

Fifth, civil remedies remain costly. Interpretation No. 726 settled the mandatory nature of approval, but workers still must prove actual hours, wage components, availability, and limitation periods. Professional work is frequently performed across offices, client sites, homes, and digital systems. An employer that does not keep time records forces the worker to reconstruct them from scattered data. The remedial regime is weakened if the law states substantive rights but leaves information control untouched.

Finally, the regime does not provide an effective exit from individualized flexibility. Formal agreement is obtained before workers know the true interaction between deadlines, staffing, customer demands, and organizational culture. If consent cannot be withdrawn without losing the position, it is not a continuing basis of legitimacy. The system requires a route back to ordinary hours, supported by protection against dismissal, reduced pay, demotion, adverse evaluation, or exclusion from reasonable opportunities.

A Statutory Framework for Discretionary Professional Work

Scope and eligibility

Taiwan should remove responsibility-based professional employees from the present hybrid exception and enact a distinct part governing discretionary professional work. The new regime should preserve ordinary law by default and authorize only the deviations necessary for work in which the allocation of method and time must genuinely be entrusted to the professional. Managerial, monitoring, intermittent, and other special work should be addressed under separate tests.

Eligibility should contain four layers. First, an objective professional threshold should require legally enumerated or professionally reviewed knowledge and skill. Second, a substantive-discretion test should prohibit detailed employer control over method, sequence, and temporal allocation and should require a mechanism for adjusting workload or deadlines. Third, individual consent must be informed: the employer should disclose deemed or agreed hours, remuneration, expected night and holiday work, health measures, withdrawal consequences, and complaints. Fourth, a collective or public-control layer should involve a union, labor-management conference, or genuinely representative committee before filing or approval.

A salary threshold may supplement, but must not replace, the occupational and discretion tests. High pay may signal scarce expertise or may simply buy out long hours in advance. A defensible threshold should be linked to the distribution of full-time earnings, periodically reviewed, and accompanied by separated statements of base pay and compensation for extended work. Impact assessment is necessary to avoid excluding genuinely discretionary work in lower-paying sectors while protecting workers from nominal salary packages.

Consent and representative participation

Consent should be revocable in writing or by a preservable electronic method. After a reasonable transition period, the worker should return to the ordinary working-time system. Employers should be prohibited from dismissing, reducing pay, demoting, lowering performance ratings, or restricting reasonable opportunities because a worker refuses or withdraws. If a particular role cannot operate under ordinary hours, the employer should negotiate a lawful reassignment rather than force the worker to choose between protection and employment.

Representative participation should not be reduced to a signature from a nominal representative. The union, labor-management conference, or elected committee should receive aggregate information about proposed hours, complaints, health measures, withdrawals, and material changes. Its role is to test whether individual discretion exists in the organization’s actual workflow and to identify collective workload problems that no single employee can solve through personal time management.

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Records, health safeguards, and review

Deemed or separately agreed hours should never eliminate the duty to understand actual work. Employers should record access, log-in, assignment, communication, and other relevant time in a privacy-respecting manner and allow worker confirmation and correction. Health review should consider exposure above fifty-five hours per week, consecutive workdays, night work, intervals between workdays, holiday work, variability, digital disconnection, workload, and staffing. Research thresholds should inform risk classification, not be converted mechanically into the only legal ceiling.

Risk triggers should produce enforceable responses: workload review, mandatory recovery, occupational-health consultation, physician assessment, staffing adjustment, or shorter approval. Repeated work beyond agreed hours should permit the authority to order improvement, narrow the arrangement, or revoke authorization. Weekly rest, annual leave, pregnancy and maternity protection, occupational safety and health, and the core opportunity for consecutive recovery should remain non-waivable.

A national digital approval interface should standardize applications and make approval conditions visible to affected workers. Required information should include job descriptions, organizational authority, schedule arrangements, wage structure, actual-hours history, occupational injuries, health measures, complaints, withdrawal, and material-change procedures. Risk flags may identify incomplete or high-risk files, but final decisions should remain with officials possessing labor-law and occupational-health competence. Approvals should expire, and material changes should trigger renewed review.

Recording must remain proportionate. The purpose is to establish when work occurs and whether recovery is adequate, not to score every keystroke or infer productivity continuously. Workers should know what data are collected, be able to correct errors, and have access to aggregate and individual records. Retention periods, access rights, purpose limitation, and representative oversight should be specified by law, responding to the privacy and dignity concerns identified by Albin (2025) and Katsabian (2025).

Civil consequences and burden of proof

The law should state the civil consequences expressly. A failure of occupational scope, writing, consent, collective process, or approval should mean that the attempted deviation has no exclusionary effect; wages and hours return to ordinary rules; favorable and severable terms may remain; and the employer bears the burden of proving the exception and payment. When records are unlawfully missing, courts should draw reasonable inferences from the worker's preliminary evidence and the normal organization of the work.

This remedial design follows the logic of Interpretation No. 726 without treating the entire employment contract as void. It removes only the employer's claimed benefit of departure, preserves more favorable terms where severable, and restores the ordinary statutory baseline. Administrative penalties and private wage remedies should be cumulative because they address different injuries: public noncompliance and individual underpayment.

Table 6. Proposed reform modules

Module	Core content	Problem addressed
Separate legislation	Regulate professional discretion separately from management, monitoring, and intermittent work	Heterogeneous work currently shares one exception
Four-layer eligibility	Professional threshold, substantive discretion, informed consent, and collective/public control	Title-based application and formal consent
Revocable consent	Withdrawal procedure and prohibition of adverse treatment	No realistic exit after workload becomes known

Health floor	Actual-hours records, risk triggers, recovery, disconnection, medical review, and improvement duties	Autonomy is misread as absence of overwork risk
Digital approval	National forms, risk classification, expiry, material-change review, and worker access	Local inconsistency and one-time paper review
Express legal effect	No exclusionary effect when conditions fail; ordinary wage rules and adjusted burden of proof	Non-recording employers receive evidentiary advantage

Note. Proposed by the authors.

CONCLUSION

The first research question concerned eligibility. The answer is functional: a discretionary professional must possess specialized expertise, responsibility for an identifiable professional assignment, and genuine authority over method, sequence, and the temporal organization of work. The capacity to adjust workload or deadlines is especially probative. Title, salary, non-compete obligations, credentials, remote-work status, and signature are supporting facts at most; none establishes the statutory rationale by itself.

The second question concerned approval and civil effect. Designation, an identifiable written agreement, and substantive local approval are cumulative. Interpretation No. 726 means that an unapproved arrangement cannot exclude ordinary working-time protections. The preferable remedial characterization is loss of exclusionary effect rather than wholesale invalidity: ordinary hours and wage rules return, while favorable and severable terms may remain. The employer should bear the burden of establishing the exception and payment, with reasonable inferences against a party that unlawfully fails to preserve records.

The third question concerned health and well-being. International research does not yield a single universal ceiling, but it identifies legally relevant exposure: very long weeks, inadequate daily and weekly recovery, night and holiday work, variability, permanent connectivity, and high demands without effective control. Autonomy may improve work–life fit yet also intensify work. The statutory inquiry should therefore apply the two-axis model, evaluating discretion and risk independently and requiring proportionate, privacy-respecting knowledge of actual hours.

The fourth question concerned Japan. The useful lesson is not deemed hours in isolation. It is a package of occupational definition, labor-management participation, individual consent and withdrawal, protection against adverse treatment, health and welfare measures, complaint procedures, records, and administrative supervision. The 2024 reforms and recent empirical evidence strengthen the case for continuing rather than one-time legitimacy.

Taiwan should consequently establish a distinct regime for discretionary professional work. Substantive discretion would determine eligibility; risk-based review would determine the permissible departures and safeguards; and non-waivable floors would preserve remuneration, records, recovery, occupational health, and an effective exit. This design recognizes professional autonomy as a valuable mode of organizing work while refusing to make autonomy a substitute for working-time protection.

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