

立法會
Legislative Council

LC Paper No. CB(2)2716/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP/1

Panel on Manpower

Minutes of meeting
held on Tuesday, 27 May 2008, at 1:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon LAU Chin-shek, JP (Chairman)
Hon KWONG Chi-kin (Deputy Chairman)
Hon LEE Cheuk-yan
Hon CHAN Yuen-han, SBS, JP
Hon LEUNG Yiu-chung
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
- Members absent** : Hon Alan LEONG Kah-kit, SC
- Public Officers attending** : Item IV
Mrs TSE LING Kit-ching, Cherry, JP
Commissioner for Labour

Mr WONG Kwok-lun, Alan, JP
Assistant Commissioner (Employees' Rights & Benefits)
Labour Department

Dr LEUNG Lai-man, Raymond, JP
Occupational Health Consultant (1)
Labour Department

Ms LUK Wai-ling, Melody
Senior Labour Officer (Compensation) (Central Services) 1
Labour Department

Item V

Mr CHEUNG Kin-chung, Matthew, GBS, JP
Secretary for Labour and Welfare

Mrs TSE LING Kit-ching, Cherry, JP
Commissioner for Labour

Mr FONG Ngai
Assistant Commissioner (Policy Support and Strategic Planning)
Labour Department

Miss LAI Sai-ming, Drew
Senior Administrative Officer (Policy Support)
Labour Department

Item VI

Mr CHEUNG Kin-chung, Matthew, GBS, JP
Secretary for Labour and Welfare

Mrs TSE LING Kit-ching, Cherry, JP
Commissioner for Labour

Mr IP Yee-cheung, Ernest
Senior Labour Officer (Special Duties) 1
Labour Department

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2) 1

Staff in attendance : Ms Janet SHUM
Senior Council Secretary (2) 8

Miss Helen DIN
Legislative Assistant (2) 1

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I. Confirmation of minutes of the previous meeting
(LC Paper No. CB(2)2013/07-08)

The minutes of the meeting held on 24 April 2008 were confirmed.

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II. Information papers issued since the last meeting
(LC Paper No. CB(2)2021/07-08(01))

2. Members noted that the Administration's paper on the proposed deletion of one permanent post of Chief Labour Officer in the Labour Department (LD) had been issued since the last meeting. No member suggested that the paper be discussed by the Panel.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)2012/07-08(01) and (02))

3. Members agreed that the following items would be discussed at the next meeting to be held on 19 June 2008 -

- (a) preparatory work for introducing a statutory minimum wage for cleaning workers and security guards if the Wage Protection Movement fails to yield satisfactory results - Enforcement and penalty in relation to the implementation of a statutory minimum wage;
- (b) preparatory work for introducing a statutory minimum wage for cleaning workers and security guards if the Wage Protection Movement fails to yield satisfactory results - Setting of the level of a statutory minimum wage; and
- (c) preparatory work for introducing a statutory minimum wage for cleaning workers and security guards if the Wage Protection Movement fails to yield satisfactory results - Mechanism for reviewing the level of the statutory minimum wage.

Items for discussion at future meetings

4. Mr WONG Kwok-hing suggested that as the Chief Executive had undertaken to put in place measures to solve the problem of enforcement of Labour Tribunal (LT) awards as soon as possible, the Panel should follow up the issue and a special meeting should be held to discuss the matter if necessary.

5. The Chairman said that as the Administration would try its best to come up with concrete proposals on the issue before the end of this legislative session, he would keep in view the situation and consider nearer the end of June the need to further discuss the issue at the Panel meeting in July. He stressed that as members had already expressed their views on the issue, future discussion should be focused on the Administration's concrete proposals.

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Regular meeting in July

6. Members agreed that the regular meeting in July would be held on 7 July 2008 from 4:30 pm to 6:30 pm.

IV. The proposal to adjust the rate and proportion of distribution of the Employees' Compensation Insurance Levy payable under the Employees' Compensation Insurance Levies Ordinance and improve the compensation for persons with occupational deafness under the Occupational Deafness (Compensation) Ordinance
(LC Paper No. CB(2)2012/07-08(03))

7. Commissioner for Labour (C for L) briefed members on the proposals to adjust the rate and proportion of distribution of the Employees' Compensation Insurance Levy payable under the Employees' Compensation Insurance Levies Ordinance (Cap. 411) and improve the compensation for persons with occupational deafness under the Occupational Deafness (Compensation) Ordinance (ODCO) (Cap. 469).

8. Mr WONG Kwok-hing asked about the details of the transitional arrangement which would enable workers who had monaural hearing loss but already left employment to claim compensation retrospectively from the Occupational Deafness Compensation (ODC) Scheme. He also asked about the number of such workers and when compensation would be granted to them under the revised Scheme.

9. C for L said that since the establishment of the ODC Scheme, some 500 workers' application had been rejected because only one of their ears was assessed to have sensorineural hearing loss of 40 dB or above since the current ODC Scheme required hearing loss to both ears. Under the proposed revised Scheme, workers with monaural hearing loss would be eligible to claim compensation. Considering that some of these 500 workers with monaural hearing loss who had left employment for some time would be unable to fulfill the requirement of having a period of continuous employment in any noisy occupation in Hong Kong within the 12 months before the date of application if they were required to make application afresh, the Administration proposed to net in these workers through a transitional arrangement. Compensation would be granted to these workers if records of the Occupational Deafness Compensation Board (ODCB) revealed that their applications were refused because they suffered from occupational deafness of 40 dB or above in only one of their ears.

10. Assistant Commissioner (Employees' Rights and Benefits) supplemented that if members supported the proposals set out in paragraph 15 of the Administration's paper, LD would proceed quickly to give instruction to

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the Department of Justice to draft an amendment bill for introduction into the Legislative Council in the 2008-2009 legislative session.

11. C for L said that while LD would proceed with the legislative procedure expeditiously, it would be difficult to foresee the actual time involved or provide a timetable for the implementation of the revised Scheme, as further issues might arise during the scrutiny of the amendment Bill.

12. Considering that the proposal was not a controversial one, Mr WONG Kwok-hing said that the Administration should have submitted the proposal at an earlier time so that workers could have benefited from the revised Scheme as early as possible. He asked how the amount of compensation would be determined.

13. C for L explained that the amount of compensation for workers with monaural hearing loss who were employed under a continuous contract in any noisy occupation in Hong Kong within the 12 months before the date of application would make reference to the workers' most updated hearing test results. As for those workers with monaural hearing loss who had left their employment in any noisy occupations for more than 12 months, they would be netted in through the transitional arrangement, and their last hearing test results adopted by ODCB would be referred to.

14. Mr LEE Cheuk-yan considered that in view of the accumulated fund of \$462.2 million of ODCB, the Administration could consider making further improvement on the Scheme. He asked whether the Administration would exercise flexibility in approving workers' claim for compensation as long as they could provide medical certification of their occupational deafness.

15. C for L responded that the establishment of a causal relationship between the disease and the occupation was crucial in considering whether an applicant was eligible for compensation under the ODC Scheme.

16. Ms LI Fung-ying agreed in principle to the revised package of proposals. She enquired whether all the 500 workers with monaural hearing loss whose hearing test results were adopted by ODCB would receive compensation automatically, and whether the Administration would also consider granting compensation retrospectively to those persons with monaural hearing loss who had not filed any application with the Board in the past and had discontinued employment in noisy occupation for more than 12 months.

17. C for L said that for the some 500 workers with monaural hearing loss whose applications for compensation had been refused by the Board in the past by reason of failure to meet the disability requirement, a transitional arrangement would be in place to net them in for compensation. She added that as workers could hardly judge by themselves whether their hearing loss was monaural or not, workers suspecting themselves of have hearing loss

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problems in the past should have already filed application to ODCB and undergone hearing test and medical examination provided by the Board.

18. Ms LI Fung-ying considered that as there might be some workers with monaural hearing loss who had not made application to ODCB, the Board should exercise flexibility in granting compensation if they could provide proof that they had worked in the specified noisy occupations in the past.

19. C for L responded that ODCB would consider the application of persons with monaural hearing loss who had not made claim in the past if they could provide proof to verify that they had been employed under a continuous contract in the specified noisy occupations in the past 12 months preceding their applications.

20. Ms LI Fung-ying asked whether the Administration would consider reviewing the list of noisy occupations in future so as to include other occupations prone to cause noise-induced deafness.

21. C for L said that there were 29 noisy occupations specified under the ODCO of which applicants fulfilling both the occupational and disability requirements could make claim for compensation. LD would seek the views of the trade and professional bodies on the need to revise the list of specified noisy occupations and consider making legislative amendment if necessary.

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22. Referring to the submission of the Association for the Rights of Industrial Accident Victims, Mr WONG Kwok-hing asked whether the Administration would consider expanding the reimbursable items under the ODC Scheme.

23. C for L said that proposals to further improve the ODC Scheme which was funded by the levy collected from employers would require the consent of both employers and employees. She pointed out that it was necessary to strike a balance as regards the scope and amount of compensation under ODC Scheme.

24. Mr LEE Cheuk-yan asked whether the Administration would consider removing the cap of the reimbursable amount for the expenses incurred in purchasing, repairing and replacing hearing assistive device, so as to provide life-long guarantee for persons with occupational deafness who would have permanent need for hearing assistance device.

25. C for L said that to avoid early exhaustion of the reimbursable amount by persons with occupational deafness, the Administration proposed that the maximum reimbursable amount be increased from \$18,000 to \$36,000. According to statistics, 80% of the claimants' reimbursed expenses were below \$10,000 or below, whereas about 1% of the persons claiming expenses in connection with hearing assistive device had exhausted the current maximum

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reimbursable amount since the introduction of the benefit under the ODCO in 2003. Hence, there was no evidence to suggest that the revised amount was inadequate. The Administration would keep in view the situation and conduct a review in future when needed.

26. C for L added that some persons who had already received compensation would continue to be engaged in noisy occupations. They might still be exposed to noise at work. As such, the Administration proposed that for persons who had continued to be engaged in any specified noisy occupation for five years in aggregate thereafter, they should be entitled to compensation in respect of additional hearing loss sustained. With the improvement in the revised Scheme, workers of noisy occupations would be encouraged to address their hearing problem and seek assistance from rehabilitation services provided by ODCB as early as possible.

27. The Chairman said that the Administration should consider the social and economic contribution of workers of noisy occupations and exercise flexibility in granting compensation to those with occupational deafness as far as possible.

V. Wage Protection Movement for cleaning workers and security guards: Assessment criteria for overall review in October 2008
(LC Paper No. CB(2)2012/07-08(04))

28. Secretary for Labour and Welfare (SLW) briefed members on the assessment criteria for the overall review of the Wage Protection Movement (WPM) for cleaning workers and security guards in October 2008.

29. Miss CHAN Yuen-han asked about the availability of data related to the wage levels of the relevant occupations and the number of cleaning workers and security guards receiving wages not lower than the market averages before the end of this legislative session. She said that WPM was a failure and urged the Administration to provide such data before the end of this legislative session so that it could proceed with the legislative procedure for introducing a statutory minimum wage (SMW) immediately. She noted that Mr Stanley LAU, a member of the General Committee of the Federation of Hong Kong Industries (FHKI) had given his support for the introduction of a SMW for all trades.

30. SLW said that the overall review of WPM could not be advanced as data of wages and payroll statistics to be provided by the Census and Statistic Department (C&SD) would not be available until September. He assured members that the Administration would follow the timetable set out in the Chief Executive's (CE's) 2007-2008 Policy Address. The Administration would introduce a bill on a SMW for the two specified occupations as early as possible in the 2008-2009 legislative session if the overall review found that

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the WPM was ineffective.

31. Mr LEE Cheuk-yan considered WPM a failure and the introduction of a SMW most essential to provide legal protection for low-skilled workers whose job mobility was limited. He asked whether there was any data on the number of jobs in the two occupations under WPM, where employers could not be persuaded to raise the wage levels.

32. SLW said that since the launch of WPM in October 2006, there were some 4 000 cleaning workers and security guards job vacancies posted by LD with wage levels scaled up to the market averages upon LD's persuasion. However, LD did not have data on the number of unsuccessful cases of persuasion by LD to raise the wage levels to meet the WPM requirement. He stressed that the 1 100 participating entities of WPM could not be an objective yardstick to measure the overall effectiveness of WPM as non-participating corporations/organisations might have in fact paid the relevant workers market average or above. For example, while a great majority of the security guards employed by large security service companies might be paid a WPM wage rate, those companies did not join WPM because a number of their security guards engaged by owners' corporations might be paid a wage rate not meeting the WPM requirement.

33. Mr LEE Cheuk-yan said that empirical evidence should be given to support the claim that some employers not joining WPM were paying the relevant workers at a WPM level. In addition, he expressed doubt as to whether the 4 000 workers placed through LD ultimately benefited from WPM, as there was no proof that the relevant employers had subsequently complied with the non-mandatory wage requirement.

34. Mr WONG Kwok-hing considered that as WPM was an ineffective measure, a SMW should be introduced as soon as possible to forestall unscrupulous employers' exploitation of low-paid workers who dared not raise complain lest they would be dismissed.

35. SLW said that under the existing provisions of the Employment Ordinance (Cap. 57) (EO), an employee might claim remedies against his employer in case of unreasonable or unlawful dismissal. Members could refer such cases, if any, to LD, for follow-up.

36. Ms LI Fung-ying said that the mid-term review in November 2007 had already indicated that WPM was ineffective. There was no reason to believe that WPM would turn out to be successful in the overall review.

37. SLW said that pursuant to the mid-term review, the Administration had stepped up the promotion of WPM. Meanwhile, it had wasted no time in taking a step forward to proceed with the preparatory work for introducing a SMW. He added that it was an unusual step that the Administration had

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advanced the preparatory work for SMW legislation prior to the making of a decision to legislate.

38. Ms LI Fung-ying considered that as WPM was a voluntary campaign and the participating entities could withdraw anytime, the number of non-compliance cases would be irrelevant as an indicator to assess the effectiveness of WPM. Ms LI asked whether there was a benchmark participation rate and a performance indicator on the number of cleaning workers and security guards receiving a wage not lower than the relevant market averages in the overall review of WPM. She said that the benchmark participation rate, both in terms of employers and workers, should not be lower than 90% as mentioned by the former Secretary for Economic Development and Labour.

39. SLW pointed out that among the 15 allegedly non-compliance cases in WPM, seven participating entities had subsequently withdrawn due to inability to rectify the breaches. Separately, two participants had withdrawn out of their own volition. The overall review would take into consideration this reference indicator. He noted that LAB would conduct further discussions with a view to developing benchmarks for the core assessment criteria, i.e. wage trends of the relevant occupations and the number of workers receiving wages not lower than the market average rates.

40. C for L added that the number of substantiated non-compliance cases should be a reference indicator as it could not be an objective measure of the overall effectiveness of WPM. She noted that the data provided by C&SD in the mid-term review of WPM in November 2007 indicated that 46% of the cleaning workers and security guards received wages not less than the relevant market averages in the second quarter of 2007. On the other hand, LD's WPM data indicated that only 33% of the relevant workers receiving the relevant market averages were involved in the entities participating in the Movement. The gap between 33% and 46% apparently revealed that some employers not joining WPM had paid the relevant workers market average rates voluntarily.

41. Mr LEUNG Yiu-chung considered that it should be the Administration rather other than LAB to propose a benchmark wage level as it would be difficult for LAB members to reach a unanimous view. Noting that the effectiveness of WPM would be assessed by comparing the wage trends of cleaning workers and security guards with that of the elementary occupations, he requested the Administration to advise of a benchmark on the increase in wage levels. Mr LEUNG, Mr WONG Kwok-hing and Miss CHAN Yuen-han enquired about the meaning of elementary occupations.

42. SLW said that LAB would discuss the benchmark wage levels which would be one of the core assessment criteria of the overall review. The benchmark would have to be worked out with the consensus of LAB members. In comparing the wage trends of the two specified occupations with that of the elementary occupations which comprised low-skilled workers with low

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education level, a benchmark could be developed by setting the increase of the wage levels of the two occupations to be at least higher than that of elementary occupations.

43. Mr Andrew LEUNG supported the proposed assessment criteria for the overall review of WPM. He sought clarification on whether the Administration had decided to proceed with the legislation for a SMW. Mr LEUNG said that the Administration should follow the timetable as set out in CE's 2007-2008 Policy Address. He further said that Mr Stanley LAU's recent comment on a SMW for all trades instead of two occupations was given on the premises that if the overall review of WPM found it a failure and a SMW was to be introduced. Mr LEUNG stated that Mr LAU's personal view neither represent FHKI's official stance nor that of the Liberal Party.

44. SLW said that pursuant to the mid-term review of WPM and in response to members' request, the Administration had proceeded with the preparatory legislative work for introducing a SMW for cleaning workers and security guards while stepping up promotion of WPM. The Administration had all along followed CE's timetable as set out in this 2007-2008 Policy Address. If the overall review of WPM in October found that the voluntary movement had failed, the Administration would introduce a bill on SMW for the two occupations.

45. Mr Andrew LEUNG asked about the number of places to be visited by LAB members in their overseas visit in June.

46. SLW responded that LAB members together with some government representatives would embark on a 4-day visit to the United Kingdom (UK) in June. The visit aimed to enhance LAB members' understanding on the policy and enforcement of the SMW regime in UK. C for L added that the delegation would mainly meet with the government authorities, and representatives of employer associations and trade unions in London. It would also visit the Low Pay Commission to study the compilation of data for setting a minimum wage.

47. Mr LEUNG Kwok-hung held the view that the Administration should proceed with SMW legislation immediately so as to solve the problem of working poverty. He stressed that it should not be LAB but the Administration to decide on the assessment criteria of WPM. He asked under what criteria the Administration would declare WPM a failure.

48. SLW said that the Administration's paper had spelt out clearly the assessment criteria of the overall review of WPM. He reiterated that the core assessment criteria would be the wage trends and the number of cleaning workers and security guards in the market receiving wages not lower than the relevant market averages, whereas the four reference indicators would be used to provide supplementary information for the assessment.

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49. Mr LEE Cheuk-yan said that by setting the increase of the wage levels of the two occupations to be at least higher than that of elementary occupations as a benchmark, the Administration should explain how such a criterion was relevant to assessing the effectiveness of WPM. He added that the key benchmark should be the number of workers of the two specified occupations receiving wages not lower than the relevant market averages. He reiterated that WPM was a failure as most of the large corporations/organisations in cleansing and guarding services had not participated in the voluntary movement and the number of participating entities was insignificant. He considered that if a benchmark participation rate was to be adopted in this respect, it should be not lower than 90% as mentioned by the former Secretary for Economic Development and Labour.

50. SLW reiterated that the number of entities participating in WPM would be a reference indicator rather than a core assessment criterion in assessing the effectiveness of WPM. C for L supplemented that data of the WPM mid-term review indicated that there was an increase of 9.5% (7 600 workers) of the two specified occupations receiving wages not lower than the relevant market averages in the second quarter of 2007 compared with the second quarter of 2006.

VI. Preparatory work for introducing a statutory minimum wage for cleaning workers and security guards if the Wage Protection Movement fails to yield satisfactory results - Definition of a statutory minimum wage

(LC Paper No. CB(2)2012/07-08(05))

51. SLW briefed members on the proposed definition of a SMW as stated in the Administration's paper.

52. Mr LEE Cheuk-yan said that the Hong Kong Confederation of Trade Unions had all along held the stance that a SMW should be implemented in all trades. Despite the fact that FHKI was against the introduction of a SMW, he shared one of its members, Mr Stanley LAU's view that introducing a SMW for the two specified occupations instead of all trades might engender future problems. He enquired whether the Administration would consider introducing a SMW for all trades.

53. SLW responded that whether it was possible to introduce a SMW for all trades would very much depend on the building of consensus of all sectors of the community. The Administration would explore such possibility if all sectors supported the proposal.

54. Mr LEE Cheuk-yan asked whether the Administration would hesitate from introducing a SMW for the two specified occupations if employers' representatives in LAB raised objection pursuant to the overall review of WPM.

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55. SLW responded that as set out clearly in CE's 2007-2008 Policy Address, the Administration would introduce a SMW for the two specified occupations if the overall review of WPM, which had been launched for two years for employers' voluntary participation, found it failed to yield satisfactory results.

56. Mr LEE Cheuk-yan said that the Hong Kong Confederation of Trade Unions agreed with the Administration's proposal to adopt an hourly rate approach in providing a definition of a SMW. He enquired whether employers could make deductions from the wages of eligible employees pursuant to the introduction of SMW.

57. SLW said that EO stipulated that in any one case of the deductions for damage to or loss of the employer's goods, equipment, or property by the employee's neglect or default, the sum to be deducted should be equivalent to the value of the damage or loss but not exceeding \$300. Whether or not deductions from an employee's wage could be made would depend on the circumstances of the case.

58. Ms LI Fung-ying said that the Administration should take into consideration the issue of standard working hours in providing a definition of SMW. She expressed concern that employees receiving daily, weekly and monthly wages might be exploited by employers if a SMW was to adopt an hourly computation approach only. Employers might take advantage of a SMW definition on hourly basis and refuse to pay extra for overtime work. She asked whether future provision of a SMW would specify the calculation of overtime pay. Miss CHAN Yuen-han raised similar question.

59. SLW explained that the proposal to adopt an hourly computation approach in defining a SMW would help forestall exploitation of employees by ensuring that their pay would be commensurate with the duration of work, with wages no lower than the SMW level. He said that definition of "wages" as provided under section 2 of EO included overtime pay. Section 2 specified that wages including overtime pay were payable to an employee in respect of work done or to be done under his contract of employment. In other words, employees' overtime pay should be worked out as specified in the employment contract agreed by both parties.

60. Mr LEUNG Kwok-hung said that the most important issue was not about the technicality of a SMW definition but how the SMW level would be determined. He considered that a minimum hourly wage rate to be calculated based on the relevant average market rate would easily be subject to employers' manipulation. He held the view that the purpose of a SMW was to alleviate the problem of working poverty. It should be set at a level higher than the allowance under the Comprehensive Social Security Assistance (CSSA) Scheme and enable workers to sustain a reasonable standard of living. Ms LI

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Fung-ying shared similar view that the cost of living should be considered in determining the SMW level.

61. SLW responded that the Administration had proposed to discuss the setting of the level of a SMW and the enforcement and penalty in relation to the implementation of a SMW at the next Panel meeting in June.

62. Mr WONG Kwok-hing said that the stance of the Hong Kong Federation of Trade Unions (HKFTU) was that a SMW for all trades should be implemented in the long run and a SMW for the two specified occupations should be considered only as a first step. As for the Administration's proposed SMW definition, Mr WONG considered that a SMW definition should exclude employees' time spent for transportation, meal breaks and on-call duties, and overtime hours, while income such as commission and tips should be included in the definition. Mr WONG also said that standard working hours should be introduced to ensure that persons who worked in excess of statutory working hours would get extra pay, and a mechanism should be introduced to review the SMW level on a regular basis.

63. Noting that employees' statutory benefits prescribed under EO such as holiday pay was calculated equivalent to the average daily wages earned by an employee in the 12-month period preceding the statutory holiday, Mr WONG Kwok-hing enquired how a minimum hourly wage rate would be worked out from the "average daily wage" and whether the number of working hours per day should be eight or twelve in the calculation.

64. SLW said that similar to the existing definition of "wages" under section 2 of EO, eligible employees' commission, tips and service charges would be included in the proposed SMW definition.

65. C for L explained that to ensure consistency and forestall confusion to trade unions, employers and employees and the enforcement agencies alike, it was pertinent to align the definition of wages for the purpose of SMW as seamless as possible with that under EO. As there was no statutory standard working hours in Hong Kong, eligible employees' wages should be commensurate with the actual duration of work and calculated according to the SMW requirement in the event of the introduction of a SMW. Should a SMW be put in place, LD would make effort to ensure that employers would keep detailed record of eligible employees' wage particulars and number of hours worked notwithstanding that the employees were paid daily, weekly or monthly.

66. C for L said that under section 48 of EO, the Commissioner was empowered to require any employer or class of employers to make returns in such form and at such times as specified. To ensure eligible employees' statutory benefits would be protected pursuant to the introduction of a SMW, consideration would be given to prescribing a form for the maintenance of employees' records by employers which should include details such as

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employees' hours worked and particulars of wages paid within the wage period. Such records of employees should be subject to inspection by LD.

67. Miss CHAN Yuen-han suggested that while LAB members would visit UK shortly to study its SMW regime, the Administration could make reference to the experience of other places and explore the feasibility of adopting a SMW on daily, weekly and monthly basis to forestall employers' exploitation.

68. SLW said that overseas experience suggested that SMW being set at an hourly basis was the most common practice. An hourly rate approach could ensure that employees' pay would be commensurate with their duration of work and provide protection for elementary workers including part-time and female workers. He further said that the mandatory wage requirement introduced for government out-sourced contracts and WPM both adopted an hourly computation approach which had worked well. He added that adopting a SMW on weekly and monthly basis might complicate the matter and give rise to exploitation of employees.

69. SLW said that should a SMW assessed on an hourly basis be put in place, the employment records would be required to be kept in a way that could show the hourly wage rate payable to eligible employees. Accordingly, employees' monthly or weekly salary should be calculated based on the specified hourly wage rate not lower than the SMW level. As the Administration proposed to align the definition of wages for the purpose of SMW closely with that under EO, overtime pay would be put under the definition of wages.

70. Mr Andrew CHENG pointed out that while SMW regime of other places mostly adopted an hourly rate for SMW, statutory standard working hours had often been implemented in tandem. He said that the issue of standard working hours should be factored into the calculation of a minimum hourly wage rate. He expressed doubt as to how a minimum wage, which presumably was to be set with reference to the median wage in the relevant markets, should be assessed at an hourly basis without considering employees' total working hours. He considered that without the introduction of standard working hours, workers might receive a low hourly rate despite the introduction of a SMW. Mr CHENG requested the Administration to address this issue at the next meeting when the setting of the SMW level would be discussed.

71. Mr Frederick FUNG shared Mr Andrew CHENG's view that the Administration needed to provide explanation as to how an hourly rate for SMW was to be derived and what parameter would be adopted in estimating employee's weekly and monthly working hours. He considered that the Administration should have a standard on the number of working hours and suggested that it should be set at eight hours per day. In addition, standard working hours on weekly/monthly basis should also be specified for the two

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occupations. He suggested that the benchmark of SMW level should be above the CSSA level and poverty line and set at 60% or 70% of the median wage in the relevant markets so as to enable low-paid workers to sustain a reasonable standard of living.

72. SLW said that the calculation of average hourly rates under WPM had taken into account that the relevant employees worked for an average of eight hours per day and six days per week. He added that if a SMW on an hourly basis was to be adopted, the employment records would be required to be kept in a way that could show the hourly wage rate and the contractual working hours for inspection by LD.

73. Mr LEE Cheuk-yan shared members' views that a notion of standard daily working hours should be factored into the calculation of a minimum hourly wage rate. While setting the level of SMW on an hourly basis using the median market wages as one of the criteria, an hourly wage rate should take into account the daily working hours of employees and not be set at a level so low that employees had to work for long hours per day to earn a living. The Hong Kong Confederation of Trade Union considered that a minimum hourly wage rate should be around \$30 and higher than the CSSA level. While employees' pay would be commensurate with the duration of work, they should be entitled to extra pay for overtime work. Different from other places such as UK which had implemented maximum standard working hours, there was no such provision in Hong Kong. As such, Mr LEE expressed concern that eligible employees might be exploited by unscrupulous employers who would impose a precondition that employees had to agree to work overtime in order to get an average hourly wage rate meeting the minimum wage requirement. Mr LEE considered that statutory standard working hours should be introduced to plug possible loopholes in future.

74. SLW considered that the case in point should be rare as employers normally would not require employees to work overtime frequently. If there was a regular need for employees to work longer hours, employers should have made adjustment to employees' daily working hour requirement.

75. Miss CHAN Yuen-han urged the Administration to consider introducing a new bill on SMW as the existing definition of "wages" under EO which included overtime pay was unsatisfactory. She added that statutory standard working hours should also be introduced to provide full protection for employees.

76. SLW said that in the event of the introduction of SMW, LD would require employment records of eligible employees to be kept in a way that could show the hourly wage rate and the contractual working hours required. It would be a breach of contract if employers required employees to work in excess of the contractual hours without extra pay. He considered that introducing a new bill on SMW for the two occupations specifying another set

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of employees' rights and benefits in addition to the existing EO would cause confusion to employers, employees and enforcement agencies. He added that EO had been well tested through time and it was of utmost importance to forestall confusion to all parties concerned in the event of the introduction of a SMW.

77. Mr LEUNG Kwok-hung reiterated that the aim of the introduction of SMW was to enable employees to sustain a reasonable standard of living. The setting of the level of SMW should be reviewed annually and assessed in relation to the cost of living rather than market averages which could be easily manipulated.

78. Noting that the employment contract would be the basis to enforce the implementation of SMW, Mr LEE Cheuk-yan considered that severe penalty and vigorous enforcement action should be adopted to deter non-compliance of employers who might keep false record of working hours and wage particulars. Stringent enforcement action would help to forestall exploitation of eligible employees who might be required to work in excess of contractual working hours without compensation and ensure that employees' pay would be commensurate with the duration of work.

79. Mr Frederick FUNG stressed on the need to introduce standard working hours without which the proposed definition of SMW set on an hourly basis would remain inadequate. While the average daily wages earned by eligible employees in the 12-month period would be used as a basis for calculating statutory benefits for minimum wage earners, Mr FUNG considered that the actual hours worked per day should be considered. It would make a difference between using eight or twelve hours as the basic unit for calculation.

80. SLW said that the introduction of statutory standard working hours would be a new issue. The proposed SMW definition was meant to ensure that eligible employees' pay would be commensurate with the duration of work, with wages not lower than the SMW level. SLW reiterated that LD would refer to the specific terms of the relevant employment contracts while adopting the EO approach in calculating statutory benefits for minimum wage earners. Whether employees should work eight or twelve hours per day should be determined in accordance with the employment contract.

81. C for L explained that a SMW hourly rate, instead of deriving from a total sum of a monthly salary divided by the number of hours worked, would be set with reference to a basket of factors. The minimum wage earners' monthly salary would be calculated based on an hourly wage rate and the total hours worked as stated in the employment contract. The actual take-home pay would be a multiple of the actual number of hours worked in the month in question. She said that overseas experience suggested that certain indicators such as the cost of living would be considered in setting the minimum wage rates, with hourly basis being the most common practice. LAB members' visit

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to UK in June would study how a SMW, in particular, a minimum hourly wage rate was to be determined.

82. In summing up, the Chairman said that as explained by the Administration, in the event of the introduction of a SMW, an eligible employee's hourly wage rate would not be lower than the statutory minimum hourly wage rate, notwithstanding that he would work for eight or twelve hours each day.

VII. Any other business

83. The meeting ended at 4: 10 pm.

Council Business Division 2
Legislative Council Secretariat
8 August 2008