

For information on
21 February 2008

Legislative Council Panel on Manpower

Preparatory Work for Introducing a Statutory Minimum Wage for Cleaning Workers and Security Guards if the Wage Protection Movement Fails to Yield Satisfactory Results

Purpose

To follow up the discussion at the last meeting of the Manpower Panel on 15 November 2007, this paper briefs Members on the progress of the preparatory work currently undertaken by the Labour Department (LD) for introducing a statutory minimum wage (SMW) for cleaning workers and security guards should the Wage Protection Movement (WPM) eventually fail to yield satisfactory results.

Background

2. The WPM was launched in October 2006. The Chief Executive (CE) made it clear that an overall review would be conducted in October 2008 and that if the WPM failed to yield satisfactory results, the Administration would introduce a bill on a SMW for cleaning workers and security guards as early as possible in the 2008-09 legislative session. The CE further stated in his 2007-08 Policy Address that “if the mid-term review shows that the progress is unsatisfactory, the Administration will further promote the WPM as well as proceed immediately with the preparatory legislative work on a statutory minimum wage”.

Progress of Preparatory Work

3. After the mid-term review of the WPM conducted in October 2007, LD has stepped up the promotion of the WPM and, at the same time, commenced studies on issues that need to be tackled should the WPM eventually fail to yield satisfactory results and a SMW for cleaning workers and security guards needs to be introduced. LD has discussed with trade unions and employers’ associations in the cleansing, guarding services as well as building management sectors to exchange views on the subject. To tap the experience of overseas jurisdictions in the implementation of the SMW, LD has

recently carried out online research and conducted visits to Australia, France and Germany. Apart from LD colleagues, representatives from the Social Welfare Department (SWD), Census & Statistics Department (C&SD) and the Financial Secretary's Office joined the visits. While the visit to Australia focused primarily on how people with disabilities (PWDs) are handled under the country's minimum wage regime, visits to France and Germany covered more aspects. Another visit to the United States is planned for mid-2008.

4. The introduction of a SMW will involve considerable interactive design details which, based on analysis to date, may be categorised into five broad issues. A brief summary of the relevant issues is given below.

(a) *The definition of cleaning workers and security guards in the draft legislation*

The coverage is one of the most difficult issues. Based on our discussion with stakeholders so far, the difficulty focuses on whether the SMW should cover all cleaning workers and security guards or should target specifically at the most vulnerable groups within them, viz. those performing general cleaning duties and those performing security guarding duties in single private residential buildings and housing estates, on the ground that they are less educated, unskilled and thus prone to exploitation. Relevant to the definition of cleaning workers could be the issue of the coverage of local and/or foreign domestic helpers. LD will continue to explore these issues in depth with stakeholders, with a view to presenting its findings in the second quarter.

(b) *Special measures, if any, for vulnerable groups*

This centres on whether the same minimum wage arrangement should apply to vulnerable groups such as youths without working experience and/or people with disabilities. In essence, we need to balance equality of treatment (in form and substance) considerations with their access to jobs, especially when the employment situation slackens. We shall elaborate on our fact-finding trip on overseas experience in paragraphs 7 to 30 below.

(c) *The definition of a statutory minimum wage*

Minimum wage is generally set on an hourly basis though daily or monthly basis also exists in some countries where standard working hours are in place. In many jurisdictions like the United Kingdom, France and the United States, an hourly minimum wage is adopted for it is fair and easy-to-calculate, especially for part-time and temporary workers.

Furthermore, in formulating a workable definition, we also need to bear in mind the interface between the SMW and the provisions of the Employment Ordinance (EO) in relation to wage period, holiday, sick leave, payment of wages, deduction of wages and the penalties for wage and benefit offences under the EO. In this connection, we also note the prevalence in these two occupations of giving workers attendance bonus and other allowances/bonuses if certain criteria are fulfilled, bearing in mind that such bonuses and allowances are also included in the meaning of wages under the EO¹.

(d) *The mechanism for setting and adjusting the minimum wage level*

Included under this is a wide range of issues affecting the level and review of the minimum wage level. Such issues will include, for instance, frequency of reviews of the minimum wage, the indicators that should be taken into account and the forum/body that should be tasked to examine the indicators, etc. LD has started looking into these and the Labour Advisory Board has also had a preliminary discussion on the frequency of reviews, an elaboration on which can be found in paragraphs 31 to 35 below.

(e) *Enforcement and penalty in relation to the implementation of a statutory minimum wage*

Should SMW be introduced, the minimum wage will become the wage floor for the workers covered by the SMW. Our current thinking is that there is no reason for not extending to these workers the prevailing mechanism of conciliation, adjudication, enforcement and prosecution for breach of the SMW.

5. In taking forward the study, LD will draw on relevant experiences in other places with SMW while bearing in mind the characteristics of Hong Kong. In addition, we are also aware of the complex interplay of various factors. For instance, the precise impact of the possible displacement of less educated, less experienced and other vulnerable workers will hinge on the interplay of the minimum wage level and the coverage of workers, particularly whether differentiated arrangements for vulnerable workers are permissible and how such arrangements work in practice.

¹ Section 2 of the EO defines wages as: “Wages” means “... all remuneration, earnings, allowances including travelling allowances, attendance allowances, attendance bonus, commission, overtime pay, tips and service charges, however designated or calculated, capable of being expressed in terms of money payable to an employee in respect of work done or work to be done under his contract of employment.”

6. With reference to paragraphs 4(b) and 4(d) above, the sections to follow will elaborate on our latest findings on treatment of vulnerable groups and frequency of reviews of the minimum wage level.

Treatment of Vulnerable Groups

Current practice and exemptions under the WPM

7. At present, enterprises/organisations joining the WPM undertake to offer the relevant workers wages not lower than the relevant average market rates as published in the Quarterly Report of Wage and Payroll Statistics (Quarterly Report) issued by the C&SD. Feedback in the course of promoting the WPM suggests that special consideration should be given to the case of PWDs.

8. Taking into account the possible reduced productivity of PWDs receiving government-subsidised vocational rehabilitation services and being placed in private companies for employment as part of their services, an exemption from applying the wage level under the WPM on PWDs under the Government-subsidised vocational rehabilitation services operated by the non-government organisations (NGO) or the SWD's recognised vocational rehabilitation services has been granted to the employing company. This aims to minimise the impact of the WPM on PWDs' opportunities in continuing their rehabilitation in a real work environment. On the other hand, the WPM does not provide for exemptions for disabled workers or young workers in open employment. So far, the exemption is well accepted by the community. No complaints are received, due perhaps to the voluntary nature of the WPM.

Treatment of People with disabilities in other places

(A) Reduced rate for PWDs

9. Both Australia and the United States allow reduced minimum wage rate for PWDs who are unable to perform certain duties to the level required due to their disability through the implementation of an assessment system to ensure that PWDs' pay is commensurate with their productivity.

10. In Australia, the Supported Wage System (SWS) was introduced in 1994 to address the barriers to employment in the market faced by PWDs who are less productive² and hence less competitive due to their disability. In the United States, 'sub-minimum' wage is introduced to prevent curtailment of opportunities for employment for PWDs. For example, if a PWD is assessed to

² PWDs participating in the SWS would have the same employment terms (e.g. holidays entitlement, fringe benefits, etc.) as their co-workers save for the differential wage rate as assessed.

be 70% productive at work, he/she would be paid at 70% of the minimum wage for persons without disability.

Eligibility criteria

11. In Australia, a PWD must meet, amongst others, the impairment criteria for receiving the Disability Support Pension. Further information on the eligibility criteria in the USA will be collected in the planned study visit.

Assessment for productivity

12. Both Australia and USA have developed over time a system to assess the productivity of disabled persons as compared against workers without disabilities. While the assessments are conducted by an independent SWS assessor on the Panel of Assessors in Australia, the assessments are conducted by the employer and certified by the government in the United States. Both require periodic reviews of the assessments.

13. The procedures for assessments are different. In Australia, once a suitable job is identified for a PWD, the PWD can be given a trial period at the workplace for up to 12 weeks before the assessment takes place. During the trial period, the employee would be paid wage of a specific amount. At the end of the trial period, the Government will fund and arrange for an objective assessment of the employee's workplace productivity which would be undertaken by an independent SWS assessor on the Panel of Assessors.

14. To assess the worker's productivity, the SWS assessor would break the job duties into small tasks. The PWD would be timed on performing each task. In calculating the productivity rate, each task is weighted according to the amount of time on which the employee has to spend, against the amount of time used by the slowest acceptable co-worker. Following the assessment and signing of the SWS agreement, the employer will pay the assessed wage. If either party objects to the assessment result, he can request re-assessment. The assessment result would be annually reviewed.

15. In the United States, the assessments are conducted by the employer and submitted to the relevant government department which would issue a certificate on the 'sub-minimum' wage rate. 'Sub-minimum' wages must be commensurate with wage rates, based on the worker's individual productivity, no matter how limited, in proportion to the wage and productivity of experienced able-bodied workers performing essentially the same type, quality, and quantity of work in the geographic area from which the labor force of the community is drawn. The key elements of the commensurate rates are :

- (a) determining the standard for workers who do not have disabilities, the objective gauge against which the productivity of the worker with a disability is measured;
- (b) determining the prevailing wage, the wage paid to experienced workers who do not have disabilities for the same or similar work and who are performing such work in the area; and
- (c) evaluating the quantity and quality of the productivity of the worker with the disability. All sub-minimum wages must be reviewed and adjusted, if appropriate, at periodic intervals. The productivity of hourly paid workers must be re-evaluated at least every six months and a new prevailing wage survey for determining the prevailing wage in (b) above must be conducted at least every twelve months.

Observations

16. The scale of the SWS programme in Australia is relatively small in terms of the number of participants. In 2006-07, a total of 5 609 assessments (including 1 765 new assessments and 3 844 reviews) were conducted.

17. The SWS primarily focuses on assisting those PWDs who need intensive support to access the open employment market. According to an evaluation report in 2001, 68% of all the SWS participants had some sort of intellectual or learning disability. Hence, jobs which are simple, repetitive and measurable would be more suitable for assessment under SWS for the sake of ensuring objectivity, and it would be essential under the SWS for the authority/agencies to negotiate with the employer for design of personalised job duties to ensure that the PWD would be able to achieve his/her maximum productivity in a particular job.

18. Though the programme is considered rather resource intensive, parties interviewed by the study team recognise the SWS as a reliable and objective productivity-based wage assessment process for a certain group of PWDs in determining fair pay for their work. Many comment that it provides PWDs with employment opportunities that would not otherwise exist.

19. LD is planning a visit to study the SMW regime, including feedback from the stakeholders, in the United States in mid-2008.

(B) Same minimum wage rate for disabled and able-bodied employees

20. Germany has a long history of collective agreement with relatively well-established industry-based trade unions and employer associations.

Against that background, wages are set by collective agreements which are legally binding to the parties of the agreement, i.e. the employees and the employers who are members of the respective signatory trade unions and employers' associations. In 1997, the federal government declared the minimum wage reached in a collective agreement of the construction sector to be legally binding for all workers of the construction sector in Germany. In 2007 and 2008, further extensions were made in the industrial cleaning sector and postal workers responsible for mail delivering services respectively. Other sectors under consideration for legislative extension may include agency workers, security service sector and retail trade.

21. Hence, by way of legislative extension of existing collective agreements, Germany has been practising a statutory sectoral minimum wage. Under the collective agreements, PWDs are paid the same wages as able-bodied workers. The German Government also encourages employers to hire PWDs by means of a subsidy that amounts to half of the wages of the PWD for the first six months upon employment.

22. In France, national SMW wage was introduced in 1950. PWDs taking up open employment are entitled to full minimum wage except for those working in special protected workshops registered with the government. A PWD who takes up employment is allowed to receive disabled welfare benefits in full for a maximum of two years. After the two-year period, his/her entitlement and amount of benefits would be reviewed based on his/her income level.

23. Members may wish to note that in Germany and France where the same minimum wage applies to able-bodied and PWDs, employers are also subject to an employment quota for PWDs. Nevertheless, there exists at the same time an "escape route" whereby employers can opt for payment of a levy to the Government in lieu of observation of the quota.

Observations

24. On the issue of how PWDs should be handled in the local context, initial feedback from the rehabilitation groups indicates that some flexible arrangements should be allowed for the PWDs. They opine that PWDs whose disabilities do not affect their productivity should be remunerated at the minimum wage. Those whose productive capabilities are impaired by their disabilities should be allowed to receive a reduced minimum wage of, say, not less than 70%. If the productive capabilities of the PWDs are even lower, PWDs and their employers should be allowed to negotiate their own wages. This would imply the introduction of some form of productivity assessment whose essence may be quite similar to those in place in Australia and the United States.

Treatment of young persons in other places

25. Places such as Australia, the United States and France allow young persons to receive a lower minimum wage rate.

26. In Australia, there are junior wage rates which vary across industries and occupations for persons under the age of 21. They are usually set as a percentage of the wage that would apply to an adult employee, with the percentage increasing in line with the employee's age. However, some pay scales may require juniors to be paid full adult rates. Currently, the junior wage system is under review.

27. In the United States, the 'sub-minimum wage', roughly equivalent to 73% of the full rate of the minimum wage, may be paid to employees under the age of 20 for their first 90 consecutive calendar days of employment with any employer as long as their work does not displace other workers. After 90 consecutive days of employment, or when the worker reaches age 20 (whichever comes first), the worker must receive at least the minimum wage.

28. France allows employers to pay a reduced rate at 80% of the minimum wage for those aged below 17 and 90% for those aged between 17 and 18. However, such reduction is not applicable if the young worker has working experience of 6 months or more in the sector that he/she is working in. The unemployment problem for young workers in France is observed to be more serious than that prevailing in other places. Though no single factor can account for this social phenomenon, parties interviewed by the study team have indicated that the allowance for a reduced minimum wage for a grace period of 6 months is not sufficient to motivate employers to hire young workers.

29. In Germany, there is no differential treatment for young workers under its minimum wage regime. Germany has a good record of youth employment as compared to other European countries. Many people believe that this is attributed to the dual training system. Apprentices and trainees undertake a great deal of on-the-job training whilst vocational training schools provide the theoretical backup. Young people are thus retained in employment.

Observations

30. In respect of young workers, there is so far little articulated demand for paying young people with lesser amount of minimum wage in the local context. While few young workers are found working as cleaning workers and security guards, those who wish to join can obtain, without much difficulty, the required skills and vocational qualifications within a short period of time.

Frequency of Reviews of the SMW Level

WPM's relevant experience

31. For the WPM, the reference wage rate is the average of the relevant occupations as released in the C&SD's Quarterly Report on a quarterly basis. Feedback received in the course of promoting the WPM suggests that the adoption of market averages collected and published on a quarterly basis as the reference wage levels is an issue of widespread concern among employers. Some are of the view that the "floating" element creates uncertainty and complication in accounting and human resource management, thereby deterring companies/organisations from joining the WPM.

32. The mechanism for WPM's quarterly adjustment of the reference wage rate for cleaning workers and security guards was discussed at the meeting of the Labour Advisory Board (LAB) meeting on 10 December 2007. In the light of WPM's experience, LAB Members generally considered that although WPM's existing mechanism for the quarterly adjustment of the reference wage rate has the merit of paying the market wages to employees of the companies which have newly joined the WPM, the frequent adjustments of the wages have exerted undue pressure for upward revision of the wage level at a rate disproportionate to developments in other facets of the economy and would give rise to a situation of differential pay for workers with similar job content within the same company. This would likely complicate human resource management. However, to avoid confusion mid-way through the WPM and in order not to confound the assessment of the overall effectiveness of the WPM, the LAB has agreed that WPM's quarterly adjustment of the reference wage rate for cleaning workers and security guards would not change until its overall review to be conducted in October 2008.

Adjustment of minimum wage in other jurisdictions

33. In countries where minimum wage legislation is introduced, many have their own system in place to determine and review the statutory minimum wage levels. Many have adopted a fixed wage level determined having regard to a wide variety of social and economic factors. Such factors may comprise, for example, the needs of workers, the capacity of the unemployed and low paid to secure and sustain employment, the cost of living, levels of social security benefits, rate of inflation, macroeconomic development, the local economy's competitiveness in a globalised world market, the cost of doing business, the capacity of employers to pay, etc.

34. On adjustments to the wage levels, many countries with statutory minimum pay regimes have provided for such reviews though the operational details may differ. Some have stipulated a specified frequency. France conducts regular review once a year. China requires its provinces/cities to adjust their minimum wage levels no less than once in every two years. Recently, Australia has decided to conduct minimum wage reviews annually. Some, on the other hand, leave the frequency flexible. For example, the United States and Ireland do not stipulate the frequency of reviews; instead, the level is adjusted only on a need-basis having regard to a basket of cost of living and economic competitiveness indicators.

35. Frequency of adjustment will have significant enforcement implications should a statutory minimum wage regime be in place. From the monitoring and collection of evidence perspectives, adjustment at quarterly intervals will incur significant resources, verification difficulty, delay and thus could affect prosecution effectiveness. Other considerations such as employers' compliance cost and the dubious desirability of encouraging, albeit inadvertently, differential pay for workers with similar job content and experience within the same company should also be considered

36. LD is studying other aspects relevant to determination of the reference wage and the minimum wage, e.g. levels and indicators to be included in the local context.

Way forward

37. LD will continue with its detailed study of the issues outlined in paragraph 4 above. We shall include other pertinent issues if such become obviously relevant in the course of our study. In addition, to expedite progress and noting the widespread implications of SMW, we are in parallel drawing expertise, where relevant, from the Department of Justice and the Government Economist. LD is also maintaining a close dialogue with relevant stakeholder groups and the Labour Advisory Board.

38. Members are invited to note the content of this paper.