

For information on
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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

Definitions of Cleaning Workers and Security Guards

PURPOSE

To follow up the discussion at the last meeting of the Manpower Panel on 21 February 2008, this paper briefs Members on the progress of the preparatory work in respect of the definitions of “cleaning workers” and “security guards” for introducing a statutory minimum wage (SMW) for the two occupations should the Wage Protection Movement (WPM) eventually fail to yield satisfactory results.

BACKGROUND

WPM

2. The WPM aims to protect, through voluntary and non-legislative means, the wage levels of cleaning workers and security guards, who are generally considered low-skilled workers with the least bargaining power. Jobs under these categories are often outsourced. Outsourcing and multi-layered sub-contracting, if not properly managed and supervised, would easily give rise to worker exploitation, including an unreasonably low take-home pay for the workers. For efficiency and expediency, the WPM has adopted the definition of “cleaning workers” and “security guards” in the Census and Statistics Department (C&SD)’s Quarterly Report of Wage and Payroll Statistics (Quarterly Report) compiled from the Labour Earnings Survey (LES) – being the closest approximation among the available reference sources. (Please see the Annex for relevant background on the LES.)

3. To facilitate the mid-term review of the WPM last October, the C&SD has assisted the Labour Department (LD) to collect additional statistical data on the employment situation of cleaning workers and security guards via the General Household Survey (GHS). The definitions of “cleaning workers” adopted in the GHS and LES are broadly similar. As for the definition of “security guards” under the LES, it is wider than that of the GHS as the former also includes armed security guards. (Please see the Annex.)

Crucial Difference Between the WPM and a SMW

4. The WPM is voluntary. Breaches would lead to either rectification measures or the employers’ withdrawal from the WPM. Hence, some imprecision in definition is tolerable. However, should SMW legislation be in place, breaches would be no different from breaches of wage provisions under the Employment Ordinance. In other words, criminal liability involving fines and imprisonment is possible. As for any other legal provisions, clarity and certainty in coverage is of paramount importance, for compliance by the employers and employees as well as for investigation and prosecution by the law enforcement agencies.

Diverse Level of Skills

5. In addition to the general workers, some “skilled” cleaning workers are covered in the cleansing industry in the LES. While fulfilment of the former job types requires relatively less skill, some of the latter tasks have a higher knowledge and skill content (e.g. pest control) and even require the possession of certain certificates; for example –

- (a) workers cleaning external walls of buildings are required to possess a valid certificate issued under the “Factories and Industrial Undertakings (Suspended Working Platforms) Regulation; and
- (b) cleaners working in confined spaces such as water tanks and tunnels are required to hold a relevant certificate issued under the “Factories and Industrial Undertakings (Confined Spaces) Regulations. If the tunnel is in a construction site, the cleaner is additionally required to possess a safety card.

6. These workers currently command a wage rate much higher than the WPM level. On the other hand, the GHS excludes workers performing other cleaning duties such as dishwashers, vegetable washers, car cleaners, personal cleaning workers (shoe-shining and laundry services), etc. In terms of skill and wage level, they are mostly at the lower end.

7. Under the LES, “security guards” are those responsible for –

- (a) preventing unauthorized entry into the building;
- (b) patrolling regularly to prevent violence, fire or disturbances; and
- (c) rushing to the scene to assist and report to the police as appropriate if an emergency occurs.

Under the GHS, “security guards” are those responsible for guarding a building and conducting patrols to prevent fire, burglary or trespassing. It does **NOT** include such jobs as hotel security officers, doormen, armed security guards, cash escort guards, airport security guards, bodyguards, etc. Since the enactment of the Security and Guarding Services Ordinance, possession of a valid permit is the prerequisite for joining the security guard occupation. When compared to the LES and GHS, the security personnel permit categories specified by the Security and Guarding Services Industry Authority (SGSIA) may provide a better basis for consideration of the skill levels of the workers that should be covered by the SMW. The categories are as follows in ascending order of the professional skills required –

- Permit A – For guarding work restricted to a “single private residential building”, the performance of which does not require the carrying of arms and ammunition;
- Permit B – For guarding work in respect of any persons, premises (*including housing estates*) or properties, the performance of which does not require the carrying of arms and ammunition and which does not fall within Category A;
- Permit C – For guarding work, the performance of which requires the carrying of arms and ammunitions; and
- Permit D – For installation, maintenance and/or repairing of a security device and/or designing (for any particular premises or place) a system incorporating a security device.

Multi-tasking

8. There is also the complication arising from multi-tasking. Experience suggests that multi-tasking is not uncommon in jobs of a non-professional nature, especially in small and medium-sized establishments where the apportionment of different tasks integral to a job may vary with operational demands. For instance, an employee in catering establishments may need to perform both cleaning, cashier and customer service tasks. In conducting the GHS, when an enumerator of the C&SD comes across a worker whose duties involve both general cleaning and other non-cleaning duties, say, food preparation, such worker would only be classified as “cleaning worker” only if his *major* duties are general cleaning.

ISSUES FOR CONSIDERATION

9. Given paragraphs 5 – 8 above, we need to consider carefully the following fundamental issues –

- (a) Whether the SMW definition of cleaning workers and security guards should follow that for the WPM?
- (b) Whether, instead, it should be confined to only those types of cleaning work and security guard tasks which demand a lower level of skills, bearing in mind the SMW objective of protecting the wages of those who are more prone to exploitation, notwithstanding that some of such are currently not covered in the WPM? If yes, how should the line be drawn?
- (c) Whether, instead of (b) above, to obviate the problems of drawing a line, all types of cleansing and guarding services should be covered since, for the higher skilled and paid, the SMW defines only the wage floor and is thus of academic interest only to workers with skills commanding a wage rate well above the SMW level?
- (d) How should multi-tasking be handled? In particular, which of the following approaches is preferred should a SMW for cleaning workers and security guards be introduced?
 - A ‘major duties’ approach for demarcation similar to that for the GHS (paragraph 8 above) may be possible but the enforcement difficulties and legal uncertainties would need to be identified and

carefully considered. For instance, workers not deemed to be cleaning workers may feel aggrieved should their work involve a small portion of cleaning duties or duties similar to the non-cleaning duties of a worker deemed to be cleaning worker but are commanding a pay rate lower than the SMW level. In addition, this approach may also inadvertently induce creative apportionment of duties to circumvent SMW provisions.

- Since SMW would be computed on an hourly rate basis, it may be argued that the wage payable (should SMW be introduced) should be computed on the basis of the actual time a worker has performed cleansing and guarding services covered by SMW. This, however, may entail significant administrative implications for employers, in addition to complexity for law enforcement agencies in ascertaining if there are arrears of wages and if wage offences have been committed.

OTHER RELATED MATTERS

Implications for the SMW Wage Rate

10. Consistent with the approach referred to in paragraph 5 above, the WPM derives its wage rate from the Quarterly Report. The definition issues raised in paragraphs 9(a) - (c) above will have implications on whether it is appropriate to adopt the *average* wage rate(s) of the occupation groups covered by SMW as the SMW wage rate(s). Different wage rates will involve different impacts in terms of the possible displacement of the more vulnerable workers and the operating costs of businesses, especially the small and medium-sized enterprises.

The Inclusion or Otherwise of Domestic Helpers

11. Domestic helpers, foreign or local, are not included into the LES definition of “cleaning workers”. They are hence likewise excluded from the WPM.

12. Where “cleaning workers” are to be defined to cover workers performing cleaning duties across the board, the question of whether to include domestic helpers surfaces since, though not explicitly set out, cleaning work normally forms an integral part of the duties of domestic helpers.

13. While some countries include domestic workers in their SMW coverage (e.g. France and Australia), others have explicitly excluded them (e.g. South Korea and the United Kingdom). For example, in the UK, Regulation 2 of the National Minimum Wage Regulations 1999 states that -

“(2) In these Regulations “work” does not include work (of whatever description) relating to the employer’s family household done by a worker where the conditions in sub-paragraphs (a) or (b) are satisfied.

(a) The conditions to be satisfied under this sub-paragraph are –

- (i) that the worker resides in the family home of the employer for whom he works,
- (ii) that the worker is not a member of that family, but is treated as such, in particular as regards to the provision of accommodation and meals and the sharing of tasks and leisure activities;
- (iii) that the worker is neither liable to any deduction, nor to make any payment to the employer, or any other person, in respect of the provision of the living accommodation or meals; and
- (iv) that, had the work been done by a member of the employer’s family, it would not be treated as being performed under a worker’s contract or as being work because the conditions in sub-paragraph (b) would be satisfied.

(b) The conditions to be satisfied under this sub-paragraph are –

- (i) that the worker is a member of the employer’s family,
- (ii) that the worker resides in the family home of the employer,
- (iii) that the worker shares in the tasks and activities of the family,

and that the work is done in that context.”

Therefore, in the UK, work done on the above basis does not count for the purpose of minimum wage.

14. In considering if domestic helpers, including foreign domestic helpers (FDHs), should be covered should SMW be introduced in Hong Kong for cleaning workers, the following considerations seem relevant –

- (a) As in the case of the UK, though domestic workers also perform cleaning duties, their job is more integrated into the family and household context of the employers;
- (b) The hourly wage rate commanded by local domestic helpers far exceed the WPM rate and will most probably be also significantly higher than the SMW wage rate; and
- (c) FDHs are at present accorded various unique employment conditions. These include free accommodation, free passage and free medical treatment as well as a Minimum Allowable Wage (MAW) (at present \$3,480 per month). The acceptance by the FDHs of the terms of the contract, including the MAW, is a condition for FDHs' entry and stay in Hong Kong.

WAY FORWARD

15. The Labour Advisory Board (LAB) had a preliminary discussion on the subject at its meeting on 16 April. Members noted the diversity in skill levels, remuneration and work arrangements within the two occupations. They agreed on the importance of legal certainty if SMW were to be introduced. The LAB will continue discussion on this and other related issues.

16. LD is expediting the preparatory work for possible introduction of a SMW for cleaning workers and security guards in consultation with stakeholders. Meanwhile, we are also in parallel seeking the expert views of Department of Justice, Government Economist and C&SD. Should the WPM eventually fail, the Administration will introduce a bill on a SMW for cleaning workers and security guards as early as possible in the 2008-09 legislative session.

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

Brief Background on the Labour Earnings Survey and the General Household Survey

Wage data for “cleaners” and “security guards” under the WPM refer to that for “cleaners” in the “**sanitary and similar services**” sector and “security guards” in the “**security and detective services**” sector of certain size respectively collected in the LES whereas the GHS interviews cleaning workers and security guards **across the board**. The definitions of “cleaning workers” and “security guards” under both surveys are set out below –

Definitions of “Cleaning Workers” under LES and GHS

2. Under the LES, “cleaning workers” for the purpose of the WPM are divided into two categories, namely –

- (a) “Cleaners (Lavatory)” who are responsible for all the cleaning work of lavatories, toilets and washrooms; and
- (b) “Cleaners (General)” who are responsible the general cleaning work such as wiping tables, sweeping floors and vacuum cleaning, etc.

3. Under the GHS, “cleaning workers” are responsible for general cleaning work such as table wiping, floor sweeping, vacuum cleaning, etc. They are also responsible for such cleaning duties as toilet cleaning, kitchen cleaning, garbage collection and disposal, indoor cleaning (office, newly furnished buildings, schools, factory premises, markets, department stores) and street cleaning. The definition does **NOT** include dishwashers, vegetable washers, outdoor cleaners (external walls of premises, site clearance), car cleaners, personal cleaning workers (shoe-shining and laundry services), waxing workers, etc.

Definitions of “Security Guards” under the LES and GHS

4. Under the LES, “security guards” are those responsible for –

- (a) preventing unauthorized entry into the building;
- (b) patrolling regularly to prevent violence, fire or disturbances; and
- (c) rushing to the scene to assist and report to the police as appropriate if an emergency occurs.

5. Under the GHS, “security guards” are those responsible for guarding a building and conducting patrols to prevent fire, burglary or trespassing. It does **NOT** include such jobs as hotel security officers, doormen, armed security guards, cash escort guards, airport security guards, bodyguards, etc.