

立法會
Legislative Council

LC Paper No. CB(2)1136/09-10
(These minutes have been seen
by the Administration)

Ref : CB2/BC/11/08

Bills Committee on Minimum Wage Bill

Minutes of meeting
held on Thursday, 28 January 2010, at 4:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Miriam LAU Kin-yee, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon Paul TSE Wai-chun

- Members absent** : Hon Paul CHAN Mo-po, MH, JP (Deputy Chairman)
Hon Alan LEONG Kah-kit, SC
Dr Hon LAM Tai-fai, BBS, JP
Hon Tanya CHAN
Hon WONG Yuk-man
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Dr Hon PAN Pey-chyou
Dr Hon Samson TAM Wai-ho, JP
- Public Officers attending** : Mr Alan WONG Kwok-lun, JP
Deputy Commissioner for Labour (Labour Administration)
- Mr FONG Ngai
Assistant Commissioner for Labour (Policy Support and Strategic Planning)
- Miss Mabel LI Po-yi
Senior Labour Officer (Statutory Minimum Wage)
Labour Department
- Ms Queenie TANG Yuen-shan
Labour Officer (Statutory Minimum Wage)
Labour Department
- Mr Eamonn MORAN, JP
Law Draftsman
Department of Justice
- Ms Roxana CHENG Pui-lan
Senior Assistant Solicitor General
Department of Justice
- Ms Amy CHAN Wing-yan
Senior Government Counsel
Department of Justice
- Clerk in attendance** : Mr Raymond LAM
Chief Council Secretary (2) 1
- Staff in attendance** : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2) 5

Ms Camy YOONG
Clerical Assistant (2) 1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to -
 - (a) explain the exclusion of the period allowed for a meal from the hours worked by an employee in a wage period for computing statutory minimum wage (SMW) as stipulated in clause 3(2)(a) of the Bill;
 - (b) explain, with examples and reference to court cases involving correctional services officers and medical practitioners of the Hospital Authority, how "hours worked" would be counted and how a place would be regarded as "place of employment" in the Bill under different scenarios in different industries;
 - (c) explain how clause 14 could safeguard the rights of employees;
 - (d) relay to the Provisional Minimum Wage Commission (MWC) members' request for a meeting with the Provisional MWC for briefing members regarding the criteria adopted in deliberating on the initial SMW rate; and
 - (e) provide materials which illustrated the counting of meal break and hours worked under the SMW regime, when available.

II. Date of next meeting

3. The Bills Committee noted that the next meeting would be held on 11 February 2010 at 10:45 am.
4. The meeting ended at 6:29 pm.

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Thursday, 28 January 2010, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000620	Chairman	Opening remarks	
000621 - 001829	Chairman Hon LEE Cheuk-yan Admin Hon Miriam LAU	<p>Continuation of discussion on the Administration's response to issues raised at the Bills Committee held on 17 December 2009 (LC Paper No. CB(2)655/09-10(01))</p> <p>Request for the Administration to provide data on the basket of economic indicators used to decide the adjustments to the Minimum Allowable Wage (MAW) for foreign domestic helpers (FDHs) in the past 10 years; whether MAW should be recommended by the Minimum Wage Commission (MWC) in future</p> <p>Administration's explanation that -</p> <p>(a) MAW was reviewed regularly, taking into account prevailing general economic conditions and employment situation, as reflected through economic indicators which included the relevant income movement, price change and labour market situation;</p> <p>(b) compilation of economic, labour and price data by the Census & Statistics Department was accessible by the public; and</p> <p>(c) previous press releases on MAW adjustments were issued by the Government (LC Paper No. CB(2)288/09-10(02))</p>	
001830 - 002407	Chairman Hon IP Wai-ming Admin	Whether the problem of false self-employment would worsen after the implementation of the statutory minimum wage (SMW); whether the	

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		<p>definition of "employee" in the Bill and the Employment Ordinance (EO) should be revised to deter false self-employment</p> <p>Administration's response that -</p> <p>(a) any change to the definition of "employee" would have read-across implications;</p> <p>(b) measures adopted by the Labour Department (LD) to tackle false self-employment was discussed by the Panel on Manpower on 19 November 2009; and</p> <p>(c) LD would keep relevant statistics on cases related to claims of false self-employment to facilitate better understanding of the problem and would report back to the Panel on Manpower</p>	
002408 - 002906	Chairman Admin	Briefing on the Administration's response to issues raised at the Bills Committee meeting held on 7 January 2010 (LC Paper No. CB(2)814/09-10(01))	
002907 - 003645	Chairman Hon Miriam LAU Admin	<p>Whether the basis for exempting live-in domestic workers (DWs) from the National Minimum Wage in the United Kingdom was applicable to Hong Kong</p> <p>Administration's clarification that local circumstances in Hong Kong, including the unique situation pertaining to live-in DWs, should be the prime considerations in exempting them from the Bill</p>	
003646 - 003734	Chairman Hon LEE Cheuk-yan	Intention to amend the Bill to provide a separate monthly SMW for live-in FDHs	
003735 - 003808	Chairman	Discussion on prescribed minimum hourly wage rate	

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003809 - 004243	Chairman Hon LEE Cheuk-yan Admin	<p>Whether the provision to exclude the period allowed for a meal from the hours worked by an employee in a wage period for SMW computation (clause 3(2)(a)) would be difficult to implement</p> <p>Administration's clarification that no legal obligation was imposed on counting meal break not worked by an employee as hours worked for the purpose of assessing the minimum wage payable since the aim of the Bill was not to change the existing arrangements under EO whereby employers and employees were free to agree between themselves the employment terms on working hours and meal break. To do otherwise would go beyond the introduction of SMW and could in practice distort the hourly wage rate</p>	
004244 - 004726	Chairman Hon WONG Kwok-hing Admin	<p>Proposal to set SMW at 60% of the median wage rate or at \$33/hour; whether MWC should make reference to the seven criteria considered by the authorities in Guangdong and Shenzhen (Annex to LC Paper No. CB(2)2506/08-09(01)) in deliberating on the SMW rates</p> <p>Administration's explanation on the function of MWC, flexibility of not specifying in the Bill the factors to be considered by MWC in deliberating the recommendation on the SMW rate, and MWC to formulate the factors suitable for Hong Kong's prevailing circumstances</p>	
004727 - 005024	Chairman Hon Miriam LAU Admin	Work currently undertaken by the Provisional MWC including consultation with stakeholders; timetable for the Provisional MWC to conclude its work	Admin to relay to the Provisional MWC about members' request for a meeting with the Provisional MWC

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005025 - 010229	Chairman Hon LEUNG Yiu-chung Admin	<p>Concern about the provision to exclude the period allowed for a meal from the hours worked by an employee in a wage period in clause 3(2)(a) for SMW computation; whether the salary of a civil servant included meal break</p> <p>Administration's explanation that -</p> <p>(a) meal break arrangement agreed in a contract of employment and the meal hours to be excluded for the computation of SMW were two different issues;</p> <p>(b) clause 3(2)(a) provided an exception so that if an employee worked in accordance with the contract of employment or with the agreement or direction of the employer during meal break, the period would not be excluded in the computation of SMW;</p> <p>(c) meal break arrangements to be determined by mutual agreement between employers and employees; and</p> <p>(d) publicity materials providing examples to illustrate the counting of meal break and hours worked under the SMW regime would be prepared for reference by employers, employees and interested parties.</p>	Admin to provide to the Bills Committee materials which illustrate the counting of meal break and hours worked under different scenarios
010230 - 010628	Chairman Hon LEUNG Kwok-hung	Whether the meal break of a civil servant was counted as hours worked	
Break			
010708 - 011244	Chairman Hon IP Wai-ming Admin	Concern about the impact of clause 3(2)(a) on the entitlement of paid meal break provided under existing contract of employment; whether the salary of a civil servant included meal break; criteria considered by the Provisional MWC in deliberating	Admin to explain the exclusion of the period allowed for a meal from the hours worked by an employee in a wage period under the

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		<p>on the initial SMW rate</p> <p>Administration's clarification that -</p> <p>(a) the Provisional MWC adopted an evidence-based approach in working out a recommendation on the SMW rate;</p> <p>(b) clause 3 did not change the existing arrangements under EO which did not regulate working hours and meal break, and it sought to specify the hours that must be taken to be included or to be excluded for the computation of SMW; and</p> <p>(c) the Bill did not seek to regulate whether an employee should be remunerated for meal break which should be mutually agreed by the employer and the employee concerned</p>	<p>SMW regime, and relay to Provisional MWC the request for briefing members regarding the criteria adopted in deliberating on the initial SMW rate</p>
<p>011245 - 012057</p>	<p>Chairman Hon Paul TSE Admin</p>	<p>Definition of "hours worked"; how to count the "hours worked"; concerns about how the "hours worked" of a tour guide would be counted in the following scenarios: travelling hours on a plane or in a coach, time spent outside Hong Kong, tour guide on on-call/stand-by mode</p> <p>Administration's response that clause 3 on hours worked should be read in conjunction with the definition of "place of employment" in clause 2. Clause 3 sought to state the hours that should be counted and not to be counted as hours worked, and did not purport to give an exhaustive list of all scenarios of "hours worked"</p>	
<p>012058 - 012324</p>	<p>Chairman Hon Andrew LEUNG Admin Hon Paul TSE</p>	<p>Concern about the risks of small and medium enterprises and employers in the catering, tourism, airline and medical services industries breaching the law when the definitions of</p>	<p>Admin to provide examples to illustrate how hours worked would be counted in different industries</p>

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		<p>"hours worked" and "place of employment" were unclear; what was the place of employment if an employee had to commute between Hong Kong and the Mainland frequently; how hours worked would be counted in respect of travelling time, waiting time, on-call/standby time, etc.</p>	
012325 - 013025	<p>Chairman Hon Albert HO Admin</p>	<p>Proposal to set the SMW rate above the level of the Comprehensive Social Security Assistance; impact of clause 3(2)(a) on an employee whose monthly salary included paid meal break; protection provided by clause 14 to nullify a provision of a contract of employment that purported to reduce the right of an employee conferred by the Bill; circumstances under which the travelling time of an employee would be counted as hours worked for the purpose of computing the minimum wage</p> <p>Administration's reiteration that the Bill did not seek to change the contract of employment in respect of paid/unpaid meal break agreed between the employer and the employee; Administration's explanation on clause 14 and clause 3 of the Bill with examples on travelling time</p>	
013026 - 013721	<p>Chairman Hon WONG Sing-chi Admin</p>	<p>Concern about possible infringement of an employee's right if an employer changed the contract of employment by excluding meal break in computing the employee's salary so that the hourly wage derived would comply with the SMW rate</p> <p>Administration's explanation that -</p> <p>(a) any change to the contract of employment should be agreed between the employer and the employee; and</p>	

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		(b) if an employee's meal break was discounted for the purpose of meeting the SMW rate, the employer would then have to pay the employee a higher hourly rate for other payments such as overtime pay	
013722 - 014315	Chairman Hon Tommy CHEUNG Admin	<p>Objection to include the period allowed for a meal to be counted as hours worked by an employee in a wage period under the SMW regime; impact of such inclusion on employers and employees in the catering industry; existing benefits provided to employees in the catering industry; whether the cost of providing meals to employees in the catering industry could become part of wages</p> <p>Administration's explanation that wages, as defined in EO, meant all remuneration, earnings, allowances, etc. capable of being expressed in terms of money and payable to an employee in respect of work done or to be done under his contract of employment, but did not include, amongst others, the value of food provided by the employer, and the definition of "wages" in the Bill was closely aligned with that in EO</p>	
014316 - 014404	Chairman Dr Hon LEUNG Ka-lau Admin	Court ruling on cases involving correctional services officers and medical practitioners of the Hospital Authority in respect of overtime, waiting time and stand-by hours at different places	Admin to provide examples to illustrate how hours worked would be counted and how a place would be regarded as "place of employment" under the SMW regime with reference to the court cases
014405 - 014909	Chairman Hon LI Fung-ying Admin	Whether clause 3(2)(a) was necessary; impact of clause 3(2)(a) on employees entitled to paid meal break upon the renewal of the contract of employment	Admin to explain the exclusion of the period allowed for a meal from the hours worked by an

Time marker	Speaker	Subject(s)	Action Required
		Administration's response that clause 3(2)(a) served to state clearly hours that must be taken to be excluded in computing minimum wage under the Bill	employee in a wage period under the SMW regime
014910 - 015229	Chairman Hon LEE Cheuk-yan Dr Hon LEUNG Ka-lau	<p>Issues raised by members -</p> <p>(a) relationship between "hours worked" and "place of employment";</p> <p>(b) whether and how the following period would be counted as "hours worked" for the purpose of computing the minimum wage: rest break taken by a bus driver, travelling time, waiting time, stand-by hours and hours worked at home by an employee;</p> <p>(c) whether a place (instead of his usual place of employment) at which an employee was in attendance for the purpose of doing work at the direction of the employer would be regarded as the "place of employment"; and</p> <p>(d) whether a waiting place at which the employee was on on-call or a home at which the employee was working would be regarded as the "place of employment"</p>	Admin to provide examples to illustrate how hours worked would be counted and how a place would be regarded as "place of employment"
015230 - 015533	Chairman Hon LEUNG Kwok-hung	The need to define "hours worked" in order to determine whether the SMW rate was met	
015534 - 015849	Chairman Hon Paul TSE Admin	Concern about the effectiveness of clause 14 in safeguarding the interests of employees, given that the definitions of "hours worked" and "place of employment" were subject to different interpretations	Admin to provide information to explain how clause 14 could safeguard the rights of employees

Time marker	Speaker	Subject(s)	Action Required
		Administration's explanation that clause 14 prevented an employer and an employee agreeing that the employee would be paid less than the SMW rate	
015850 - 015914	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
19 March 2010