

立法會
Legislative Council

LC Paper No. CB(2)2277/09-10
(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, 13 May 2010, at 8:30 am
in the Chamber of the Legislative Council Building

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Chairman)
 - Hon Paul CHAN Mo-po, MH, JP (Deputy Chairman)
 - Hon LEE Cheuk-yan
 - Hon LEUNG Yiu-chung
 - Hon Miriam LAU Kin-yee, GBS, JP
 - Hon Emily LAU Wai-hing, 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 WONG Kwok-hing, MH
 - Hon Jeffrey LAM Kin-fung, SBS, JP
 - Hon Andrew LEUNG Kwan-yuen, SBS, JP
 - Hon WONG Ting-kwong, BBS, JP
 - Hon Ronny TONG Ka-wah, SC
 - Hon Cyd HO Sau-lan
 - Dr Hon LAM Tai-fai, BBS, JP
 - 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 Mrs Regina IP LAU Suk-yee, GBS, JP
 - Dr Hon PAN Pey-chyou
 - Dr Hon Samson TAM Wai-ho, JP
- Members absent** :
- Hon Albert HO Chun-yan
 - Hon Abraham SHEK Lai-him, SBS, JP

Hon Vincent FANG Kang, SBS, JP
Hon CHIM Pui-chung
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun

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
Chief Labour Officer (Statutory Minimum Wage) (Acting)
Labour Department

Ms Queenie TANG Yuen-shan
Senior Labour Officer (Statutory Minimum Wage) (Acting)
Labour Department

Mr Eamonn MORAN, JP
Law Draftsman
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) 4

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 consider the suggestion of topping up the difference between the statutory minimum wage ("SMW") rate and the wage level for persons with disabilities ("PWDs") determined according to the outcome of the productivity assessment.

3. The Administration undertook to review the special arrangement for PWDs under the Bill in the light of operational experience within two years after the implementation of SMW, including the issue on whether there was a need for re-assessment and the appropriate arrangement, if found necessary.

4. The Bills Committee agreed that the Equal Opportunities Commission should be requested to provide further views on the effect of the exemption in clause 23 of the Bill on existing protection afforded to PWDs under the Disability Discrimination Ordinance and clarification on paragraphs 3 and 4 of its submission relating to inherent requirements of a job.

II. Date of next meeting

5. The Bills Committee agreed to proceed to the study area of "others", and commence clause-by-clause examination of the Bill at the next meeting to be held on 18 May 2010 from 4:30 pm to 7:30 pm.

6. The meeting ended at 10:25 am.

Council Business Division 2
Legislative Council Secretariat
17 September 2010

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Thursday, 13 May 2010, 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000134	Chairman	Opening remarks	
000135 - 000920	Chairman Admin	Briefing on the Administration's response to issues raised at the Bills Committee meeting held on 4 May 2010 (LC Paper No. CB(2)1511/09-10(01))	
000921 - 001503	Chairman Hon LI Fung-ying Admin	Responses from the rehabilitation groups on assessment of degree of productivity of persons with disabilities ("PWDs") (LC Paper Nos. CB(2)1511/09-10(02)-(06)); whether re-assessment should be conducted in the event of improved productivity of PWDs in the same job and the same workplace as advocated by some of the rehabilitation groups; whether the Minimum Wage Commission ("MWC") should pay regard to the wage level of PWDs in future; the Administration explained the reasons for maintaining a simple and user-friendly assessment mechanism, the divergent views among different stakeholders on the need for re-assessment, and a PWD could invoke another assessment on his productivity when his work changed though being engaged by the same employer	
001504 - 002210	Chairman Hon IP Wai-ming Admin	Views of different rehabilitation groups; the dismissal of a PWD on account of the outcome of productivity assessment and the dismissal of a PWD because of his failure to fulfil the inherent requirements of a job (paragraph 7 of LC Paper No. CB(2)1511/09-10(01)); exemption provided to employers under clause 23 of the Bill; the need to maintain	

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		<p>a simple and user-friendly assessment mechanism to help minimize any possible adverse impact of statutory minimum wage ("SMW") on the employment opportunities of PWDs, particularly those with more severe disabilities</p>	
<p>002211 - 002453</p>	<p>Chairman Hon CHAN Kin-por Admin</p>	<p>Whether to provide for re-assessment of PWDs' productivity as proposed by some rehabilitation groups and if so, whether a time limit would be imposed between the first assessment and the second assessment; an employer who paid the PWD below the assessed rate specified in the certificate of assessment would be liable to criminal sanction for wage offence; undertaking of the Administration to review the special arrangement for PWDs in the light of operational experience within two years after the implementation of the SMW regime, including the issue on whether there was a need for re-assessment and the appropriate arrangement, if found necessary</p>	
<p>002454 - 003057</p>	<p>Chairman Hon LEE Cheuk-yan Admin</p>	<p>Whether an exceedingly low wage rate assessed on a PWD would contravene the purpose of the Bill; whether a wage floor should be provided to PWDs so that they would be remunerated at least say 50% of SMW rate; whether the Administration would consider subsidizing the difference if a PWD was assessed to have a productivity below 50%; right of a PWD to refuse signing the certificate of assessment if he was not satisfied with the result</p> <p>The Administration explained that making it mandatory for PWDs to be remunerated at least say 50% of the SMW rate irrespective of the outcome of assessment would affect</p>	

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		<p>the employment opportunities and in turn the social integration of PWDs especially those with severe disabilities. There was no intention to provide wage subsidy (which was also not the policy intent of the Bill) to top up the difference between SMW and the wage level of PWDs determined according to their assessed productivity. The Labour Department had already implemented special programmes to help place PWDs into open employment</p>	
003058 - 003554	<p>Chairman Hon CHEUNG Kwok-che Admin</p>	<p>Trial period of employment and extended trial period of employment; whether an employer who signed the certificate of assessment and dismissed the PWD the following day would be liable to an offence under the Discrimination Disability Ordinance ("DDO"); whether an employer was allowed to consider the assessment result for a couple of days before deciding whether or not to sign the certificate of assessment (paragraph 4 of LC Paper No. CB(2)1511/09-10(01))</p> <p>The Administration responded that the PWD employee would be entitled to the SMW rate from the following day after the completion of assessment if the certificate of assessment was not signed by the employer and thus not yet effective. The exemption from DDO relating to dismissal provided in the Bill was limited to the situation where the reason for the dismissal was the outcome of assessment</p>	
003555 - 004136	<p>Chairman Hon WONG Sing-chi Admin</p>	<p>Whether a PWD could request for a re-assessment of his productivity because of deteriorated health; circumstances under which a PWD could invoke another assessment on his productivity while working for</p>	

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		the same employer; the Administration explained that the PWD could invoke the assessment mechanism in the event of change of work though under the same employer	
004137 - 004850	Chairman Dr Hon PAN Pey-chyau Admin SALA2	Whether a PWD could request for a re-assessment of his productivity if his job nature remained the same but the workload had increased; the Administration responded that the facts of individual cases should be taken into account and the PWD could invoke the assessment mechanism if his work changed	
004851 - 010115	Chairman Hon Miriam LAU Admin	Whether countries implementing SMW allowed re-assessment of PWDs' productivity; whether a productivity re-assessment could be invoked with the mutual agreement of the employer and the PWD; qualifications and creditability of the approved assessor; submission from the Equal Opportunities Commission ("EOC") (LC Paper No. CB(2)1478/09-10(01)); who to determine whether a PWD had satisfied the inherent requirements of a job; whether the assessment mechanism could achieve the purpose of encouraging employers to hire PWDs if employers were subject to the risk of infringing DDO; how assessment would be conducted in the workplace; the Administration responded that the exemption from DDO relating to dismissal provided in the Bill was limited to the situation where the reason for the dismissal was the outcome of assessment	
010116 - 011232	Chairman Hon Tommy CHEUNG Admin SALA2	Whether the assessment mechanism could achieve the purpose of encouraging employers to hire PWDs if employers were subject to the risk of infringing DDO; interpretation of paragraph 4 of	

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		<p>EOC's paper by the Administration; exemption of employers from DDO for acts done in connection with the special arrangement for PWDs; difference between inherent requirements of a job and degree of productivity of PWDs on that job; the Administration responded that if an employee was dismissed on ground of disability rather than his failure to satisfy the inherent requirements of a job, the Bill would not affect his claim under DDO</p>	
<p>011233 - 012244</p>	<p>Chairman Hon Audrey EU Admin SALA2</p>	<p>Effect of the Bill with and without the exemption provided in clause 23; relationship between inherent requirements of a job and degree of productivity of PWDs on that job; whether the dismissal of a PWD by his employer on account of the assessed degree of productivity which the employer found unacceptably low would infringe DDO; the Administration explained that an assessment under the Bill served to determine whether the disability affected the degree of productivity of the PWD in performing his work for the purpose of deciding whether he should be remunerated at no less than the SMW level or at a rate commensurate with his productivity</p> <p>Request for EOC to provide further views on the effect of the exemption in clause 23 of the Bill on existing protection afforded to PWDs under DDO and clarification on paragraphs 3 and 4 of its submission relating to inherent requirements of a job</p>	<p>SALA2 and clerk to follow up</p>
<p>012245 - 012859</p>	<p>Chairman Hon LEE Cheuk-yan Hon Miriam LAU Admin</p>	<p>Whether the exemption provided to employers in clause 23 was necessary; whether a wage floor should be provided to PWDs so that they would be remunerated at least</p>	

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		<p>say 50% of the SMW rate; whether the Administration would consider subsidizing the difference if a PWD was assessed to have a productivity below 50%; the Administration reiterated the reasons for not making it mandatory for PWDs to be remunerated at a certain minimum level irrespective of the outcome of assessment and for not providing wage subsidy; transitional arrangement for PWDs already in employment as proposed in paragraph 20 of the Administration's paper (LC Paper No. CB(2)1455/09-10(01)); whether the time limit allowed for a PWD already in employment to opt for a productivity assessment should be relaxed; purpose of the special arrangement for PWDs</p>	
012900 - 013419	<p>Chairman Hon LEUNG Yiu-chung Admin</p>	<p>Whether a PWD could request for a re-assessment of his productivity because of improved productivity; whether a wage increase to reflect improved productivity should be determined between the employer and the PWD rather than by another assessment; practical problems arising from the re-assessment of a PWD's productivity, if allowed; the Administration explained that a PWD could invoke another assessment on his productivity while working for the same employer when his work changed</p>	
013420 - 013934	<p>Chairman Hon Cyd HO Admin</p>	<p>Whether a PWD could request for a re-assessment of his productivity because of improved health and productivity; whether the existing mechanism which deprived the right of a PWD to have his productivity re-assessed would result in the PWD receiving wages not commensurate with his productivity; practical problems arising from the re-assessment of a PWD's productivity, if allowed; the</p>	

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		Administration explained that a PWD could invoke another assessment on his productivity while working for the same employer when his work changed	
013935 - 014846	Chairman Dr Hon LEUNG Ka-lau Admin	Qualifications and experience required of the approved assessor (paragraph 17 of LC Paper No. CB(2)1455/09-10(01)); guidelines for the approved assessor and productivity assessment; termination of employment should be in compliance with the Employment Ordinance, other relevant legislation and the relevant terms of the employment contract; the Administration explained the need to work out with rehabilitation groups details of the assessment mechanism and that the special arrangement for PWDs under the Bill would be reviewed within two years after implementation of SMW	
014847 - 015022	Chairman Hon CHEUNG Kwok-che Admin	Whether an employer or an employment agency which requested a PWD to invoke the assessment mechanism would infringe DDO; exemption of employers from DDO in clause 23; the Administration explained that the right to invoke the assessment mechanism was vested in PWDs	
015023 - 015129	Chairman	Date of next meeting	