

立法會

Legislative Council

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(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, 27 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 Albert HO Chun-yan
- Hon LEE Cheuk-yan
- Hon LEUNG Yiu-chung
- Hon Miriam LAU Kin-ye, 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 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 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 IP Kwok-him, GBS, JP
- Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Hon Paul TSE Wai-chun
- Hon LEUNG Kwok-hung

- Member attending** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
- Members absent** : Hon Frederick FUNG Kin-kee, SBS, JP
Hon CHIM Pui-chung
Dr Hon PAN Pey-chyou
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
- 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 Kiwi NG
Legislative 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) consider whether clause 3(2)(a) should be deleted;
 - (b) consider reviewing the drafting of clause 3(2)(b);
 - (c) consider stating in the guidelines on implementation of statutory minimum wage that clause 3(2) allowed the provision of a contract of employment to confer greater benefits on employees than those under the Bill; and
 - (d) consider whether clause 3(2) should be subject to clause 3(1).

II. Date of next meeting

3. The Bills Committee noted that the next meeting would be held on 3 June 2010 at 8:30 am.

4. The Chairman said that having regard to the progress of clause-by-clause examination of the Bill, additional meetings would be scheduled for the Bills Committee.

(Post-meeting note: With the concurrence of the Chairman, two additional meetings had been scheduled for 5 June 2010 from 11:00 am to 1:00 pm and 17 June 2010 from 8:30 am to 10:30 am respectively.)

5. The meeting ended at 10:33 am.

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Thursday, 27 May 2010, 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000404	Chairman	Opening remarks Continuation of clause-by-clause examination of the Bill	
000405 - 000941	Chairman SALA2 Hon Andrew LEUNG Admin	Examination of clause 2 Some specified items not included as wages according to the definition of "wages" in the Employment Ordinance ("EO"); the Administration's response that "wages" in the Bill, subject to clause 5, had the same meaning as in EO	
000942 - 001244	Chairman Admin Hon LI Fung-ying	Examination of clause 3 Views of trade unions that clause 3(2)(a) concerning meal break should be deleted The Administration responded that clause 3(2)(a) did not seek to change the existing arrangements under EO whereby employers and employees were free to agree between themselves the employment terms on meal break, viz. the duration of meal break and whether it was regarded as working hours	Admin to consider whether clause 3(2)(a) should be deleted
001245 - 001552	Chairman Hon LEE Cheuk-yan Admin	Whether the Bill should provide that "hours worked" should be taken to include "contract hours" The Administration responded that clause 3 did not seek to give an exhaustive list of the precise circumstances of hours worked for the purpose of computing statutory minimum wage ("SMW"). Apart from clause 3, the question as to whether any time or period was hours worked by the employee for	

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		<p>the computation of SMW had to be decided by reference to any agreement or contract between the employer and the employee and to all other relevant circumstances of the case. If the time or period in question was regarded as hours worked by the employee under the employment contract or with agreement of the employer, it would be included in computing SMW under the Bill notwithstanding that it was not covered by clause 3</p>	
001553 - 002039	<p>Chairman Hon IP Wai-ming Admin</p>	<p>Views of trade unions that clause 3(2)(a) concerning meal break should be deleted; circumstances under which travelling time would be counted as hours worked; the Administration's explanation on the application of clause 3(1)(b) and (2)(b)</p>	
002040 - 003101	<p>Chairman Hon Miriam LAU Hon WONG Ting-kwong Admin</p>	<p>Whether the law had specified the period for taking meal; circumstances under which travelling time within Hong Kong and outside Hong Kong would be counted as hours worked; concern about possible disputes on hours worked because of the multifarious work patterns of employees; the Administration's response on the need for clause 3 to be read in conjunction with the definition of "place of employment" in clause 2 and to make reference to the contract of employment in order to determine how hours worked should be counted for the purpose of computing SMW</p>	
003102 - 004751	<p>Chairman Hon LEE Cheuk-yan Admin SALA2</p>	<p>Whether clauses 3(1)(b), 3(2)(a) and (b) were necessary if employers and employees were free to agree between themselves the working hours and travelling arrangements in contracts of employment; whether an employment contract</p>	<p>Admin to consider stating in the guidelines on the implementation of SMW that clause 3(2) allowed the provision of a</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>which included the period as specified in clause 3(2)(b) as hours worked would be considered as contracting out under clause 14; advice of SALA2 that clause 3(1) sought to protect the interest of employees and clause 3(2) sought to protect the interest of employers; clarification of the Administration that clause 3 sought to state the hours that must be taken to include or exclude in computing SMW and did not seek to reduce the entitlements provided to an employee under a contract of employment, while clause 14 did not render void a provision of a contract of employment that purported to confer greater benefits on employees than those under the Bill</p>	<p>contract of employment to confer greater benefits on employees than those under the Bill</p>
<p>004752 - 005325</p>	<p>Chairman Hon Albert HO Admin Hon CHAN Kin-por</p>	<p>How hours worked would be counted if an employee's wages were paid on a project or job basis; the Administration's response that the employee should be remunerated wages at a rate not less than the SMW on average for the hours worked in any wage period</p>	
<p>005326 - 010035</p>	<p>Chairman Hon Miriam LAU SALA2</p>	<p>Commission apportioned and payable in different wage periods; difficulty in keeping record of hours worked for employees working overseas; possibility of exempting employers from the requirement of keeping records of the total number of hours worked for employees who earned more than a specified income; whether the deletion of clause 3(2)(a) would give rise to disputes on whether meal break should be counted as hours worked for the purpose of computing SMW; the Administration's response that requests and suggestions made by Members and stakeholders on these issues were being considered</p>	

Time marker	Speaker	Subject(s)	Action Required
010036 - 010846	Chairman Hon LEE Cheuk-yan Admin	Whether clause 3(2)(a) was necessary; possibility of inconsistency between clause 3(2)(b) and the terms of a contract of employment since it stated the hours worked must be taken not to include in computing SMW and did not provide any exception; the Administration's response that clause 3(2)(b) did not seek to reduce the entitlements provided to the employee under his contract of employment	Admin to consider reviewing drafting of clause 3(2)(b)
010847 - 011410	Chairman Hon LEUNG Kwok-hung	The need to ensure equal treatment for white collar and blue collar employees under the SMW regime	
011411 - 012301	Chairman Hon Tommy CHEUNG Admin	Provision of meals in the catering industry; impact of retaining or deleting clause 3(2)(a) on counting of hours worked for the purpose of computing SMW; mutual agreement between employers and employees on meal break arrangements to be stipulated in the contracts of employment; the need to include meal break arrangements in the industry-based guidelines; the Administration's response that clause 3(2)(a) did not exclude the meal break during which the employee worked in accordance with the contract of employment or with the agreement or direction of the employer	
012302 - 013001	Chairman Hon Paul TSE Admin	The need to retain clause 3(2)(a) to ensure clarity; difference between the travelling allowance which was of a non-recurrent nature as referred to in the definition of "wages" under EO and the travelling time referred to in clause 3(2)(b); reiteration of the Administration that the Bill did not seek to regulate existing arrangements under EO whereby employers and employees of different trades and industries were free to agree between	

Time marker	Speaker	Subject(s)	Action Required
		themselves the terms in the contract of employment; the need for clause 3 to be read in conjunction with the definition of "place of employment" in clause 2 in order to determine hours worked for the purpose of computing SMW	
013002 - 013324	Chairman Hon Mrs Regina IP Admin	The need to retain clause 3(2)(a) to ensure clarity; the Administration's explanation of clause 3(2)(a) and circumstances under which travelling time would be counted as hours worked under clause 3(1)(b) and 3(2)(b)	
013325 - 013832	Chairman Dr Hon Priscilla LEUNG Admin	Whether the idling time of chauffeurs would be counted as hours worked; the Administration's explanation on the application of clause 3(1)	
013833 - 014735	Chairman Dr Hon LEUNG Ka-lau Admin SALA2	Factors to be considered in determining whether a place was a place of employment; circumstances under which standby and meal time would be counted as hours worked; different requirements for counting hours worked for the purpose of computing SMW in clause 3(1)(a) and the exception provision in clause 3(2)(a) (i.e. the former required an employee to be in attendance at a place of employment irrespective of whether he was provided with work while the latter required an employee who was taking meal break to do work in accordance with the contract of employment or with the agreement or at the direction of the employer); the Administration's explanation that the time fulfilling clause 3(1) was counted as hours worked for computing SMW	
014736 - 015622	Chairman Hon Audrey EU Admin	Whether the concept of "in attendance at a place of employment" should be reflected in	

Time marker	Speaker	Subject(s)	Action Required
	SALA2	the exception provision of clause 3(2)(a) so as to be consistent with 3(1)(a); relationship between clauses 3(1), 3(2) and 14; whether a provision of a contract of employment which contravened clause 3(1) or clause 3(2) would be considered as contracting out under clause 14; advice of SALA2 that clause 3(1) sought to protect the interest of employees and clause 3(2) sought to protect the interest of employers; clarification of the Administration that while a provision of a contract of employment that contravened clause 3(1) and purported to reduce the right of employees under the Bill would be rendered void under clause 14, a provision of a contract of employment that differed from clause 3(2) and purported to confer greater benefits on employees than those under the Bill would not be considered as contracting out under clause 14	
015623 - 020523	Chairman Hon Miriam LAU Admin SALA2	Whether the deletion of clause 3(2)(a) would give rise to more labour disputes; whether the period during which an employee was taking meal while travelling in connection with his employment under clause 3(1)(b) should be counted as hours worked for the purpose of computing SMW; the Administration's explanation that the time fulfilling clause 3(1) was counted as hours worked for computing SMW	Admin to consider whether clause 3(2) should be subject to clause 3(1)
020524 - 020542	Chairman	Date of next meeting Scheduling of additional meetings	