

立法會
Legislative Council

LC Paper No. CB(2)2306/09-10
(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, 3 June 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-ye, GBS, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon LI Fung-ying, BBS, JP
 - Hon Tommy CHEUNG Yu-yan, 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
 - Dr Hon LAM Tai-fai, BBS, JP
 - Hon CHAN Kin-por, JP
 - Dr Hon Priscilla LEUNG Mei-fun
 - Hon CHEUNG Kwok-che
 - Hon WONG Sing-chi
 - Hon WONG Kwok-kin, BBS
 - Hon IP Wai-ming, MH
 - Hon IP Kwok-him, GBS, JP
 - Dr Hon PAN Pey-chyou
 - Hon Paul TSE Wai-chun
 - Dr Hon Samson TAM Wai-ho, JP
 - Hon Alan LEONG Kah-kit, SC
 - Hon LEUNG Kwok-hung
- Members absent** :
- Hon Albert HO Chun-yan
 - Hon Abraham SHEK Lai-him, SBS, JP

Hon Frederick FUNG Kin-kee, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Dr Hon LEUNG Ka-lau
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
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 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 explain whether paying wages to employees twice a month (the so-called "大細糧") in the catering industry would be regarded as one wage period or two wage periods for the purpose of computing the statutory minimum wage.

II. Date of next meeting

3. The Bills Committee noted that the next meeting would be held on 5 June 2010 at 11:00 am.

4. As the Bills Committee intended to work towards the resumption of Second Reading on the Bill in July 2010, the Chairman said that additional meetings of the Bills Committee would be scheduled.

(Post-meeting note: With the concurrence of the Chairman, five additional meetings had been scheduled for June 2010. An updated schedule of all future meetings of the Bills Committee was issued to members vide LC Paper No. CB(2)1728/09-10 on 7 June 2010.)

5. The meeting ended at 10:28 am.

Council Business Division 2
Legislative Council Secretariat
28 September 2010

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Thursday, 3 June 2010, 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000257	Chairman	Opening remarks Continuation of clause-by-clause examination of the Bill	
000258 - 001017	Chairman Hon Tommy CHEUNG Admin	Examination of clause 3 Application of clause 3(1)(a) and how hours worked would be counted in the catering industry; whether the time of an employee in the catering industry taking free meals in the restaurant should be counted as hours worked for the purpose of computing the statutory minimum wage ("SMW"); whether the time during which a Member's assistant answering a telephone call in the office while taking meal should be counted as hours worked for the purpose of computing SMW; difficulty in keeping records of hours worked if the meal breaks mentioned above should be counted as hours worked for the purpose of computing SMW Response of the Administration that clause 3 should be read in conjunction with the definition of "place of employment" in clause 2 and the time would be counted as hours worked for computing SMW if it fulfilled clause 3(1). Apart from clause 3, if the time in question was regarded as hours worked by the employee under the contract of employment or with agreement of the employer, it would also be counted as hours worked for the purpose of computing SMW. Employers would have to keep records of the total number of hours worked in a wage period upon the	

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		implementation of SMW	
001018 - 001222	Chairman Hon IP Kwok-him Admin	<p>Whether the time spent for working lunch and business lunch should be counted as hours worked</p> <p>Response of the Administration that subject to the actual circumstances of the case, if such time fulfilled clause 3 or if it was regarded as hours worked by the employee under the contract of employment or with agreement of the employer, it would be counted as hours worked for the purpose of SMW</p>	
001223 - 001321	Chairman Admin	Examination of clause 4	
001322 - 002035	Hon Emily LAU Admin	<p>Proposal to provide employees with salary slips setting out the hours worked in a wage period when SMW was implemented; the Administration explained the existing obligation of employers under section 49A of Employment Ordinance ("EO") to keep wage and employment records of their employees and the additional item of the total number of hours worked in a wage period (as stipulated in clause 20) to be included in the wage and employment records through consequential amendments to EO for the purpose of SMW</p>	
002036 - 002604	Hon Tommy CHEUNG Admin	<p>Concern about the additional administrative work and costs on small and medium enterprises ("SMEs") arising from the requirement to keep records of the total number of hours worked; the unique practice of the catering industry whereby employees were paid twice a month (the so-called "大細糧") and whether it would be regarded as one wage period or two wage periods for the purpose of computing SMW; how to ensure</p>	Admin to explain whether the "大細糧" would be regarded as one wage period or two wage periods for the purpose of computing SMW

Time marker	Speaker	Subject(s)	Action Required
		<p>that the wages paid to employees in the catering industry would comply with the SMW requirement</p> <p>Explanation of the Administration that when the employer and the employee had a clear understanding that the wage period was one month, the wage period should be taken to be one month even though the employer paid wages twice in a wage period; the computation of SMW was based on wages payable in respect of a wage period and hours worked in the wage period to ascertain compliance with the SMW requirement; agreement to be reached between employers and employees on the employment terms including working hours, wages and wage period; clause 4(2) provided that the wage period should be taken to be one month, unless the contrary was proved</p>	
002605 - 003204	Hon WONG Ting-kwong Admin	<p>Concern about the discrepancies of the number of hours worked and overtime hours recorded by employers and employees would give rise to disputes; difficulty in recording hours worked when an employee was working overseas; response of the Administration that different trades and establishments might work out appropriate arrangements in recording the total number of hours worked by employees to cater for their individual circumstances; disputes between employers and employees on the total number of hours worked could be conciliated by the Labour Department ("LD") if necessary</p>	
003205 - 003352	Hon Andrew LEUNG	<p>Concern that the proposal to provide salary slips of hours worked in a wage period to all employees would incur substantive administrative work and costs on</p>	

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		SMEs, bearing in mind that the SMW regime would apply to about 10% of the total employees only	
003353 - 003603	Hon CHEUNG Kwok-che	<p>Proposal to provide salary slips to employees who were employed on an hourly or job basis to prevent disputes; industry-based guidelines should be formulated where appropriate to explain how records of hours worked in a wage period should be kept</p> <p>Scheduling additional meetings</p>	
003604 - 004004	Chairman Hon WONG Kwok-hing Admin	Appeal to employers to comply with the SMW requirement irrespective of the number of wage payments made in a wage period; the need for LD to step up promotion to enhance awareness of the SMW requirements; response of the Administration that the concept of wage period in the Bill followed that of EO	
004005 - 004609	Chairman Hon Jeffrey LAM Admin	Possible disputes between employers and employees on the number of hours worked recorded in a wage period; whether an employee could claim for hours worked not counted in a wage period; the Administration explained the requirement of "in accordance with the contract of employment or with the agreement or at the direction of the employer" in the provisions on hours worked in the Bill, and that employers and employees should ensure mutual understanding if there were unclear terms on hours worked in their contracts of employment	
004610 - 005042	Hon Paul TSE Admin	Concern about the additional administrative costs on SMEs arising from the requirement to keep records of hours worked; possible disputes between employers and employees on the	

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		number of hours worked recorded in a wage period; whether LD had adequate manpower to handle labour disputes arising from the implementation of SMW; response of the Administration that requests and suggestions made by members and stakeholders to reduce administrative costs on record keeping under clause 20 were being considered	
005043 - 005132	Hon LEE Cheuk-yan	Appeal to members to focus the discussion on the drafting of each clause rather than policies of the Bill	
005133 - 005618	Chairman Hon Tommy CHEUNG Admin	The unique practice of the catering industry to apportion and pay wages in different periods; how to ensure that the wages paid to employees in the catering industry would comply with the SMW requirement; explanation of the Administration that the computation of SMW was based on wages payable in respect of a wage period and hours worked in the wage period to ascertain compliance with the SMW requirement; reiteration of the Administration that the Bill did not seek to change the existing employment terms agreed between employers and employees in different industries; examples on counting of hours worked in a wage period in guidelines to be formulated	
005619 - 005737	Chairman Hon Emily LAU	Proposal to provide a management information system to assist SMEs in keeping records of the total number of hours worked in a wage period of employees	
005738 - 010124	SALA2 Chairman Hon Miriam LAU Admin	Concern about the effect of the wage period, which was normally taken to be one month as stipulated in clause 4(2), on the computation of the minimum wage in clause 7(2)	

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		because a month could consist of 28, 29, 30 or 31 days; clarification of the Administration that the "one month" in clause 4(2) referred to one calendar month	
010125 - 010338	Chairman Admin	Examination of clause 5	
010339 - 011135	Chairman Hon Andrew LEUNG Admin SALA2	Queries raised on the drafting of clause 5(2) and the Administration's clarification that the provision dealt with the payment made to an employee in a wage period for time that was not hours worked by the employee; explanation on the application of clause 5(3) and (4); response of the Administration that requests made by members to enhance clarity of clause 5(5) were being considered	
011136 - 011728	Hon Miriam LAU Admin	Concern about the definition of wages in clause 5 being too rigid; concern about employees whose wages were paid on a commission basis refusing to agree to the new arrangements on commission payable and paid in different wage periods to meet the SMW level; explanation of the Administration that clause 5 sought to ensure clarity of the reckoning of wages payable for the purpose of computing SMW; further elaboration by the Administration on the application of clause 5(3) and 5(4)	
011729 - 012302	Hon Jeffrey LAM Admin	Concern about the drafting of clause 5; how to apportion commission payable and paid in different wage periods in a contract of employment in order to comply with clause 5(5); explanation of the Administration on the drafting approach adopted in clause 5(2), application of clause 5(3) and (4), and the need to clearly reckon wages payable in clause 5 as failure	

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		to pay SMW could constitute a criminal offence; payment method of commission to be agreed between employers and employees and the Bill did not seek to change the commission systems adopted by various trades	
012303 - 012800	Chairman SALA2 Admin	Whether clause 5 should make reference to the relevant provisions in EO; circumstances under which tips would not be counted as part of the wages under EO; response of the Administration that "wages" in the Bill, subject to clause 5, had the same meaning as in EO; industry-based guidelines to provide examples, where appropriate, on the application of provisions on wages for the purpose of computing SMW	
012801 - 013628	Chairman Hon Paul TSE Admin SALA2	Difference between the definition of "wage period" in clause 4(1) and EO; explanation of the Administration that the definition of "wage period" in clause 4(1) had the same meaning as that of EO which should be read in conjunction with the definition of "wages"	
013629 - 014053	Hon LEUNG Kwok-hung Admin	Concern about the protection to employees under SMW when maximum working hours was not imposed; explanation by the Administration about the calculation of statutory benefits under EO and employees' entitlement to SMW under the Bill	
014054 - 014522	Chairman Hon Emily LAU Admin	Circumstances under which tips would and would not be counted as part of the wages under EO Explanation of the Administration that the definition of "wages" in the Bill was aligned with that in EO	

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014523 - 015105	Chairman Hon Miriam LAU Admin	Availability of industry-based guidelines to explain the circumstances under which tips would and would not be counted as part of the wages under EO; concern about employees whose wages were paid on a commission basis refusing to agree to the new arrangements on commission payable and paid in different wage periods to meet the SMW level; response of the Administration that clause 5(5) set out how commission should be counted as wages payable in respect of a wage period in order to provide clear guiding principles to determine whether the employee was remunerated at not less than the SMW rate; reiteration of the Administration that requests made by members to enhance clarity of clause 5(5) were being considered	
015106 - 015305	Chairman Dr Hon Priscilla LEUNG Admin	Circumstances under which tips would and would not be counted as part of the wages under EO in different trades; the Administration's explanation on promotion and publicity activities on the SMW requirement to be launched	
015306 - 015516	Chairman Hon Tommy CHEUNG	Circumstances under which tips would and would not be counted as part of the wages under EO in different trades and its impact on income tax; the need to promote understanding of the concept of wages in order to prevent labour disputes	
015517 - 015729	Chairman Hon Paul TSE	Clear guidelines on the circumstances under which tips would and would not be counted as part of the wages under EO in different trades in order to prevent labour disputes and possible criminal liability; advocate the use of consistent wording for terms defined in the Bill and EO as far as	

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		possible	
015730 - 015933	Chairman Hon LEE Cheuk-yan	Observation that the questions raised by members were related to EO rather than the Bill	
015934 - 020209	Chairman Hon LEUNG Kwok-hung Admin	Expression of the view that clause 5(2) of the Bill on payment for time that was not hours worked did not provide sufficient protection to employees; response of the Administration that the computation of SMW was based on hours worked by an employee in the wage period	
020210 - 020353	Chairman Hon Tommy CHEUNG Hon LEE Cheuk-yan Hon Emily LAU	Date of next meeting Scheduling of additional meetings	