

立法會
Legislative Council

LC Paper No. CB(2)420/10-11
(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, 10 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 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 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 Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, 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 WONG Yuk-man

Member attending : Dr Hon Philip WONG Yu-hong, GBS

Members absent : Hon Frederick FUNG Kin-kee, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon CHIM Pui-chung
Hon WONG Sing-chi
Hon LEUNG Kwok-hung

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 -
 - (a) consider reviewing the drafting of the Chinese version of "purports to" in clause 14;
 - (b) consider stipulating in the Bill that it would publish the recommendation report submitted by the Minimum Wage Commission; and
 - (c) provide information on the obligation of the employer to keep records of working hours under the statutory minimum wage regime in the United Kingdom.

II. Date of next meeting

3. The Bills Committee noted that the next meeting would be held on 15 June 2010 at 4:30 pm.
4. The meeting ended at 10:34 am.

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Thursday, 10 June 2010, at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000858	Chairman	Opening remarks Continuation of clause-by-clause examination of the Bill	
000859 - 001223	Chairman Admin SALA2	Examination of clause 14 Explanation of the Administration that clause 14 prevented the parties to a contract of employment contracting out of the provisions of the Bill	
001224 - 001744	Chairman Hon Paul TSE Admin	Views on whether the drafting of the Chinese version of "purports to" was appropriate; explanation of the Administration that clause 14 applied to both express and implied terms of contract of employment, made orally or in writing	Admin to consider reviewing the drafting of the Chinese version of "purports to" in clause 14
001745 - 001906	Chairman Admin	Examination of clause 15	
001907 - 002435	Chairman Hon LI Fung-ying Admin	Views regarding the report of the Minimum Wage Commission ("MWC"); the Administration responded that it would provide the public and the Legislative Council ("LegCo") with the justifications the Chief Executive in Council had taken into account in making the decision on whether to accept the recommendation of MWC, and would consider making public the contents of the MWC report	Admin to consider stipulating in the Bill that it would publish the recommendation report submitted by MWC
002436 - 002610	Chairman Hon IP Wai-ming Admin	Explanation of the Administration that section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) referred to in clause 15(4) was about the procedures for placing subsidiary legislation before LegCo under the negative vetting procedure	

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002611 - 002814	Chairman SALA2 Admin	Explanation of the Administration that "a factor" in clause 15(3) referred to a percentage of the statutory minimum wage ("SMW") rate that would apply to persons with disabilities after the productivity assessment or during the trial period of employment	
002815 - 002907	Chairman Admin	Examination of clause 16	
002908 - 003014	Chairman Admin	Examination of clause 17	
003015 - 003146	Chairman Admin	Examination of clause 18	
003147 - 003226	Chairman Admin	Examination of clause 19	
003227 - 003320	Chairman Admin	Examination of clause 20	
003321 - 003539	Chairman Hon CHAN Kin-por Admin	Feasibility of exempting employers from recording the total number of hours worked of employees whose monthly wages were not less than a specified amount	
003540 - 003804	Chairman Hon Tommy CHEUNG Admin	How the specified wage level of an employee for the purpose of exempting employers from recording the total number of hours worked would be set; the Administration responded that the wage level should be set to strike a reasonable balance between the need to enforce the SMW requirement and that to minimise the administrative cost of employers	
003805 - 004602	Chairman SALA2 Admin	Whether the proposed section 49A(3)(ea) to be added to the Employment Ordinance ("EO") would give rise to labour disputes since the records of the total number of hours worked kept by an employer in each wage period might not be verified by his	

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		<p>employees; admissibility of such records as evidence in court in case of labour disputes; whether the time spent by an employee on keeping his own records of hours worked would be counted as hours worked for the purpose of computing SMW</p> <p>Response of the Administration that section 49A(3)(d) of EO also required employers to keep a record of wages paid to an employee in respect of each wage period; experience of the Labour Department ("LD") in enforcing section 49A(3) and handling disputes over the amount of wages paid; the need to strike a balance between record keeping requirement and the creation of unnecessary work for and costs on employers</p>	
004603 - 004753	Chairman Hon LEE Cheuk-yan Admin	<p>Whether an employer should be required to keep wage and employment records of each employee covering the period of his employment during the preceding six years instead of 12 months as stipulated in section 49A(1) of EO, having regard to the fact that the Labour Tribunal allowed an employee to make retrospective claims covering the period of his employment during the preceding six years; suggestion that salary slips setting out the total number of hours worked in a wage period would be provided to employees; response of the Administration that enforcement experience revealed that the keeping of employment records of each employee covering the period of his employment during the preceding 12 months would suffice; additional administrative work for and costs on employers if the period of keeping employment records was to be extended</p>	

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004754 - 005210	Chairman Hon Andrew LEUNG Admin	Whether the proposed section 49A(3)(ea) to be added to EO would cover all employees; the Administration explained that the requirement was only applicable to employees entitled to SMW; feasibility of exempting employers from recording the total number of hours worked of employees whose monthly wages were not less than a specified amount was being considered and Committee Stage amendments to that effect would be introduced; employers could implement appropriate management practices for record keeping to suit their individual circumstances and to avoid labour disputes	
005211 - 010205	Chairman Hon Jeffrey LAM Hon WONG Ting-kwong Admin	<p>Prevention of labour disputes arising from discrepancies on the number of hours worked recorded by employers and employees in a wage period; difficulty in recording the number of hours worked when an employee was working overseas; whether employers might incur criminal liability when such disputes arose; administrative costs on employers if additional manpower was required to record hours worked by all employees</p> <p>Response of the Administration that in real life situation, it was more likely for an employee to record hours worked for the employer's verification; employers and employees could agree to the record keeping procedure to enhance transparency and to avoid unnecessary disputes; record keeping was a management issue involving understanding between employers and employees; feasibility of exempting employers from recording the total number of hours worked of some employees was being considered</p>	

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010206 - 010624	Chairman Hon Miriam LAU Admin	Queries raised by Hon Miriam LAU on the drafting of the proposed section 49A(3)(ea) of EO and the Administration explained that not all employees covered by EO were covered by the Bill and the proposed section 49A(3)(ea) sought to limit its application to employees other than those exempted under clauses 6(2), 6(3) and 6(4) of the Bill	
010625 - 011341	Chairman Hon Tommy CHEUNG Admin	<p>Possible administrative costs on employers in order to record hours worked by all employees; whether an employer might incur criminal liability when disputes arose over the total number of hours worked recorded in a wage period; views that requiring employers to keep wage records of their employees for six years was too long; whether the proposed section 49A(3)(ea) of EO was necessary as clause 7 of the Bill already required employers to pay employees not less than SMW</p> <p>Reiteration by the Administration that members' suggestions to exempt employers from recording the total number of hours worked of employees whose monthly wages were not less than a specified amount was being considered. The accurate keeping of records was a management issue involving understanding between employers and employees. The drafting of proposed section 49A(3)(ea) of EO sought to reflect the statutory duty of employers to keep records of total hours worked by employees in each wage period under the SMW regime</p>	
011342 - 012031	Chairman Hon Paul TSE Admin	Whether an employer would incur criminal liability for failure to keep accurate employment records when the failure was due to the fault of the employee; whether an employee would also be held criminally liable	

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		<p>if he was not co-operative in keeping accurate records of the total number of hours worked; response of the Administration that the employer could have a defence if he had a reasonable and honest belief that the records he kept was true; provisions under section 9 of EO for an employer to terminate a contract of employment if the employee, in relation to his employment, willfully disobeyed a reasonable order or misconducted himself etc.</p>	
<p>012032 - 012546</p>	<p>Chairman Hon WONG Ting-kwong Admin</p>	<p>Whether employees should be required to verify the total number of hours worked in a wage period at an appropriate time to avoid labour disputes; response of the Administration that employers might adopt effective human resources management and staff communication measures in collaboration with employees to prevent disputes on wage and employment records such as verification of the records by employees</p>	
<p>012547 - 013328</p>	<p>Hon Miriam LAU Admin</p>	<p>Concern expressed by small and medium enterprises about the possibility of incurring criminal liability for failure to keep records of total number of hours worked by employees in each wage period, especially in recording hours worked by a number of employees who were working overseas; whether the requirement for employers to keep records of the total number of hours worked by employees in each wage period could achieve the intended purpose of preventing employers from paying employees at less than SMW; information on the requirement to keep records of working hours by the employer under the SMW regime in the United Kingdom; response of the</p>	<p>Admin to provide information on the requirement to keep records of working hours by the employers under the SMW regime in the United Kingdom</p>

Time marker	Speaker	Subject(s)	Action Required
		Administration that LD was experienced in enforcing section 49A(3) of EO and handling cases of labour disputes over the amount of wages paid; LD would investigate each case carefully when complaints relating to employees' SMW entitlement were received	
013329 - 013454	Hon LEE Cheuk-yan Chairman Hon Tommy CHEUNG Hon WONG Ting-kwong	The need to focus on discussing drafting of the Bill rather than policy issues	
013455 - 013953	Chairman Hon Emily LAU Admin	Reiteration by the Administration that employers were free to give reasonable work instruction to employees such as verification of the total number of hours worked in a wage period to avoid labour disputes; rights provided to employers under section 9 of EO	
013954 - 014225	Chairman Hon Andrew LEUNG Admin	Explanation of the Administration that the requirement to keep records on hours worked as stipulated in the proposed section 49A(3)(ea) of EO did not cover, among others, live-in domestic workers	
014226 - 014924	Chairman Hon Tommy CHEUNG Admin Hon WONG Kwok-hing Hon IP Wai-ming	Employers might incur criminal liability under the proposed section 49A(3)(ea) of EO; whether the proposed section 49A(3)(ea) was necessary as clause 7 of the Bill already required employers to pay employees not less than SMW; the Administration concurred with the Chairman's view that should labour-management dispute over wage payment arise and no settlement could be reached, the parties could seek court adjudication; examination of drafting of the Bill	
014925 - 015025	Chairman Admin SALA2	Examination of clause 21	

Time marker	Speaker	Subject(s)	Action Required
015026 - 015159	Chairman Admin Hon Tommy CHEUNG	Examination of clause 22	
015200 - 015608	Chairman Admin SALA2	Examination of clause 23 Advice of the Administration that technical amendments would be introduced to clause 23 Submission from the Equal Opportunities Commission in response to issues raised by members on clause 23 (LC Paper Nos. CB(2)1478/09-10(01) and CB(2)1640/09-10(02))	
015609 - 015750	Chairman Admin	Examination of Schedule 1	
015751 - 020144	Chairman Admin Hon LEE Cheuk-yan SALA2	Examination of Schedule 2 Explanation by the Administration that the methods of assessment of persons with disabilities referred to in the proposed section 4(4) in Schedule 2 of the Bill would be published in the Gazette in the form of subsidiary legislation subject to negative vetting by LegCo	
020145 - 020156	Chairman Admin	Examination of Schedule 3	
020157 - 020324	Chairman Admin Hon Emily LAU	Examination of Schedule 4	
020325 - 020519	Chairman Hon Tommy CHEUNG Admin Hon Emily LAU	Date of next meeting	