

Bills Committee on Minimum Wage Bill

Administration's further responses to the Bills Committee

Introduction

In response to concerns and suggestions made by Members of the Bills Committee, the Administration will propose a number of changes to the Minimum Wage Bill (the Bill) in a separate submission to the Bills Committee. For other issues raised by Members at the Bills Committee, our considerations and justifications have been explained to Members in the Legislative Council (LegCo) Brief, in various papers submitted to the Bills Committee, and during discussions at the Bills Committee meetings. The major issues are recapped in the following paragraphs.

Setting the statutory minimum wage rate

2. Our aim is to design a statutory minimum wage (SMW) regime which would provide a wage floor to forestall excessively low wages but without unduly jeopardising our labour market flexibility and economic competitiveness and without causing significant adverse impact on the employment opportunities for the vulnerable employees. As wages are returns for individual employees' labour, SMW being a wage floor, not a living wage, may not be sufficient to cover family expenses of all employees which in any case vary greatly. Eligible families may obtain financial assistance from the Comprehensive Social Security Assistance Scheme which provides, among others, financial support to eligible low-income households.

3. The Minimum Wage Commission (MWC) would adopt an evidence-based approach in coming up with a recommendation on the SMW rate through data research and analysis as well as extensive consultations with stakeholders, having regard to the need to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimising the loss of low-paid jobs, and to sustain Hong Kong's economic growth and competitiveness. Given the diverse interests of different stakeholders as well as the significant economic and employment implications of the SMW rate, safeguarding the

evidence-based approach is of cardinal importance. The regular collection and publication of relevant statistical data could best facilitate the MWC to arrive at a recommended SMW rate and enable the community to appreciate, from a broader perspective, the impact that different levels of SMW may have on various groups of stakeholders. We would consider the recommendation of the MWC in a prudent and objective manner and prescribe the SMW rate in Schedule 3 of the Bill by way of subsidiary legislation subject to the approval of LegCo. Our proposal that LegCo may approve or revoke, but not amend, the proposed SMW rate is intended solely to safeguard the evidence-based approach. The proposed SMW rate cannot take effect if LegCo decides to revoke it.

4. In the same vein, a balanced number of members with labour, business, academia and government backgrounds would help ensure holistic and balanced deliberations by the MWC based on evidence. It is therefore crucial for the MWC to include official members who will contribute their expertise, public administration experience and knowledge in areas relevant to SMW. They will serve to facilitate objective and comprehensive analyses and deliberations, and participate in the MWC in the same way as the non-official members. It is equally essential for the non-official members to be appointed on an ad personam basis according to their individual attributes in matters relating to the labour sector, business sector and relevant academic fields rather than as representatives elected or nominated by the respective organisations. This will better enable the members to deliberate on the rate collectively and in the overall interest of Hong Kong, after considering the perspectives of various sectors. In making future appointments to the MWC, we would, having due regard to gender consideration, continue to reach out and identify women who are suitable and willing to participate in the work of the MWC. In line with established practice, we will also follow the “Six-year Rule” and “Six-board Rule”¹ in making such appointments.

Exemption of live-in domestic workers

5. Having carefully considered all relevant factors and circumstances as well as the views of stakeholders, we have proposed to exempt all live-in domestic workers, local or foreign, from the coverage

¹ “Six-year Rule” means not appointing a non-official member to serve on the same advisory and statutory body (ASB) in any one capacity for more than six years, and “Six-board Rule” means not appointing a person to serve as a non-official member on more than six ASBs at any one time.

of the Bill. The exemption is legally tenable since live-in domestic workers are not in an analogous position with other employees because of their distinctive working pattern and their enjoyment of in-kind benefits not available to non-live-in workers. Such different working pattern (especially working and resting in the employer's household) and enjoyment of in-kind benefits (viz. free accommodation and usually free food, savings in transport between home and workplace, etc.) form the basis of our considerations. This exemption is in conformity with the Basic Law including the human rights provisions. We have also set out in the LegCo Brief and a paper submitted to the Bills Committee (LC Paper No. CB(2)814/09-10(01)) the justifications for not adopting a monthly SMW rate for live-in domestic workers.

6. Although it is based on the principled consideration outlined in paragraph 5 above that we have proposed the exemption of live-in domestic workers, it is pertinent to point out that there are real concerns raised by some stakeholders about the practical implications of bringing live-in domestic workers under the SMW. For families that need to stop employing these workers owing to the increased cost, one of the working spouses (more so the wife) would likely need to leave the workforce and stay home. According to figures provided by the Census and Statistics Department, the female labour participation rate (aged 25 to 45) increased from 67.6% to 77.3% between 1999 and 2009, whereas their median monthly earnings stood at \$10,000 in 2009. Against the backdrop of an ageing population in Hong Kong, we should be mindful of any measure that may reduce the labour participation rate of those within the economically active age brackets.

Special arrangement for persons with disabilities

7. It is important to reiterate that the special arrangement for persons with disabilities (PWDs) under the Bill is in conformity with the Basic Law, including the provisions concerning human rights. It seeks to safeguard the principle of like treatment of PWD and able-bodied employees while at the same time forestalling undue prejudice of the employment opportunities of the PWD employees owing to the introduction of SMW. PWDs whose productivity may be impaired by their disabilities will have the right to choose to have their productivity assessed. The assessment serves to determine the extent, if any, that the disability affects the degree of productivity of a PWD in performing his work so as to decide whether he should be remunerated at no less than the SMW level or at a rate commensurate with his productivity. The

Administration has no plan to provide wage subsidy (which is also not the policy intent of the Bill) to top up the difference between the SMW rate and the wage level of the PWD determined according to his assessed degree of productivity. The exemption from the Disability Discrimination Ordinance (DDO) relating to dismissal as proposed in the Bill is limited to the situation where the reason for the dismissal is solely the outcome of the assessment. If the employee is dismissed on ground of his disability rather than his failure to satisfy inherent requirements of the particular employment, the Bill does not affect his claim under the DDO.

8. As to whether the PWDs who have their productivity assessed should have a review in the form of a second assessment, stakeholders have divergent views on this contentious issue. Even those supporting a review favour a lapse of time between the original assessment and the review rather than a review to be conducted shortly after the assessment. We believe the most appropriate way forward is to review the special arrangement in the light of operational experience within two years of the implementation of the SMW. Such review may include whether there is a need for a second assessment.

No exemption of employers from criminal liability after implementation of SMW

9. Prior to the commencement of the SMW system, time will be provided for the community and the business sector to gear up for implementation. This will obviate the need for a further grace period after the commencement of the Minimum Wage Ordinance to exempt employers from criminal liability for failing to pay SMW. Moreover, non-compliance with SMW is no different in nature from underpayment of wages. Since an employer who underpays wages wilfully and without reasonable excuse is currently liable to prosecution under the Employment Ordinance (EO), a grace period to exempt employers for defaulting SMW is not justifiable.

Coverage under the SMW legislation

10. The Bill is aligned as closely as possible with the provisions of the EO so as to ensure consistency, facilitate enforcement and forestall confusion to employers and employees. Therefore, the Bill is modelled on the EO in defining the meaning and coverage for employees. In line

with the EO which does not bind the Government, the Bill should also not bind the Government.

11. Although the EO does not bind the Government, it is the established policy of the Administration that the employment terms of government employees should, overall speaking, be no less favourable than the provisions under the EO. As in the case of the EO, the Administration's policy is to pay its employees no less favourably than the prevailing minimum wage rate stipulated under the statutory minimum wage legislation (as and when enacted).

Labour and Welfare Bureau
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