



A Proposal on Minimum Wage Legislation (2009)

Introduction:

1. In the 2008-09 Policy Address, the Chief Executive pledged to introduce legislation on an across-the-board minimum wage. He emphasized this decision was made for social justice, to protect the workers against exploitation and to prevent the continued loss of low-paid jobs. To honour the pledge, the Chief Executive said that the government would proceed with the legislative work and would schedule the first bill by July for further discussion.
2. This paper outlines OHK's propositions, analysis and proposal supporting the government in introducing policy action to improve the situation of the working poor.

Our Propositions

3. Oxfam Hong Kong's vision is to help people to help themselves. We have been working since 1998 to ensure a decent wage for all working people, our propositions on employment poverty are:
 - i. Employment is imperative in fighting poverty;
 - ii. Employment alone cannot help reducing poverty if jobs do not ensure a decent living
 - iii. Poverty reduction requires helping people as workers, that is, to ensure that working people have a reasonable level of income that can support them as well as their families' basic livelihood.
 - iv. Minimum wage should not be treated as the sole measure to eliminate employment poverty,
 - v. To create productive employment requires macro-economic planning;

- vi. On the other hand, if disadvantaged groups cannot enjoy a decent livelihood, it is important for the government to develop effective income protection measures.
 - vii. Any policy may affect different groups' interests to various degrees. The question is, are there any effective measures to help people in need, to relieve the stress of the people affected and to help people to adapt.
4. Our proposition is in line with of the obligation of international covenant on people's rights, for instance, the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to the enjoyment of just and favourable conditions of work which ensure remuneration that provides all workers, as a minimum, with a decent living for themselves and their families. We strongly believe that the government is accountable for ensuring that those earning a bare, basic wage can make both ends meet.

Poverty facts

5. **One in every Ten workers is poor** -Nearly 400,000 workers are known as working poor, defined as earning less than \$5,000 per month in 2008 (General Household Survey, Q4, 2008).
6. **In 2008, there are totally 227,800 working poor households** (i.e., poor households with at least one wage-earning member).- The number of working poor households with earnings of less than \$5,000/month increased to 227,800 in 2008, 18.4% above 2001.
7. **A drastic increase of those extra-poor households in these few months** - During the period of November 2008 to January 2009, the number of extra-poor households, earning less than \$4,000 climbed to 190,200; that is 22.7% higher than in the period October to December 08.
8. **Statutory minimum wage is a global trend** - According to our study "The Examination of International Practice of Minimum Wage System", over one hundred countries, both developing and developed have enacted minimum wage legislation. More than twenty out of thirty OECD member states had such legislation.

9. **According to our study in 2007, the negative impact of a minimum wage on employment in the UK and Ireland are minimal** – The United Kingdom and Ireland had positive experiences in the implementation of a minimum wage in 1999 and 2000 respectively, though there were some minor negative affects in some industries, such as residential care. The introduction of minimum wage indeed raised income levels among low-paid workers and helped reduce the wage gap between men and women. Also, both countries’ economies haven’t shown any troubles in terms of unemployment or a negative impact on GDP growth.

10. **The past experience of HKSAR government in enforcing a mandatory wage policy on public service subcontractors was also positive** - According to the special study conducted by Oxfam in 2005, 59% of cleaners in Housing Department earned over \$5,000 per month after the enforcement of a mandatory wage. Most importantly, there was no evidence of lay-offs. The study by HK Women Workers Association in 2006 also found similar result. That means the introduction of mandatory wage brings a general improvement in the working conditions of HK workers without a large-scale lay-offs.

Our Position on a Minimum Wage:

11. The minimum wage should complements other social security measures, like child poverty allowance, and negative tax to help the working families that still have financial difficulties.

12. OHK in principle supports the legislation of a minimum wage in Hong Kong to ensure that all working people can achieve a decent minimum standard of living for themselves and their families through their work.

13. Minimum wage legislation should be introduced as the major policy tool to protect people who are willing to work from becoming poor.

Proposal – OHK Supports Minimum Wage Legislation for All Low-paid Workers

14. The system of minimum wages serves as necessary guarantee for the purpose of offering a minimal acceptable protection for workers and ensuring a standard of living for them and their families. We urge the government to enact a minimum wage law for all low-income workers in Hong Kong as soon as possible, to provide decent work for the working poor. Our proposal mainly focuses on three areas including a) coverage of the minimum wage; b) process of determining the minimum wage rate and c) enforcement and penalty.

15. Coverage of minimum wage

15.1 Eligibility for minimum wage - The minimum wage system should apply to workers who are covered by the Employment Ordinance. However, we agree that students taking up internship for study credit and apprentices¹ should not be covered by the legislation. The Labour Department should take an active role to avoid workers being involuntarily turned into self-employed.

15.2 Disabled workers - The minimum wage system should also apply to disabled workers who will voluntarily apply for an assessment evaluating their productive capacity and received wages corresponding to a percentage of the minimum wage rate. We propose that the wage difference should be subsidized by government in order to encourage them to enter workforce.

This suggestion will encourage disabled people to enter the workforce, rather than living solely on welfare. Moreover, it may possibly lessen the financial burden to the government at the same time. Comparing government's financial responsibility for CSSA and the suggested work subsidy, it is found that the latter option is much more financially viable. A person with a 50% disability can receive approximately \$5,000 per month from the CSSA². Comparing it with the government subsidy to supplement their usual earned monthly income (\$2,000), the required subsidy amount is always lower than that of CSSA (please see table 1).

¹ The definition of "apprentice" is clearly stated in the existing Apprenticeship Ordinance Chapter 4.

² This amount includes standard rate and the special grants (such as housing allowance, transportation allowance, special meal allowance etc.) of Comprehensive Social Security Assistance (CSSA) scheme.

Table 1: Comparing the CSSA and minimum wage with different level for disabled workers

(Monthly wage with different minimum wage level) – (the existing earned monthly income of disabled worker \$2000)	Wage subsidy amount	Compare with CSSA level
If minimum wage is \$25/hour		
\$5,200- \$2,000	\$3,200	-\$1,290
If minimum wage is \$27/hour		
\$5,616-\$2,000	\$3,616	-\$874
If minimum wage is \$30/hour		
\$6,241-\$2,000	\$4,240	-\$250

16. Process of determining the minimum wage rate

16.1 Authority for determining the minimum wage rate - We propose that the Legislative Council should be the institution with ultimate authority to determine the minimum wage rate mandated by the Government.

16.2 Advisory body, its membership and term of reference - An independent Minimum Wage Commission is suggested to be the advisory body.

In order to have a balanced representation from the various organizations and interests involved, with particular account taken to ensure representation by all stakeholders from the civil society, membership of the MWC will then comprise of 16 representatives from the following four categories:

- a) employee, worker unions
- b) employer, trade unions
- c) voluntary and community sectors
- d) academic
- e)

Representative organizations from the above four categories can make nominations. All the candidates are required to declare their interests and efforts to make work pay, which will be posted in the official website or government publications.

The role of the MWC will be:

- a) To analyse, monitor, evaluate and review the minimum wage, its operational mechanism as well as complimentary policies so as to ensure that all working people and can achieve a decent minimum standard of living for themselves and their families through their regular work.
- b) To encourage full participation and input by the MWC and social partners, so as to ensure ownership of the final result.
- c) To ensure transparency in the decision-making process

16.3 **Criteria for determining the minimum wage** - We propose that at least three criteria should be considered as determining the minimum wage. They are:

- a) Minimum living standards of employees and their dependents;
- b) Economic performance (such as the employment situation, business costs, and competitiveness of the economy etc.);
- c) Consumer price index

For criterion (a), it is suggested to take the “average labour force per household” into account. Taking reference from “Basic Need Study of Hong Kong” (HKCSS, 2005), the level of minimum wage per month was calculated with the following formula:

$$\frac{\textit{Cost of Basic standard of living}}{\textit{Average labour force per household}}$$

According to the government figure, the latest figure of average labour force per household is 1.5 (November of 2008 to January of 2009). Therefore, we suggest that the hourly minimum wage level should be calculated as:

$$\textit{Cost of Basic standard of living}/1.5/24 \textit{ days}^3/8 \textit{ hours}$$

16.4 **Procedures for determining the minimum wage** - We propose that the government may determine the minimum wage rate with the advice of Minimum Wage Commission, subject to LegCo Council’s approval.

³ We presume that a worker should normally work for 5.5 days per week.

16.5 **Frequency of adjustment** - Annual basis is preferable as it can keep pace with the changes of socio-economic circumstances.

17 **Enforcement and Penalty**

17.1 **Enforcement agency** - We propose that Labour Department should be the enforcement agency.

17.2 **Penalty for failing to pay the minimum wage rate** - We suggest, taking reference to Employment Ordinance Cap.57, that Employers will be liable to prosecution and, upon conviction, to a fine of HK\$350,000 and to imprisonment for three years.

17.3 **Supervisory system** - We consider that the labour inspectors of Labour Department will check from time to time. We agree to follow the Employment Ordinance Cap.57, that all employers are obliged to keep records such as employees' working hours, wages and payment period etc. for 15 months.

Conclusion

17. The ultimate objective of minimum wage legislation should be to provide at least a basic standard of living for all workers and their families. Fairness should be the very basic criteria in implementing a minimum wage, which can help all low paid workers regardless of their occupations, gender, race or age.

18. We urge the government to enact a minimum wage law for all low-income workers in Hong Kong as soon as possible to provide decent work for the working poor.

19. Other than the measures for a minimum wage, the government should suggest concrete policy proposals on alleviating employment poverty. Much effort is required from the government in studying the feasibility of tax credit or negative income tax, wage subsidy programs, subsidies to firms employing minimum wage workers and an active labour policy for providing stronger protection for workers.

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