



**Employers'
Federation
of Hong Kong**
香港僱主聯合會

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23 September 2009

Hon Tam Yiu Chung, GBS JP
Chairman
Bills Committee on Minimum Wage Bill
Legislative Council
8 Jackson Road
Central, Hong Kong

Dear Mr Tam,

Minimum Wage Bill

The Minimum Wage Bill which attempts to introduce a statutory framework for setting a wage floor to the labour market will inevitably affect the current employment structure and the operation of all businesses in Hong Kong. As the collective voice for employers, the Employers' Federation strongly believe that the legislation must take into account its impact on the sustainable business development of Hong Kong.

Attached is the Federation's view on the Minimum Wage Bill for your perusal and we shall appreciate if our representatives can attend the Bills Committee Meeting scheduled on 7 October 2009 to elaborate our perspective with all the Committee Members directly.

Please feel free to contact me or my colleague Ms Jodi Koon for clarification or further information.

Yours sincerely,



Louis Pong
CEO



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香港僱主聯合會對最低工資條例的意見撮要

香港僱主聯合會堅信創造和保障就業是本港長遠持續發展的主要因素之一。最低工資條例應該以社會大眾利益為考慮依歸。

就此，聯會認為：

- 最低工資水平應設在合理的水平，在為僱員提供基本收入與保持勞工市場靈活性以保障就業間取得平衡。
- 最低工資應交由最低工資委員會就不同考慮因素及與相關團體進行詳細諮詢後作出建議和檢討。立法會在審閱期間只具有批准或否決有關建議的權力。
- 條例中的「工作時數」應訂明為僱傭合約所載或經僱主同意或指示下的工作時數。同時，法例亦應容許在某一薪酬水平下僱主得以豁免遵守保留該僱員的工作時數紀錄的法定要求。

Highlights of the Employers' Federation of Hong Kong's views on Legislation of minimum wage in Hong Kong

The Employers' Federation of Hong Kong strongly believes that creating and preserving employment is the key for the sustainable development of Hong Kong. Legislation should be carefully designed to accommodate the interests of the community as a whole.

As such, the Federation is of the view that

- The mandatory minimum wage should be set at a reasonable level to strike a balance between providing basic income to employees covered and maintaining the flexibility of the labour market and the preservation of jobs.
- The mandatory minimum wage should be recommended and reviewed by the Minimum Wage Commission based on comprehensive consideration of various factors and consultation with major social stakeholders. It should not be subject to discussion or amendment in LegCo.
- The hours worked referred to in the Legislation should be defined as hours of work in accordance with the contract of employment or with the agreement or at the direction of the employer. There should be a salary cap on the need for companies to maintain records of hours worked.



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EFHK's Views on the Minimum Wage Bill

Minimum Wage Legislation is being introduced to provide a wage floor; this will inevitably distort the current employment structure and, to some extent, the operation of all businesses in Hong Kong. The Federation strongly believes that creating and preserving employment is the key to a sustainable labour force. The Employers' Federation of Hong Kong thus believes that the legislation must take into account its impact on the sustainable business development of Hong Kong.

1. *Coverage of the Legislation*

The Federation notes that the Government is suggesting different treatment for various special groups.

The disabled

The Federation considers that the proposed assessment process for people with disabilities (PWDs) could strike an appropriate balance between employment of PWDs and their remuneration needs - *provided* that the mechanism is managed effectively and efficiently. Should employers and employees be forced into completing protracted and cumbersome administrative procedures, it will only deter the employment of PWDs.

Interns

The Federation agrees that student internships are desirable for our youngsters to learn more about business and gain practical experience for their future employment. Wages should not be a deterrent to offering them job experience and training opportunities. However, we question the need to limit the scope of such definition to work "arranged by an education institution". Many very valuable internships are arranged by the employer and the individual student directly.

Live-in domestic helpers

We acknowledge the Government's position in excluding live-in domestic helpers from the legislation to avoid a significant impact on Hong Kong families and the community as a whole. There are though, workers other than domestic helpers (like farm workers) that are engaged on similar conditions to domestic helpers whose employers will need to observe the legislation. We urge therefore that the definition of "live in workers" be more carefully defined.



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2. Definition of hours worked

The definition of hours worked stipulated in the draft bill is very broad; theoretically, all physical presence in the workplace is counted as work hours. Legal interpretation will be difficult as different industries have their own arrangements. For example, it is common in the catering industry that employees stay in their workplace for their afternoon breaks. Many employees also arrive in the office earlier than their work time either to avoid traffic congestion or simply to take care of personal matters. Against this background, we consider it is more reasonable to define hours worked as hours of work requested by employers.

3. Minimum wage level

There is no common practice as to how a statutory minimum wage should be calculated. We believe therefore that an evidence-based approach is needed to ensure that the minimum wage level is aligned with community interests as a whole. While recognising that the objective of a statutory minimum wage is to ensure a minimum income, minimum wage levels must not be too high. This is especially important in the current weak economy since any undesirable move will only further jeopardise employment. Equally, although a statutory minimum wage may help some, it cannot cover all household needs and requirements or reduce poverty as a whole. Individuals or households in need can (and should) obtain assistance under the current social security system - CSSA.

Experience in other countries shows that the statutory minimum wage will over time only be adjusted upwards, not downwards. Thus in Hong Kong, particularly in the current economy, the initial level of minimum wage should be set to minimise the possible adverse effect on employment and the economy in general. To encourage low earners to take jobs instead of relying on CSSA, CSSA should be revamped to provide better incentives to work - e.g. the top-up subsidy should allow workers a higher disposable household income while keeping them in employment.

4. Review mechanism

To enable informed decisions in future, the impact of minimum wages should be carefully assessed. The Annual Earnings & Hours Survey (AEHS) conducted by the Census & Statistics Department may not be sensitive enough to reflect the chain effect of SMW in pushing up wages overall. It is important that the impact of SMW on unemployment be specially studied. A basket of social, economic and employment statistics in addition to the AEHS should be used to provide a thorough analysis of the operation of SMW in Hong Kong. These factors may include inflation, the employment situation, cost of business operations, relative competitiveness of Hong Kong and the like.



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The Minimum Wage Commission comprises representatives from employers, employees and academics to ensure a balanced deliberation on all matters relating to the establishment of a statutory minimum wage in Hong Kong. Any recommendation or consensus drawn from the Commission should be respected.

5. Conclusion

To develop a statutory minimum wage that is acceptable to the majority of the community and with minimal adverse impact on the sustainable development of Hong Kong, the Federation strongly believes that there should be a careful and balanced debate on the operational details of the Legislation. The Administration must also allow time for sufficient data collection and robust analysis to enable informed and sensible decisions.



Comments on Individual Clause of the Bill

Statutory provision	Comment
1. Section 2 (Interpretation)	
(a) Definition of "domestic worker"	How do you define "household"? Would this include a farm in the New Territories? If not then why shouldn't "live-in" workers on such farms be excluded also?
(b) Definition of "employee with a disability"	It is unlikely that a contract of employment will set out "the work required under the contract of employment". It will normally simply set out a generic position.
(c) Definition of "a place of employment"	For clarity, the words ", in accordance with the contract of employment or with the agreement or at the direction of the employer," should be inserted into section 3(1) itself.
(d) Definition of "prescribed minimum hourly wage rate"	This is limited to <u>one</u> rate. The UK has 3 rates for different ages. Why don't we at least leave such option as a possibility?
(e) Definition of "student intern"	This is very narrow. It will result in a sharp reduction in internships for undergraduates. Suggest do not limit this to academic internships.
2. Section 3 (Hours of Work)	
(a) Section 3(1)	<p>The words "must be taken to include" should be replaced by "shall be" (as there should never be additional hours over and above those where the employee is either at work or travelling).</p> <p>The words ", in accordance with the contract of employment or with the agreement or at the direction of the employer," should be inserted immediately after the words "at a place of employment" in section 3(1)(a) in order to avoid the suggestion that an employee can unilaterally extend his or her hours without the approval of the</p>



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Statutory provision	Comment
	<p>employer.</p> <p>This section should include an express reference to time at work which is not approved by the employer being excluded from "hours worked".</p>
(b) Section 3(2)	<p>The words "other than a place of employment that is outside Hong Kong and is not his or her usual place of employment" should be deleted. Why should travel outside Hong Kong be "hours worked"?</p>
3. Section 5 (Wages)	
(a) Section 5(1)	<p>There appears to be some confusion between wages "payable" (sections 5 and 9) and wages "paid" (section 7).</p>
(b) Section 5(2)	<p>This is dangerous. It could be construed so that an employee who is paid monthly but contracted to work only a set number of hours per month (e.g. 160) can argue that a substantial part of his or her monthly salary is paid in respect of time in which they are not required to work.</p>
(c) Section 5(4)	<p>This could have major implications. Sub-section (4) should be clarified. Currently it is confusing.</p>
(d) Section 5(5)	<p>This section is also confusing. Especially in respect of a wage period which is 7 days. To which "period" do the words "in respect of <u>that</u> period" refer?</p>
4. Section 8 (Hourly rate)	
(a) Section 8(2)	<p>What happens between the end of the trial period and the PWD obtaining an assessment? Presumably the PWD gets the 100% hourly wage. If the PWD then becomes an "employee with a disability" then the employee becomes entitled to a reduced</p>



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	<p>amount after the trial period, but what happens to the overpayment of wages since the trial period?</p> <p>It is perfectly possible that a PWD may request an assessment some months/years after a trial period. In such circumstances how does section 8(2) operate?</p>
(b) Section 15(3)	<p>Why restrict the Commission to a single rate? Why not allow multiple rates as in the UK?</p>
(c) Section 20	<p>This gives rise to a new potential offence under the EO, namely failing to record the hours worked of an employee. There will be many occasions where an employee is earning a salary which makes the minimum wage irrelevant. In such circumstances the administrative obligation to keep a record of hours worked should be removed as being an irrelevance.</p> <p>For example, if an employee worked every hour of every day in a month (roughly 750 hours) and the minimum hourly wage rate is \$20, then, for anyone earning over HK\$15,000 per month, the legislation is irrelevant and the obligation to keep records should also be removed.</p>
9. Schedule 2 (Assessment of PWDs)	<p>This is unclear. Who pays for the assessor? Where are they going to come from? What happens if the job specification of an employee changes whilst the employer does not? What happens about an internal group reorganisation necessitating a change in employer (Is a new assessment necessary)? What is the form of the "certificate" under section 5? Why does it need to be signed by the employer?</p> <p>The whole process seems incredibly inefficient.</p>