



## **IDWN's view on the Minimum Wage Bill in Hong Kong**

### **Recognize Domestic Work as Work**

#### **Inclusion of Domestic Workers in Statutory Minimum Wage**

We are representatives of domestic workers' organizations from around the world. We are concerned about the recent Hong Kong Government's proposal of the Statutory Minimum Wage (SMW) Bill to exclude live-in domestic workers from its coverage. We strongly oppose the exclusion. The government should reconsider the proposal of the exclusion, treat all kinds of workers equally and include live-in domestic workers in the SMW.

#### **SMW should ensure equal treatment to all workers**

Domestic workers are workers. Governments should ensure they are enjoying equal treatment as other wage earners. The present Employment Ordinance of Hong Kong is not excluding domestic workers from its coverage. If the SMW is excluding domestic workers, it will be a very bad precedence and would potentially erode the non-discriminative principle of the labour law and violate international standards.

#### **The government's reasons to the exclusion are not justifiable**

The Hong Kong Government suggests 4 reasons to exclude live-in domestic workers in the SMW<sup>1</sup>: 1) the distinctive working pattern of live-in domestic workers; 2) their enjoyment of in-kind benefits; 3) the possible socio-economic ramifications; and 4) the fundamental erosion of the FDH policy. These reasons are only excuses *just* to exclude live-in domestic workers from SMW. In the "reasons" that the government mentioned and described, there are underlying discriminations and assumption of domestic workers to endure exploitation.

#### **Excuse 1: "Round-the-clock presence" and "provision of service-on-demand"**

The government suggests that the "distinctive working pattern, i.e. round-the-clock presence and provision of service-on-demand expected...will give rise to insurmountable practical difficulties in bringing them under the SMW."

<sup>1</sup> Legislative Council Brief Minimum Wage Bill, June 2009, Labour and Welfare Bureau, File Ref.: LD SMW 1-55/1/4(C) [http://www.legco.gov.hk/yr08-09/english/bills/brief/b24\\_brf.pdf](http://www.legco.gov.hk/yr08-09/english/bills/brief/b24_brf.pdf)





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This assumption of “round-the-clock presence” and “provision of service-on-demand” is unacceptable as this assumption is actually exploitation to domestic workers.

Domestic workers are human beings just like you and everyone else. We need rests and free time. It is this assumption of “round-the-clock presence” and “provision of service-on-demand” that brings so much suffering to domestic workers. Specific time period should be allocated as working hours while the rest of the time period is just rest time. If domestic workers are required to be on standby, this should be regarded as working time. To ensure decent work for domestic workers, the government must legislate working hours limit for workers, as well as the standby hours limit.

As long as the government recognize the need to limit working hours, it is surely possible for the employer to make a record of working hours for domestic workers.

Therefore, the “distinctive working pattern” as suggested by the government is not justified to exclude live-in domestic workers in the SMW. Instead, this should be something we must pay attention to and provide special protective measure. The government should follow the International Labour Recommendation No. 116 (1962) and Convention No. 47 (1935) on working hours to ensure workers to have balance of work and life.

### **Excuse 2: “Enjoyment of in-kind benefits”**

SMW is basic labour protection to ensure that workers are receiving basic income to ensure decent living. It is for *all* workers no matter workers are already earning comparatively higher wages or better benefits. Most important of all is that the SMW will provide a wage fixing mechanism which is conducted by consulting with the representative organizations of workers and employers. The wage fixing mechanism includes a tripartite wage board to ensure full consultation.

The present Minimum Allowable Wage (MAW) measure under the standard contract of migrant domestic workers in Hong Kong is just an administrative policy. Domestic workers and stakeholders concerned are never able to participate in the wage fixing process. Bringing live-in domestic workers under the coverage of SMW is to bring workers and stakeholders concerned to the wage fixing process. Therefore, MAW



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cannot replace SMW for domestic workers.

### **Excuse 3: “the possible socio-economic ramifications”**

The government assumes that once live-in domestic workers are included in the SMW, there could be increased cost and Hong Kong families will need to stop hiring live-in domestic workers. This is again not reasonable. As mentioned before, the wage fixing will be based on full consultation with society. Inclusion of live-in domestic workers does not necessarily mean the families will not be able to afford the hiring of domestic workers.

The government further suggests that if live-in domestic workers are covered in the SMW, some employers may require their workers to leave the household to minimize the “working time” which is to be paid by wages. The government says “we are wary of the possible social problems that this may cause”. Are domestic workers assumed only to stay in employers’ households otherwise they may cause “social problems”? This assumption made by the government is, again, discrimination to domestic workers.

The government should recognize the fact that when live-in domestic workers cannot enjoy rest time and are made to stay in employers’ households all the time, there will be more exploitation and abuses suffered by the workers. These abuses are social problems and should be solved. The government has the responsibility to eliminate the exploitation and abuses by ensuring basic labour and human rights for domestic workers.

Governments should recognize basic human rights of domestic workers – “All human beings are born free and equal in dignity and rights” as stated in United Nations Universal Declaration of Human Rights. When live-in domestic workers, local or migrant workers, can enjoy rest and free time, and protection of SMW as other wage-earners do, the society will be more harmonious and will have less social problems.

### **Excuse 4: “the fundamental erosion of the FDH policy”??**

All policies and laws are to enhance basic rights of the people. The government



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should make possible adjustment of existing policies to adapt to any new policies and legislations. When you have now the SMW, the existing FDH and immigration policy must make changes accordingly in order to accomplish the law's requirement.

Therefore, inclusion of SMW for live-in domestic workers may lead to changes in the FDH policy which is a good development to enhance labour protection and social harmony. All in all, the present FDH policy is very old. The FDH policy has been proved that it is not enough to protect migrant domestic workers – there has been so many cases of abuses and exploitation. Some immigration policies, e.g. the New Condition of Stay, which limit migrant domestic workers to leave Hong Kong within 2 weeks upon termination of contract, even aggravate the exploitation suffered by domestic workers. Such discriminative immigration policy should be removed.

A law should uphold the principle of non-discrimination and the provision of protection especially to the most exploited. If there are any possible administrative and implementation difficulties, the government should always find ways to overcome the difficulties.

### **Decent Work for Domestic Workers, an ILO agenda**

The Governing Body of International Labour Organization (ILO) has decided to put an agenda on decent work for domestic workers in the coming International Labour Conference in June 2010. By 2011, the ILO will adopt an international standard on domestic workers.

The world is now making effort to achieve decent work for domestic workers. Hong Kong has a large proportion of domestic workers in its workforce. We urge the Hong Kong government to support the ILO convention for domestic workers and make policy and legislation to ensure that domestic workers can enjoy decent work and equal treatment with other workers.

International Domestic Workers Network

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