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Minimum wage law will just ensure social injustice

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Tomorrow marks the end of the public consultation period on the proposed minimum wage law. While the issue has been the topic of lively debate, there is one area that has received little attention: the proposed legislation itself. Yet, the bill currently being considered by the Legislative Council is the most veritable source for understanding what effect a mandatory minimum wage would have for Hong Kong. Above all, the proposed legislation's objective to exclude domestic helpers from its ambit betrays the inherent failing which afflicts all minimum wage laws - they cause unemployment.

The minimum wage narrative began in earnest with the adoption of a voluntary wage protection scheme in 2006. However, in his 2008 policy address, Chief Executive Donald Tsang Yam-kuen declared that the voluntary scheme had failed, insisting that a statutory minimum wage was necessary to ensure "social justice". And who could disagree with that? Even so, the statement would be more convincing if, in the meantime, Tsang had checked whether the proposed law was actually just.

To understand the bill, it is instructive to read the accompanying 13-page legislative brief presented to Legco before its first reading on July 8. Although it purports to provide the rationales for adopting a minimum wage law, only one sentence is allocated to justify the need for legislation. This mirrors Tsang's unsubstantiated claim that the voluntary wage protection scheme has failed.

The other striking aspect about the brief is that more than a third of it is devoted to justifying why domestic helpers should not be covered. This exclusion seems to contradict Tsang's declaration that a minimum wage should apply to "employees in all trades and industries". To be sure, the most recent announcement from Legco states that the law "seeks to provide for a minimum wage at an hourly rate for certain employees". It seems as if employees are only equal in the chief executive's rhetoric.

The first reason advanced by the government for treating domestic helpers differently is that they have "distinctive working patterns". While it is stipulated that "round-the-clock attendance [is] expected of live-in domestic workers", the government's conclusion is that it is "impossible to ascertain the actual hours worked".

The only problem with this reasoning is that Article 3 of the proposed legislation specifies that working hours are those hours during which "the employee is in attendance", irrespective of whether they actually work or not. Thus, rather than justifying exclusion, the law seems to support extending a minimum wage for domestic helpers.

The other argument is that domestic helpers "dwell free of charge". The accompanying brief states domestic helpers also enjoy "free food", "free medical treatment" and "free passage". In the real world, the non-cash benefits enjoyed by domestic helpers are quantifiable and form part of their overall compensation package, like employment benefits. Thus, the proposed law again fails to justify discriminatory treatment.

But if excluding domestic helpers is legally not justifiable, why has the government made such an effort to exclude them? Fortuitously, it provides us with the answer in its own brief, under the heading of "Possible significant and far-reaching socio-economic ramifications". Here it claims that a pay rise for domestic helpers would cause "distress" for many Hong Kong families.

Logically, what applies to domestic helpers applies to security guards and cleaners, too. The truth is that when the government makes hiring more expensive, fewer people are hired. The real reason for differentiating between domestic helpers and other low-wage workers is that the latter are seen as more dispensable.

What the bill does is to discriminate against one group of people while rendering swathes of other people unemployable. Is this what Tsang means by "social justice"?

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