

Federation of Asian Domestic Workers' Unions in Hong Kong – Organizing Committee

Position paper handed to the Bill Committee of Minimum Wage on 7 Oct 2009

Decent Work for Domestic Workers Statutory Minimum Wage for Domestic Workers

We are against government's proposal to exclude live-in domestic workers in the Minimum Wage Bill. This exclusion is discriminatory and is unacceptable.

Exclusion from SMW = Exclusion of workers as one of the party on the fixing of minimum wage

Minimum wage fixing should be made by consulting representatives of workers and other stakeholders concerned. As the Bill suggests, there will be a Minimum Wage Commission with members from stakeholders concerned to discuss about the wage level with data research, analysis and extensive consultations. Yet, if live-in domestic workers are excluded in the Bill, it means domestic workers and the stakeholders concerned will *not* have any means to be involved in the wage fixing. The government solely makes the decision in "black box", without known and accountable to anyone - this is not a civilized city should behave. This infringes international standards¹.

We **DEMAND** that there should be *democracy* and *transparency* in the minimum wage fixing as well as in all other policy-making process regarding domestic workers.

The present FDH policy, including the fixing of the minimum allowable wage, is undemocratic and untransparent. Because the decision is never open, the policy is unable to respond to the many abuses and exploitations of domestic workers. The recent move of the government to increase the food allowance from \$300 to \$740 per month is an example. Nobody other than somebody at the government knows how it decides the level. What is the calculation behind? How the government thinks such an indecent level of \$740 per month is possible for survival?

A good government needs to be accountable to the public in making policies. The inclusion of live-in domestic workers in SMW is to make the government accountable to the public in minimum wage fixing.

Exclusion from SMW = Exclusion of recognition of basic rights of domestic workers

Domestic workers are workers. The present Employment Ordinance and most labour related legislations at present do not exclude domestic workers. Yet, when the Bill intends to safeguard "the interests of the vulnerable" and enhance "social harmony" by providing a wage floor, live-in domestic workers are kicked out. While the live-in domestic workers are one of the most vulnerable, we are kicked out from the protection for the vulnerable.

¹ For instance, the Minimum Wage Fixing Convention, 1970 (No. 131), ILO

Labour laws, Employment Ordinance, SMW etc, are to provide the basic rights of workers. The Bill uses practical reasons as excuses to exclude live-in domestic workers. This infringes the basic principle of recognition of domestic workers as workers and protection their rights. Laws are made according to basic principles to protect people and maintain social harmony. Yet, without upholding the basic principles, the government uses 4 main excuses which are unjustifiable.

The 4 excuses to exclude live-in domestic workers in SMW

Here are the 4 excuses to exclude live-in domestic workers in the Bill stated in its “Legislative Council Brief on Minimum Wage Bill” and our response:

1) “Distinctive working pattern”

The government suggests that domestic workers have “round-the-clock presence” and thus impossible to ascertain the actual hours to calculate the SMW for live-in domestic workers.

Domestic workers are human beings. How can we assume that they should be present “round-the-clock” without working hour limits and proper rests?

The government should realize that this so-called “distinctive working pattern” actually means that the working hours including the standby can be very long and exploitative. That is, with such “distinctive working pattern”, live-in domestic workers should be protected with distinctive protection measures but *not* exclusion from protection.

We **DEMAND** that live-in domestic workers deserve decent lives and working hours limit. Records of working time should be made and the record is never difficult once you recognize domestic workers’ rights for working hours limit.

2) “Enjoyment of in-kind benefits”

The government says domestic workers have been enjoying “in-kind benefits” such as free food and accommodation. These are not enjoyed by non-live-in workers, so live-in domestic workers are enjoying “higher disposable income”, the government says.

When we talk about SMW for workers, it is all about basic rights. We will not say some workers are already enjoying high salary and good benefits so that they cannot be account for minimum wage.

We **DEMAND** that SMW should be regarded as **basic rights** and should be for **all** workers.

3) “Possible significant and far-reaching socio-economic ramifications”

The government says that “bringing live in domestic workers ... under the SMW could cause financial hardship to many families.”.

Yet, the government should take the obligation to take care of the family needs of the people and *at the same time* ensure domestic workers basic human rights like SMW and working hour limits. The government should provide adequate service and welfare for the people’s family needs when domestic workers are taking rests.

The government further says that if live-in domestic workers are covered in the SMW, “some employers may require their workers to leave the household” and are “wary of the possible social problems that this may cause”.

To response to this, first when domestic workers are really in rest period, he or she should have freedom to choose to stay inside or outside of the household. Second, it is discriminatory to assume that if domestic workers are staying outside of the households may cause social problems.

The argument raised by the government is based more on intimidation to the public than reasonable justifications in order to exclude live-in domestic workers in the SMW.

We **DEMAND** that it is the government’s responsibility to ensure basic needs and rights of both employers and workers to attain social harmony. To ensure live-in domestic workers’ rights for SMW can only enhance social harmony but NOT negative ramifications.

4) “Fundamental erosion of the FDH policy”

The government says the suggestions to prescribe “standard working hours” and remove “live-in requirement” will “amount to a significant departure from the existing FDH policy which has been put in place for good policy reasons and necessary immigration control”.

Yet, domestic workers are human beings. The government cannot make migrant domestic workers to be confined to stay live-in for its “good policy reasons” and “immigration control”.

The government should be aware that the live-in requirement has created lots of abuses and exploitations. If the government really has policy reasons and the needs of immigration control, it should make necessary and innovative policies, administrative and implementation measures instead of just making the domestic workers to be confined to stay live-in and work “round-the-clock”.

Inclusion of live-in domestic workers in the SMW may require necessary changes of different policies. All in all, a good policy is one that can regard all people are human beings (not slaves) and ensure them decent lives.

We **DEMAND** that fundamental rights of domestic workers should be ensured. Necessary policy changes in the 20-year-old FDH policy and related policies are needed to fulfill this. Otherwise, to continue policies that creates more abuses and exploitations are fundamental erosion of the migrant domestic workers’ fundamental rights.

We **DEMAND** that the government should make policies according to international standards on migrant workers. When the United Nations human rights bodies (CEDAW, CERD, ICESCR) have already cited Hong Kong for its discriminatory policies against migrant domestic workers, the FDH policy must be reviewed and changed.

Decent Work for Domestic Workers

Today, 7 Oct 2009, is the World Decent Work Day. We would like to call for your concern on decent work for domestic workers, that is–

- Basic human and labour rights should be uphold for domestic workers
- Elimination of violence, abuses and exploitations on domestic workers
- Fair and non-discriminatory policies on domestic workers and society in large should build a non-discriminatory society, with anti-discrimination policies, laws and practices in place
- The discriminatory “New Condition of Stay” should be abolished.
- Domestic workers should have the collective bargaining rights and should be involved in the decision making process in all domestic workers related policies.
- Domestic workers need decent wage, working hour limits, rests, basic labour protection such as retirement, maternity protection etc. Domestic workers, like all wage-earners, should be ensured equal treatment and fair terms of employment.
- Stop underpayment, excessive agency fees, overburdened workload...
- Blacklist employment agencies and employers who violate labour contracts and laws.
- Increase the food allowance – workers should be involved in deciding the food allowance level
- Effective measures to monitor employment agencies and employers. Domestic workers should not be the ones to be exploited behind closed doors.
- Bilateral dialogue with sending countries should be increased to provide protection of migrant workers during the process of international migration and cooperation to provide protective policies for migrant workers.
- Apply international standards and conventions to protect domestic workers’ rights.

We **DEMAND** that if the Hong Kong government is recognizing domestic workers are workers, and decent work for them, it should **INCLUDE** live-in domestic workers in the SMW. SMW is for all workers. SMW is for domestic workers. SMW is the basic human rights for ALL.

Federation of Asian Domestic Workers' Unions in Hong Kong (FADWU) Organising Committee:

Filipino Domestic Workers' Union (FDWU), Hong Kong Domestic Workers General Union, Indonesian Migrant Workers Union (IMWU), Thai Migrant Workers Union (TMWU), Union of Nepalese Domestic Workers (UNDW).

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