

25th September 2009

Clerk to Bills Committee
Legislative Council Secretariat
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Dear Sirs,

I would like to express my thanks for the opportunity to put forward the views of AHK Air Hong Kong Limited (“AHK”) on the proposed Minimum Wage Bill.

As a regional express cargo airline registered and based in Hong Kong, AHK is committed to playing a positive role in supporting any initiatives that will benefit the local community. It has always been our policy to operate as an equal-opportunity employer and to ensure our employees are always treated in a fair and equitable way.

AHK will, of course, have no objection to the introduction of the Minimum Wage Bill (the “Bill”) which as its primary objective will provide wage protection for workers in low-paid position. At AHK, employees are paid well above the market rate and their wellbeing protected by a range of fringe benefits.

We wish to offer our viewpoints on two specific aspects of the Bill’s provisions, namely those relating to hours worked and the requirement for keeping wage and employment records which AHK believe need amendment:-

Hours Worked

Provision S.3 of the Bill defines hours worked in a broad context and leaves some uncertainties regarding interpretation and application. From AHK’s point of view there are a number of practical concerns in defining the number of hours worked by our employees, especially given the unique operating complexity of a regional express cargo airline.

For example, our flight crew are employed to perform their duties during the course of a flight and it is common for them to have a layover in an overseas destination where they are not required to work. Hotel accommodation and meals are provided by the company during these layovers. In this case, the time involved in productive activity – that is, the flight period and transiting and reporting times - are counted as working hours while the layover period is viewed as personal time when the employee is not on duty.

What’s more, AHK has a business network that stretches across Asia and many of our other employees, not just flight crew, need to travel extensively as part of their normal duties. AHK covers hotel accommodation and meals for all duty travel, but any time outside business hours is not work-related and is regarded as the employee’s personal time.

Under the Bill's S.3 provision, however, any time spent outside Hong Kong by an employee will be counted as "hours worked", regardless of whether or not the employee is on duty. From our perspective this is totally illogical and unacceptable. Clause 15(b) of the Legislative Council Brief of the Bill states that one of the considerations for live-in domestic workers being excluded from coverage under the Statutory Minimum Wage (SMW) is that such workers are given free accommodation and food. Flight crew also are provided with accommodation and food by their employers despite not being required to work while on an overseas layover. It seems illogical and unreasonable, therefore, that overseas layover time, under provision S.3 of the Bill, will be counted towards "hours worked".

Requirement to keep wage and employment records

Provision S.20 of the Bill expands on section S.49A(3) of the Employment Ordinance regarding requirements to keep wage and employment records and will require an employer to keep a tally of the total number of hours worked by all employees down to the last minute. Clause 29 of the Legislative Council Brief of the Bill says that "the main objective of the Bill is to provide for a minimum wage so as to forestall the payment of excessively low wages to employees". In other words, the SMW is aimed at preventing the wages of employees falling below the SMW rate.

Employees in AHK are paid well above the market rate and are therefore not affected by the SMW provisions. In addition, some of our employees with a higher income are working on a project or task basis, or have the capability to work from home or other remote locations without being physically present in the workplace. Given the diversity of the business operation in AHK, and the different modes of working for various employee groups within the organisation, it is technically impossible for us to count and record the actual hours worked by all our employees.

Our view is that having a mandatory requirement to record every single hour of work will not only create unnecessary administrative burden on employers but also impose a high compliance cost on various business sectors. Furthermore, there is a concern that employers will be exposed to a higher legal risk due to such uncertainties.

Conclusion

AHK fully appreciates the rationale behind the Bill and we also understand that strengthening Hong Kong's long-term competitive edge relies on improving the rule of law and management capabilities. We therefore urge the Bill Committee to consider the followings recommendations in taking the Bill forward to reduce the commercial and technical impact and minimise companies' administrative obligations in complying with the law:

- It is recommended that the above concerns should be considered in redrafting S.3 to iron out any uncertainties in the interpretation and application of the law.
- In light of the unique operation of an international airline and the stringent flying hours as mandated under aviation laws, we suggest that flight crew members should be exempted from the application of the legislation.

- Apply a threshold for the minimum wage under the provisions of the Bill. In other words, employees who are earning more than a certain income should be excluded from the requirements of the legislation to record in precise detail the number of hours worked.

One of Hong Kong's primary strengths is the "user-friendliness" of legislation covering the commercial sectors. We believe this is a key factor in helping to build and sustain the long-term prosperity of Hong Kong.

With this in mind, we look forward to the Bill Committed giving serious consideration to the above recommendations from AHK. We would be happy to discuss the issues in more detail if required so please do not hesitate to contact our General Manager Operations and Administration – Mr Ron Davies at 2761 8557 or via email to ron.davies@airhongkong.com.hk.

Yours faithfully,
AHK Air Hong Kong Limited



Richard A.K. Cater
Chief Operating Officer