



香港人力資源管理學會

Hong Kong Institute of Human Resource Management

operated by Hong Kong Institute of Human Resource Management Limited

Hon TAM Yiu-chung, GBS, JP  
 Chairman, Bills Committee on Minimum Wage Bill  
 The Legislative Council of the HKSAR  
 3/F Citibank Tower  
 3 Garden Road, Central  
 Hong Kong  
 Attn: Clerk to Bills Committee, Legislative Council Secretariat

September 25, 2009

[By POST, FAX &amp; EMAIL]

Dear Mr Tam,

**HKIHRM Submission on the Public Consultation on Minimum Wage Bill**

1. This submission is made by the Hong Kong Institute of Human Resource Management (HKIHRM) in response to the invitation for submission by the Bills Committee on Minimum Wage Bill of the Legislation Council of HKSAR regarding the Minimum Wage Bill (the Bill). Established in 1977, the Institute is the most important professional body for human resource management in Hong Kong. Currently, we have over 4,500 members, including some 500 corporate members. Majority of our members are HR professionals at managerial level or above.

**Principles**

2. The Institute agrees on the main objective of the Minimum Wage Bill (the Bill) is “to provide for a minimum wage so as to forestall the payment of excessively low wages to employees” if it is also well designed to minimize the loss of low-paid jobs and to ensure Hong Kong’s economic growth and competitiveness can be sustained.

3. While the Institute is not in a position to recommend at what level the minimum wage should be set at this stage, we believe that the key successful factors to make the legislation work on its implementation for various major stakeholders, including employers, employees and related government agencies, are **(a) focusing protection of employees who are exposed or likely to be exposed to exploitation, (b) ensuring reasonable compliance costs and additional administrative work, and (c) minimizing confusion as market practices vary.** The following are our views on specific clauses of the Bill that based on what we have collected regarding the current HR practices from our members:

**Clause 3 - Hours worked (1)**

4. The Institute strongly believe that the way we define work is vital to the successful implementation of the legislation. With reference also to overseas experience, the following are usually work-related activities requiring clarification or guidelines for the reference of the public, including both employers and employees.

**(A) On-call / stand by**

5. We observe that many employees in Hong Kong carry all kinds of communications gadgets enabling them to connect or be connected for work purposes almost 24 hours a day. They may be required to work at any time and at any place when a call is received from their employers or customers<sup>1</sup>. We suggest guidelines be provided with reference to any precedent cases.



**(B) "Waiting" time between duties**

6. Employees may be required to spend time waiting, or in attendance, during the course of work due to factors beyond their control and thus be absent for a period of time from the place of employment. Therefore we recommend the government to provide guidance to explain when "waiting" should be counted as work time in order to educate both employers and employees to comply with the law.

**(C) "Sleeping" time between duties**

7. A typical example is a tour guide who is required to take care of a group outside Hong Kong for a period of time. He/she is required to take care of his/her customers day and night, 24 hours a day. We believe that clear guidance should be provided on how to count hours worked in case the tour guide is requested to offer help during the night in order to maximize alignment of understanding across the community

**(D) Attending functions, charitable activities or training/development programs arranged by companies**

8. It is common practice for companies to organize staff functions, ranging from sports days to annual dinners, in which staff members are requested to participate. In a way, such activities arise from the nature of the employment and are usually held outside regular office hours. Similar activities could also include charitable activities and training/development programs<sup>2</sup> arranged by the employer for employees during weekends. As regards the latter, some could be sponsored but not arranged by the employer

9. We recommend the government to provide guidance as to when participation in these activities is considered work and when it is not. Guidelines providing appropriate examples would help align understanding and practices across the community, thus help to minimize confusion.

**Clause 3 - Hours worked (2)**

10. We observe that due to frequent travel by employees between Hong Kong and the Mainland nowadays, it is useful to provide guidance and cases for reference in order to establish an accepted practice<sup>3</sup>. For instance, the time spent on the homeward journey to Hong Kong from Shenzhen office after a one-day business trip to the city is considered working hours, although the journey could take less time than the journey home from Hong Kong office on a normal day.

**Clause 5 - Wages (5)**

11. The Institute suggests an extension of the "seven days" timeline to "ten days" to provide a buffer for the calculation of commission, especially when the wage period ends with a long week-end and public holidays

**Clause 6 - Application of Ordinance (4)**

12. We believe it is important to maximize opportunities for young people to learn from the workplace prior to entering the working world as a full-time employee. As such, we would like to see the exemption extended to cover all kinds of placements of full-time students in the workplace, primarily for learning purposes.



**Clause 20 - Requirement to keep wage and employment records (1)**

13. As the legislation is provided with the sole intent of protecting workers against exploitation, the Institute strongly recommends the government to draw a line to exclude employees who will definitely not be considered as “being exploited” in terms of pay by any standards from related protection. The government should also consider not applying the legislation, including the need to comply with requirements on record-keeping, with employees at senior level, earning a monthly or annual salary of a particular amount. This will help maintain compliance costs at a reasonable level<sup>4</sup>.

14. The Institute observes that it is irrelevant to maintain working-hours records for piece workers as their pay is measured solely by productivity rather than hours worked. We recommend suggesting a formula acceptable to both employers and employees on turning piece rates into hourly rates.

15. We hope you will find our input to be of use, and we welcome professional sharing on this important subject of minimum wage legislation. For any further enquiry, please feel free to contact me, Ms Monisa Wan, Chairperson of Minimum Wage Taskforce or Ms Carrie Chau, General Manager of the HKIHRM, at 2837 3888 / 2881 5113.

Yours sincerely,

Wong Kam-pui

President

Hong Kong Institute of Human Resource Management

cc. Monisa Wan, Chairperson, Minimum Wage Taskforce, HKIHRM

**Reference notes:**

Hong Kong Institute of Human Resource Management conducted an online poll among its members between late May and early June 2009 to obtain a better understanding of current practices in recording and recognizing work hours among organizations, and of the possible impact of the minimum wage legislation in Hong Kong. A total of 172 valid responses were received, covering companies in 20 major business sectors. Reference data referred to the comments listed above are as follows:

1. Less than 25 per cent of respondent companies in the poll said that they included employee on-call duties as work hours.
2. Forty-five per cent of companies surveyed reported that they did not include time spent by employees on compulsory outside-office-hours training as working hours.
3. Some sixty-five per cent of respondent companies said that they did not compensate employees for business-travel time outside normal working hours.
4. Over 30 per cent of companies surveyed said that they did not keep any records of attendance. In addition, 52 per cent of respondent companies did keep record by means of an access control attendance system, requiring employees to clock on and off. However, extra effort would be required to keep track of the work hours of employees who usually work outside the office or are frequently on the road.