



THE
LAW SOCIETY
 OF HONG KONG
 香 港 律 師 會

The Law Society of Hong Kong Submissions on Minimum Wage Bill

Section No.	Comment
1. Section 2 (Interpretation)	
(a) Definition of "employee with a disability"	<p>It is unlikely that a contract of employment will set out <i>"the work required under the contract of employment"</i>. Normally, it will simply set out a generic position.</p> <p>Whilst this may be a point to be considered as part of the assessment in Schedule 2, we suggest the words <i>"in performing the work required under the contract of employment"</i> be deleted from this definition.</p>
(b) Definition of "hours of work"	Rather than <i>"- see section 3"</i> this should be <i>"has the meaning given by section 3"</i> .
(c) Definition of "a place of employment"	The words <i>", in accordance with the contract of employment or with the agreement or at the direction of the employer,"</i> should be deleted and inserted into section 3(1).
(d) Definition of "student intern"	This is very narrow. It will result in a sharp reduction in internships for undergraduates. Suggest do not limit this to academic internships.
(e) Definition of "wage period"	<i>"- See section 4"</i> should be deleted and replaced by <i>"has the meaning given by section 4"</i> .
2. Section 3 (Hours of Work)	
(a) Section 3(1)	<p>This section is all encompassing. As such the words <i>"must be taken to include"</i> should be replaced by <i>"shall be"</i>.</p> <p>In addition, the words <i>", in accordance with the contract of employment or with the agreement or at the direction of the employer,"</i> should be inserted immediately after the words <i>"at a place of employment"</i> in section 3(1)(a).</p>

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(b) Section 3(2)	<p>The words "<i>must be taken not to</i>" should be replaced with "<i>do not</i>".</p> <p>The words "<i>other than a place of employment that is outside Hong Kong and is not his or her usual place of employment</i>" should be deleted as these words can be interpreted to imply that travel of this type should be included.</p>
3. Section 4 (Wage period)	It would be simpler to adopt the current meaning of " <i>wage period</i> " in section 22 Employment Ordinance. ("EO")
4. Section 5 (Wages)	
(a) Section 5(1)	<p>The term "<i>payable and in respect of that period</i>" appears to contradict section 7(1) which refers to "<i>paid wages in respect of any wage period</i>".</p> <p>Is it amounts <u>payable</u> or <u>paid</u> which are relevant?</p>
(b) Section 5(2)	This section should only apply to hourly paid employees. The concern is that an employee paid monthly but contracted to work only a set number of hours per month could argue that a substantial part of his or her monthly salary is paid in respect of time in which they are not required to work.
(c) Section 5(4)	<p>Presumably such arrears of wages should be counted as part of the wages payable in the wage period to which they relate?</p> <p>If this is the case then sub-section (4) should be clarified to make this point.</p>
(d) Section 5(5)	This is confused. Especially in respect of a wage period which is 7 days. To which " <i>period</i> " do the words " <i>in respect of that period</i> " refer?
5. Section 6 (Application)	
(a) Section 6(3)	The words "in, or in connection with, a household and" should be deleted. They are already included in the definition of "domestic worker".
6. Section 7 (Payment of minimum wages)	
(a) Section 7(1)	An employee "is entitled to be <u>paid</u> wages in respect of any wage period". However, section 5 identifies wages

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	<p>which are "<u>payable</u>" in respect of a wage period. In addition, section 9 also refers to "<u>wages payable</u>".</p> <p>There is difference between wages being "payable" and wages which are "paid". This leads to confusion in the legislation.</p>
7. Section 8 (Hourly rate)	
(a) Section 8(2)	<p>What happens between the end of the trial period and the PWD obtaining an assessment? Presumably the PWD gets the full minimum hourly wage. If the PWD then becomes an "<i>employee with a disability</i>" then the employee becomes entitled to a reduced amount after the trial period, but what happens to the overpayment of wages since the trial period?</p> <p>It is perfectly possible that a PWD may request an assessment some months/years after a trial period. In such circumstances how does section 8(2) operate?</p>
(b) Section 8(3)	<p>We do not see what this section is adding. It should be deleted.</p>
8. Section 20	<p>This gives rise to a new potential offence under the EO, namely failing to record the hours worked of an employee. There will be many occasions where an employee is earning a salary which makes the minimum wage irrelevant. In such circumstances the administrative obligation to keep a record of hours worked should be removed as being an irrelevance.</p> <p>The obligation to keep records should be restricted to employees who are hourly paid or who have monthly/weekly wages below a specified threshold.</p>
9. Schedule 2 (Assessment of PWDs)	<p>This appears to be a very cumbersome and inefficient process. Why does it need to apply separately for every job?</p>