



Our reference: G2010-023

12 February 2010

Bills Committee on Minimum Wage Bill
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Chairman and Members of the Bills Committee,

**Comment on "place of employment" and "hours worked" in the
Minimum Wage Bill**

Referring to the Administration's responses to issues raised at the Bills Committee Meeting held on 28 January 2010 (under reference of LC Paper No. CB(2)922/09-10(01)), the Federation would like to express the following views on the "place of employment" and "hours worked" as elaborated in the Paper

(a) General

The basic aim of the Administration is understood and mostly agreed. It is the DRAFTING of the Bill which is confusing and defective.

Simply put, hours at work should be time spent at the place of work either in accordance with the contract or at the direction of the employer. This is not clearly reflected in the draft legislation.

Take Example 2. Clearly the "place of work" of the employees is the restaurant. The only reason they are at the restaurant is due to their employment and their employment contract itself may well state that the restaurant is where they work. So, what are the "hours worked" under section 3(1)(a)? Section 3(1)(a) provides that the hours to be included are "any time during which the employee is in attendance at a place of employment irrespective of whether he or she is provided with work or training at that time". If the employees remain at the restaurant during their time "off the field" there is a compelling argument that this is "hours worked".



This confusion can be easily solved by moving the words "in accordance with the contract of employment or with the agreement or at the direction of the employer" from the definition of "place of employment" to section 3(1)(a). So, section 3(1)(a) would read.

"(a) any time during which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance at a place of employment, irrespective of whether he or she is provided with work or training at that time; and"

(b) Specific comments

Example 3 - what about 3(1)(b)? Is the cabin crew travelling when on a layover? If not then where does it say that this is not hours worked?

Example 4 - the employer may well agree that the employee can stay at the factory as this facilitates his performing his job. When does the factory stop being his "place of employment" and become his "hotel"? What if the employee deals with some emails on his Blackberry before going to sleep?

Example 5 - see example 3 in relation to 3(1)(b). What about if the guide needs to respond to a phone call at night?

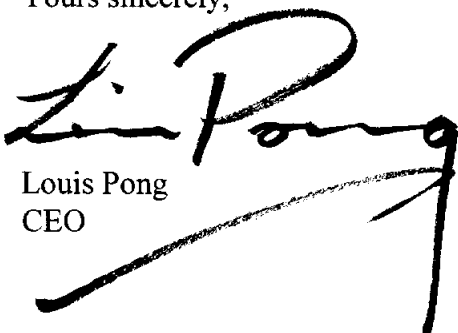
Example 7 - what if the worker, whilst eating his lunch, also checks emails?

On-call or standby time - no examples, but paragraph 8 doesn't seem to make sense. It focuses on "place of employment" but the prior examples (tour guide etc) make it clear this can be anywhere in accordance with contract. So, if an employee is required to be on standby in Hong Kong over the weekend - is that hours worked?

In view of the significant impact of statutory minimum wage on employment market, we shall be most obliged if you could take due consideration on the above concerns.

Please do not hesitate to contact me should you need any clarification or further discussion on this matter.

Yours sincerely,



Louis Pong
CEO