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From : Clerk to the Legislative Council
To : All Members of the Legislative Council

Council meeting of 14 July 2010

Minimum Wage Bill

Committee stage amendments

The Second Reading debate on the above Bill will be resumed on 14 July 2010. Subject to the Bill receiving a Second Reading, the President has given permission for the Secretary for Labour and Welfare to move amendments to the Bill at its Committee stage.

2. As directed by the President, the amendments are attached for Members' consideration.

(Ms Jessica CHAN)
for Clerk to the Legislative Council

Encl.

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Labour and Welfare

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the definition of “employee”, by deleting “or (4)” and substituting “, (4) or (5)”.</p> <p>(b) In the definition of “employee with a disability”, by deleting “has been assessed under Schedule 2” and substituting “is stated in a certificate of assessment that has effect for the purposes of section 8(1)(b)”.</p> <p>(c) In the definition of “student intern”, by deleting everything from “means” to “for which” and substituting –</p> <p style="padding-left: 40px;">“means –</p> <p style="padding-left: 80px;">(a) a student undergoing a period of work arranged or endorsed by an education institution specified in Schedule 1 in connection with an accredited programme being provided by the institution to the student; or</p> <p style="padding-left: 80px;">(b) a student resident in Hong Kong and undergoing a period of work arranged or endorsed by an institution in connection with a non-local education programme being provided by the institution to the student,</p> <p style="padding-left: 40px;">for which”.</p> <p>(d) In the English text, in the definition of “wages”, by deleting the full stop at the end and substituting a semicolon.</p>

(e) By adding –

““assessment-opting PWD” (選擇受評估殘疾人士) means a PWD who, in accordance with section 3A(2) of Schedule 2, has elected to have an assessment made under that Schedule of his or her degree of productivity in performing the work required under the contract of employment;

“exempt student employment” (獲豁免學生僱用) – see section 2A;

“non-local education programme” (非本地教育課程) means a full-time programme of education which leads to the award of a non-local academic qualification which is at the level of degree or higher;

“option form” (選擇表格) means a form referred to in section 3A of Schedule 2;

“work experience student” (工作經驗學員) means a student who –

- (a) is enrolled in an accredited programme; or
- (b) is resident in Hong Kong and enrolled in a non-local education programme,

and who is engaged under a contract of employment at the beginning of which he or she is under the age of 26 years.”.

New By adding –

“2A. Exempt student employment

A work experience student and his or her employer may agree to treat a continuous period of up to 59 days during the contract of employment (“the current contract”) as a period of exempt student employment if –

- (a) no period during another contract of employment to which the work experience student was a party and that commenced in the same calendar year as the current contract was a period of exempt student

employment; and

- (b) the work experience student provides to the employer before the commencement of the current contract a statutory declaration (or copy of a statutory declaration) made by him or her verifying the fact set out in paragraph (a).”.

3(1) By deleting everything after “wage period” and substituting –

“include 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 –

- (a) in attendance at a place of employment, irrespective of whether he or she is provided with work or training at that time; or
- (b) travelling in connection with his or her employment excluding travelling (in either direction) between his or her place of residence and his or her place of employment other than a place of employment that is outside Hong Kong and is not his or her usual place of employment.”.

3 By deleting subclause (2).

5(2) By deleting “for an hour (or any part of an hour) not worked” and substituting “for any time that is not hours worked”.

5(5) (a) By adding “(1),” after “subsections”.

- (b) By deleting “in a wage period after the first 7 days of that period, or within 7 days after the end of a wage period,” and substituting “, with

the prior agreement of the employee, at any time after the first 7 days of a wage period but before the end of the 7th day immediately after that period”.

(c) By adding “under the contract of employment” after “otherwise payable”.

6(2) By deleting “or (2A) of that Ordinance” and substituting “of that Ordinance or who is engaged under a contract of apprenticeship registered under the Apprenticeship Ordinance (Cap. 47)”.

6 By adding –

“(5) This Ordinance does not apply to a work experience student during a period of exempt student employment.”.

8(1) (a) In paragraph (b), by deleting “provided under section 5 of Schedule 2; and” and substituting “referred to in section 5 of Schedule 2;”.

(b) By adding –

“(ba) for an assessment-opting PWD who continues to be employed to do the same work for the same employer, until the end of the day on which the assessment of his or her degree of productivity in performing that work is completed under Schedule 2, the hourly rate that is the percentage specified in the option form of the prescribed minimum hourly wage rate; and”.

8(2) (a) By adding “who has undergone a trial period of employment” after “PWD”.

(b) By deleting “of a trial period of employment” and substituting “of the trial period”.

8 By adding –

“(4) Schedule 2 also provides for determining the percentage of the prescribed minimum hourly wage rate that is applicable to an assessment-opting PWD until the end of the day on which the assessment of his or her degree of productivity in performing the work required under the contract of employment is completed under that Schedule.”.

10(2) In paragraph (b), by deleting everything after “public officers” and substituting

–

“of whom –

- (i) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, matters relating to the labour sector;
- (ii) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, matters relating to the business sector; and
- (iii) not more than 3 must be persons who, in the opinion of the Chief Executive, have knowledge of, or experience in, a relevant academic field; and”.

10(3) By adding “and, in appointing members under subsection (2)(b) and (c), the Chief Executive may have regard to the need for there to be a balanced number of members appointed under each of the subparagraphs of paragraph (b) of subsection (2) and under paragraph (c) of that subsection” after “Chief Executive”.

11 By deleting subclause (1) and substituting –

“(1) The main function of the Commission is, when required

by the Chief Executive to do so, to report to the Chief Executive in Council its recommendation about the amount of the prescribed minimum hourly wage rate.”.

11(4) In the English text, by deleting “recommendations” and substituting “recommendation”.

13 By deleting the clause and substituting –

“13. Report of Commission

(1) The Chief Executive must require that a report under section 11(1) is made at least once in every 2 years.

(2) The Chief Executive must, as soon as practicable after receiving a report made under section 11, cause a copy of it to be published.”.

17 By adding –

“(3) For the purposes of section 2A, no account is to be taken of any period of employment that precedes the commencement of that section.”.

20(1) By deleting the proposed section 49A(3)(ea) and substituting –

“(ea) if the employee is an employee within the meaning of the Minimum Wage Ordinance (of 2010) and the wages payable to the employee in respect of any wage period are less than the amount specified in the Ninth Schedule (or the amount that bears the same ratio to that amount as the length of that wage period bears to the month in which that wage period falls, calculated where that wage period falls in more than one month

according to the number of days of that wage period falling in each particular month), the total number of hours (including any part of an hour) that are hours worked by the employee in that wage period;”.

20(2) (a) By adding –

“(3A) Despite subsection (3), subsection (1) must also be taken to require an employer to keep –

- (a) for an employee to whom the Minimum Wage Ordinance (of 2010) does not apply because of section 6(4) of that Ordinance, a document (or copy of a document) issued by an institution showing that the period of work is arranged or endorsed by the institution in connection with a programme being provided by the institution to the employee that is of a kind covered by the definition of “student intern” in section 2 of that Ordinance; and
- (b) for an employee to whom the Minimum Wage Ordinance (of 2010) does not apply because of section 6(5) of that Ordinance, the statutory declaration (or a copy of the statutory declaration) provided by the employee under section 2A(b) of that Ordinance and a document (or copy of a document) issued by an institution showing that the employee is at the commencement of the employment enrolled in a programme being provided by the institution that is of a kind covered by the definition of “work experience

student” in section 2 of that Ordinance.”.

(b) By adding –

“(5) The Commissioner may, by notice published in the Gazette, amend the Ninth Schedule.

(6) For the purposes of subsections (3)(ea) and (4), “hours worked” (工作時數), “wage period” (工資期) and “wages” (工資) have the same respective meanings as in the Minimum Wage Ordinance (of 2010).”.

New By adding immediately after clause 21 –

“21A. Ninth Schedule added

The following is added –

“NINTH SCHEDULE [s. 49A]

MONETARY CAP ON KEEPING RECORDS OF HOURS WORKED

per month”.”.

23 (a) By renumbering the clause as clause 23(2).

(b) By adding –

“(1) Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) is amended by renumbering item 1 as item 4.”.

23(2) (a) By deleting “to the Disability Discrimination Ordinance (Cap. 487)”.

(b) By deleting –

“Part III Only a person”

and substituting –

“1. Part III Only a person”.

(c) In the proposed item 1, by adding a full stop after “Ordinance (of

- (c) In section 2(1), in the Chinese text, by adding “的安排” after “工期”.
- (d) By adding –

“3A. PWDs employed before commencement may opt for an assessment

(1) A PWD who –

- (a) was employed immediately before the commencement of section 8;
- (b) continues to be employed to do the same work for the same employer; and
- (c) is employed at an hourly wage rate that is less than the first prescribed minimum hourly wage rate,

may, before the effective date of the first prescribed minimum hourly wage rate, elect to have his or her degree of productivity in performing the work required under the contract of employment assessed under this Schedule.

(2) An election is made by the employee signing an option form and giving it to his or her employer as soon as practicable after signing it.

(3) An option form must –

- (a) be in the form approved by the Commissioner;
- (b) specify the hourly wage rate (“the current contractual rate”) at which the PWD is then employed; and
- (c) specify the percentage of the first prescribed minimum hourly wage rate that the current contractual rate represents.

(4) The employer must countersign the option form before the effective date of the first prescribed minimum hourly wage rate and give a copy of it to the employee as soon as practicable after doing so.

(5) This section is subject to section 4(5) of this Schedule.

3B. Other employees may opt for an assessment

(1) An employee who is a PWD (other than a PWD to whom section 2 of this Schedule applies who has chosen to undergo a trial period of employment or a PWD who is an assessment-opting PWD) may at any time, if he or she chooses to do so, seek to have his or her degree of productivity in performing the work required under the contract of employment assessed under this Schedule.

(2) This section is subject to section 4(5) of this Schedule.”.

(e) In section 4, by adding before subsection (1) –

“(1A) This section applies to an assessment under this Schedule with respect to the following employees –

- (a) a PWD who has chosen to undergo a trial period of employment under section 2 of this Schedule;
- (b) an assessment-opting PWD;
- (c) a PWD covered by section 3B of this Schedule who has chosen to have an assessment made.”.

(f) In section 4(1), in the Chinese text, by adding “有關” after “執行”.

(g) In section 4(2), by deleting “the employer, whether” and substituting “his or her employer. For a PWD who has chosen to undergo a trial period of employment under section 2 of this Schedule, that time may be”.

(h) In section 4(5), by deleting “whose degree of productivity has been assessed” and substituting “in respect of whom an assessment of his or her degree of productivity has been completed”.

(i) By deleting section 4(6).

(j) In section 5(1), in the Chinese text, by adding “有關” after “執行”.

- (k) In section 5(2)(c), by deleting “by the PWD and the employer as well as”.
- (l) In section 5, by adding –
 - “(2A) The assessment of the degree of productivity of the PWD is completed for the purposes of this Ordinance when the certificate of assessment is signed by the approved assessor.
 - (2B) The PWD and the employer must countersign the certificate provided to them under subsection (1). On and from the first day after their doing so the certificate has effect for the purposes of section 8(1)(b).”.
- (m) In section 5(3), by deleting “signing” and substituting “countersigning”.

Schedule 4 In section 1(2), in the Chinese text, by deleting “任期” and substituting “任免”.