

立法會 *Legislative Council*

LC Paper No. CB(3) 943/09-10

Ref : CB(3)/B/LW/3 (08-09)
Tel : 2869 9550
Date : 12 July 2010
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

Members were informed vide LC Paper No. CB(3) 926/09-10 issued on 9 July 2010 that the President had given permission for the Secretary for Labour and Welfare to move his proposed amendments to the above Bill at the Council meeting of 14 July 2010. Members are invited to note that the President has also given permission for the following Members, subject to the Bill receiving a Second Reading, to move their proposed amendments to the Bill, as set out in **Appendices I to IX**:

<u>Mover</u>	<u>Appendix</u>
Hon Emily LAU	I
Hon WONG Kwok-hing	II
Hon IP Wai-ming	III
Dr Hon LEUNG Ka-lau	IV
Hon Mrs Regina IP	V
Hon CHEUNG Kwok-che	VI
Hon Cyd HO	VII
Hon LEE Cheuk-yan	VIII
Hon LEUNG Yiu-chung	IX

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 Honourable Emily LAU Wai-hing

<u>Clause</u>	<u>Amendment Proposed</u>
10	By adding – "(3A) In appointing the chairperson and members under subsection (2)(a), (b) and (c), the Chief Executive must have regard to a participation target of at least 30% of each gender."
10	By adding – "(3B) A member who is not a public officer may not be appointed as a member continuously for more than 6 years and may not serve as a member of more than 5 other public sector advisory and statutory bodies at any one time."

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable WONG Kwok-hing

<u>Clause</u>	<u>Amendment Proposed</u>
11	<p>By deleting subclause (3) and substituting –</p> <p>“(3) In performing its functions, the Commission must have regard to the need to assure the minimum wage—</p> <p>(a) must not be lower than the comprehensive social security level; and</p> <p>(b) is enough to afford employees’ personal and their families’ necessary living expenses.”.</p>
11	<p>By adding —</p> <p>“(5) The Chief Executive must require that a report under subsection (1) is made at least once in every year.”.</p>

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable IP Wai-ming

<u>Clause</u>	<u>Amendment Proposed</u>
10(2)	<p>In paragraph (b), by deleting everything after “public officers” and substituting —</p> <p style="padding-left: 40px;">“of whom —</p> <ul style="list-style-type: none"> (i) not more than 3 must be persons who are members of the Labour Advisory Board, elected by employee unions registered under the Trade Unions Ordinance (Cap. 332); (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; (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	<p>By adding —</p> <p style="padding-left: 40px;">“(3A) Only the chairperson and 9 other members who are not public officers have the voting rights.”.</p>

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by Dr. the Honourable LEUNG Ka-lau

Clause

Amendment Proposed

- | | |
|---|---|
| 2 | In the definition of “place of employment”, by adding “, waiting for work” after “the purpose of doing work”. |
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MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Mrs. Regina IP LAU Suk-yea, GBS, JP

<u>Clause</u>	<u>Amendment Proposed</u>
2	In the definition of "employee", by deleting "or (4)" and substituting ", (4), (5) or (6)".
6	By adding - <p style="margin-left: 40px;">"(6) Despite any other section, this Ordinance does not apply to a PWD with a type of disability specified in Schedule 1A."</p>
16	(a) In the heading, by deleting "2 and 4" and substituting "1A, 2 and 4". (b) In subclause (1), by deleting "or 2" and substituting ", 1A or 2".
New	By adding - <p style="margin-left: 100px;">"SCHEDULE 1A [ss. 6 & 16]</p> <p style="margin-left: 100px;">TYPES OF DISABILITIES OF PWD</p> <p style="margin-left: 40px;">1. Mental handicap."</p>

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable CHEUNG Kwok-che

<u>Clause</u>	<u>Amendment Proposed</u>
23	<p>By deleting the clause and substituting –</p> <p>“23. Further exceptions to this Ordinance</p> <p>(1) Schedule 5 to the Disability Discrimination Ordinance (Cap. 487) is amended by renumbering item 1 as item 3.</p> <p>(2) Schedule 5 is amended by adding –</p> <p style="margin-left: 40px;">“1. Part III Only a person who holds a valid Registration Card for People with Disabilities issued by the Central Registry for Rehabilitation established by the Government being allowed to have his or her degree of productivity assessed under Schedule 2 to the Minimum Wage Ordinance (of 2010).</p> <p style="margin-left: 40px;">2. Part III An employer in accordance with the Minimum Wage Ordinance (of 2010), paying a minimum wage to a person with a disability that is less than that payable to a person without such a disability.”.”.</p>

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Cyd HO Sau-lan

Clause

Amendment Proposed

15

By deleting subclause (4).

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable LEE Cheuk-yan

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the definition of “employee”, by deleting “, (3)”.</p> <p>(b) By deleting the definition of “minimum wage” and substituting – ““minimum wage” (最低工資) –</p> <p style="padding-left: 40px;">(a) for an employee who is not a live-in domestic worker for a wage period, has the meaning given by section 7(2); or</p> <p style="padding-left: 40px;">(b) for a live-in domestic worker for a wage period, has the meaning given by section 7(2A);”.</p> <p>(c) In the Chinese text, in the definition of “實習學員”, by deleting the full stop and substituting a semicolon.</p> <p>(d) By adding – ““conversion multiplier” (轉換乘數) means the value specified in column 1 of Schedule 3A; “days worked” (工作日數), in relation to a live-in domestic worker, has the meaning given by section 3A; “live-in domestic worker” (留宿家庭傭工) means an employee who is employed as a domestic worker in, or in connection with, a household and who dwells in that household free of charge; “minimum daily wage rate” (每日最低工資額), in relation to a live-in domestic worker, means the wage rate derived by multiplying the prescribed minimum hourly wage rate by the conversion multiplier;”.</p>

3

By deleting the clause and substituting –

“3. Hours worked

The hours worked by an employee in a wage period 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; and
- (b) travelling in connection with his or her employment –
 - (i) including travelling (in either direction) between his or her place of residence and his or her place of employment that is not his or her usual place of employment; and
 - (ii) excluding travelling (in either direction) between his or her place of residence and his or her usual place of employment.”.

New

By adding –

“3A. Days worked

The days worked by a live-in domestic worker in a wage period include any day on which the live-in domestic worker is, in accordance with the contract of employment or with the agreement or at the direction of the employer, doing work or receiving training, irrespective of the number of hours the live-in domestic worker is doing work or receiving training on that day.”.

5

By adding –

“(2A) A payment made to a live-in domestic worker in any wage period for any day that is not days worked by the live-in domestic worker must not be counted as part of the wages payable in respect of that or any other wage period.”.

- 5 By adding –
“(2B) A premium pay made to an employee in any wage period for any time worked by the employee on a holiday or a rest day, or for an overtime hour (or any part of an overtime hour) worked by the employee must not be counted as part of the wages payable in respect of that or any other wage period.”.
- 6 By deleting subclause (3) and substituting –
“(3) Sections 3, 5(2), 7(2), 8 and 17(1) and (2) do not apply to a live-in domestic worker.”.
- 7 By adding –
“(2A) The minimum wage for a live-in domestic worker for a wage period is the amount derived by multiplying the total number of days worked by the live-in domestic worker in the wage period by the minimum daily wage rate.”.
- 10(2) In paragraph (c), by adding “non-voting” after “other”.
- 10 By adding –
“(3A) When appointing a member referred to in subsection (2)(b)(i), the Chief Executive must have regard to any nomination made for the purposes of such appointment by any one or more of the labour organizations specified in Schedule 3B.”.
- 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 By adding –
“(1A) Another 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 value of the conversion multiplier.”.

- 11 By deleting subclause (3) and substituting –
- “(3) In performing its functions, the Commission must have regard to –
- (a) the needs of employees and their families, taking into account the general level of wages, the cost of living, social security benefits, and the relative living standards of other social groups; and
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.”.
- 11(4) In the English text, by deleting “recommendations” and substituting “recommendation”.
- 11 By adding –
- “(5) The Chief Executive must require that a report under subsection (1) is made at least once in every year.”.
- 13 By deleting the clause and substituting –
- “13. Report of Commission**
- The Chief Executive must, as soon as practicable after receipt of a report made under section 11, publish a copy of the report.”.
- 15 (a) In the heading, by deleting “**Schedule 3**” and substituting “**Schedules 3 and 3A**”.
- (b) By adding –
- “(1A) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 3A to –
- (a) specify in column 1 a conversion multiplier or increase or reduce the then current conversion multiplier specified in that column; and
- (b) specify in column 2 the effective date for any amendment referred to in paragraph (a).”.
- 15(2) (a) By adding “or (1A)” after “subsection (1)”.
- (b) By adding “or (1A)” after “section 11(1)”.

- 16 (a) In the heading, by adding “, 3B” after “2”.
- (b) In subclause (1), by deleting “or 2” and substituting “, 2 or 3B”.

17 By adding –

“(2A) If the relevant date is a date after the beginning of a wage period of a live-in domestic worker, in calculating the minimum wage for the live-in domestic worker for that period no account is to be taken of any day worked by the live-in domestic worker in that period before that relevant date nor of any wages payable to the live-in domestic worker for any such day.

(2B) In subsection (2A), “relevant date” (有關日期) means –

- (a) the effective date of the first prescribed minimum hourly wage rate; or
- (b) the effective date of the first conversion multiplier,

whichever is the later.

(2C) If the minimum daily wage rate is increased or reduced under section 15(1) or (1A) after the beginning of a wage period of a live-in domestic worker, in calculating the minimum wage for the live-in domestic worker for that period the increased or reduced rate only applies to any day worked by the live-in domestic worker on or after the effective date of the increase or reduction.”.

New By adding immediately before clause 20 –

“19A. Information to employees

Section 45 of the Employment Ordinance (Cap. 57) is amended by adding –

“(1A) If an employer is required under section 49A to set out in the wage and employment record particulars of a kind referred to in section 49A(3)(ea) of an employee in a wage period, the employer shall, upon receipt of a written request from that employee, inform that employee of –

- (a) the total number of hours that are hours worked by that employee in that wage period referred to in section 49A(3)(ea);
- (b) the wages, calculated in accordance

with section 5 of the Minimum Wage Ordinance (of 2010), paid to that employee for the total number of hours referred to in paragraph (a) in that wage period; and

- (c) the wages other than those referred to in paragraph (b) (if any) paid to that employee in that wage period.

(1B) If an employer is required under section 49A to set out in the wage and employment record particulars of a kind referred to in section 49A(3)(eb) of an employee in a wage period, the employer shall, upon receipt of a written request from that employee, inform that employee of –

- (a) the total number of days that are days worked by that employee in that wage period referred to in section 49A(3)(eb);
- (b) the wages, calculated in accordance with section 5 of the Minimum Wage Ordinance (of 2010), paid to that employee for the total number of days referred to in paragraph (a) in that wage period; and
- (c) the wages other than those referred to in paragraph (b) (if any) paid to that employee in that wage period.”.”.

20(1) By deleting “of the Employment Ordinance (Cap. 57)”.

20(1) By adding –
“(eb) if the employee is a live-in domestic worker, the total number of days that are days worked (within the meaning of the Minimum Wage Ordinance (of 2010)) by the employee in any wage period;”.

20(2) By adding –
“(4A) Nothing in subsection (1) requires an employer of a live-in domestic worker to set out in a record particulars of a kind

referred to in subsection (3)(*ea*) of the live-in domestic worker.

(4B) Nothing in subsection (1) requires an employer of a live-in domestic worker to set out in a record particulars of a kind referred to in subsection (3)(*eb*) for any wage period, or part of a wage period, of the live-in domestic worker that occurred before the relevant date.

(4C) In subsection (4B), “relevant date” (有關日期) means the date referred to in section 17(2B) of the Minimum Wage Ordinance (of 2010).

(4D) In this section, “live-in domestic worker” (留宿家庭傭工) has the same meaning as in the Minimum Wage Ordinance (of 2010).”.

21 By deleting the clause and substituting –

“21. Powers of officers

Section 72(1)(*b*) is amended by repealing everything after “this Ordinance” and substituting –

“and –

- (i) in the case of a record which includes particulars required to be included under section 49A(3)(*ea*), require that the particulars under section 49A(3)(*a*), (*d*), (*e*), (*ea*) and (*f*) are produced in a single document; or
- (ii) in the case of a record which includes particulars required to be included under section 49A(3)(*eb*), require that the particulars under section 49A(3)(*a*), (*d*), (*e*), (*eb*) and (*f*) are produced in a single document,

and inspect, examine and copy the same;”.

New By adding –

“SCHEDULE 3A [ss. 2 & 15]

CONVERSION MULTIPLIER

Conversion multiplier Effective date”.

New

By adding –

“SCHEDULE 3B

[ss. 10 & 16]

SPECIFIED LABOUR ORGANIZATIONS

1. Hong Kong Confederation of Trade Unions.
2. The Federation of Hong Kong and Kowloon Labour Unions.
3. The Hong Kong Federation of Trade Unions.”.

MINIMUM WAGE BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable LEUNG Yiu-chung

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	(a) By deleting “; to repeal the Trade Boards Ordinance”. (b) By adding “, the Trade Boards Ordinance” after “Employment Ordinance”.
2	In the definition of “employee”, by adding “, (2A)” after “6(2)”.
6	By adding – “(2A) This Ordinance does not apply to a person to whom a Government notification made by the Chief Executive in Council under section 2(1) of the Trade Boards Ordinance (Cap. 63) applies.”.
Part 5	In the heading, by deleting “REPEAL AND”.
18	By deleting the cross-heading immediately before the clause and the clause.
New	By adding immediately after clause 21A –

“Trade Boards Ordinance**21B. Trade Boards and minimum wages**

(1) Section 2(1) of the Trade Boards Ordinance (Cap. 63) is amended by repealing “The” and substituting “Subject to subsection (1B), the”.

(2) Section 2 is amended by adding –

“(1A) The general minimum time-rate fixed under subsection (1) shall be not less than the hourly wage rate specified in column 1 of Schedule 3 to the

Minimum Wage Ordinance (of 2010).

(1B) If the hourly wage rate specified in column 1 of Schedule 3 to the Minimum Wage Ordinance (of 2010) is increased under section 15(1) of that Ordinance so that the increased hourly wage rate exceeds the general minimum time-rate fixed under subsection (1), the general minimum time-rate shall be increased to a rate equal to the increased hourly wage rate with effect from the effective date of the increase of the hourly wage rate.”.”.