



*By Fax: 2877 5029*

**Labour Department (Headquarters)**

勞工處 (總處)

Your reference 來函編號 : LS/S/11/10-11  
Our reference 本處檔案編號 : (1) in LD SMW 1-10/8(C) Pt. 2  
Tel. number 電話號碼 : 2852 3842  
Fax number 傳真機號碼 : 3101 0414

12 January 2011

Mr Bonny LOO  
Assistant Legal Adviser  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong

Dear Mr LOO,

**Minimum Wage (Criteria for Approved Assessors) Notice (L.N.1)**  
**Minimum Wage (Assessment Methods) Notice (L.N.2)**

Thank you for your letter dated 7 January 2011 concerning the above Notices. Further to our discussion on 11 January 2011, our responses to the matters raised in your letter are as follows:

*Minimum Wage (Criteria for Approved Assessors) Notice (L.N.1)*

- (a) According to section 2(1)(d)(i), the person has provided vocational rehabilitation or other services in relation to the employment of persons with a disability for not less than 5 years in the aggregate during the 10 years immediately before the relevant date. Examples are the provision of vocational training and placement services for persons with disabilities. Such experience gained on a part-time or full-time basis would be reckoned in the same manner in calculating the 5-year aggregate experience required by section 2(1)(d)(i) and section 4(b).
- (b) (i) As reflected in footnote 1 of the Legislative Council (LegCo) Brief (File Ref.: LD SMW 1-10/8(C)), the organisations that the Commissioner for Labour (the Commissioner) would recognize for the purpose of section 2(1)(d) are those organisations engaged in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities.

- (ii) & (iii) Instead of issuing certificates of recognition to the recognized organisations, we shall maintain an administrative list of the recognized organisations and publish the list through the website of the Labour Department (LD) and any other channels as appropriate for general information.
  - (iv) To accommodate the need of updating the list of recognized organisations from time to time in the light of operational experience and to avoid straitjacketing the timely recruitment of approved assessors, we do not consider it appropriate to list out in L.N.1 the names of the recognized organisations.
- (c)
- (i) With a view to ensuring the smooth and effective implementation of the productivity assessment mechanism, the training to be provided for persons seeking to become approved assessors will focus on assisting them to fully appreciate and have a good grasp of the relevant provisions of the Minimum Wage Ordinance (MWO) and its subsidiary legislation, the principles of the assessment mechanism as well as details of the procedures and methods of the assessment. We shall finalize the details, including who will be the speakers/ instructors/ facilitators of the training, in consultation with stakeholders, in particular, the relevant professional associations of approved assessors. The Administration will bear the cost of such training.
  - (ii) The application process for seeking the approval to become an approved assessor will involve eligible persons applying to become approved assessors by submitting duly completed application form and documentary proof, LD vetting applications received , arranging training for screened-in applicant assessors and granting approval to assessors who have satisfactorily completed the training. Subject to LegCo's negative vetting of L.N.1 and L.N.2, we shall commence the recruitment process by publicizing for general information the application procedures and requirements as well as inviting applications from eligible persons through various channels.
- (d) We shall rely on section 40(2) of the Interpretation and General Clauses Ordinance (Cap. 1), which provides that "... where any Ordinance confers power - .... (c) to approve any person or thing, such power shall include power to withdraw approval thereof;", for the power to withdraw an approval granted to the approved assessor who is considered unable or unfit to carry out his/her duties owing to poor performance or any sufficient cause.

- (e) We shall monitor the performance of the approved assessors through multifarious channels including conducting opinion surveys with persons whose productivity has been assessed and their employers, and investigating into complaints on the approved assessors. As mentioned in point (d) above, the Commissioner may decide whether or not to approve a person as an approved assessor and exercise the power conferred under section 40(2) of the Interpretation and General Clauses Ordinance to withdraw the approval so granted. A decision of whether an approval should be withdrawn will not be made before representation from the assessor is received and considered. We will ensure fair procedure in accordance with administrative law principles.
- (f) Similar to the arrangement for recognizing organisations by the Commissioner for the purpose of section 2(1)(d) mentioned in point (b) above, we shall maintain and update an administrative register of approved assessors so as to facilitate persons with disabilities who decide to invoke the assessment mechanism to select approved assessors from the register to conduct the assessment. We shall publish the register on the websites and in the offices of LD and other relevant government departments and organisations.
- (g) The expression “persons with a disability” is used in describing the type of experience which must be possessed by a person seeking to become an approved assessor in Schedule 2 to the MWO and L.N.1. This is to ensure that all relevant experience in the provision of vocational rehabilitation or other related services in the employment of persons with disabilities rendered but not limited to persons holding a valid Registration Card for People with Disabilities issued by the Central Registry for Rehabilitation can be taken into account when considering the applications of approved assessors. In this connection, the word "disability" is to be construed in its ordinary meaning and need not be defined..

*Minimum Wage (Assessment Methods) Notice (L.N.2)*

- (h) Possible circumstances that would make the person with disabilities fail to demonstrate his/her full potential in the assessment and worth upward adjustment in his/her degree of productivity are, to name only a few, he/she is in a state of ill health or excessive stress, he/she has yet fully acclimatized to the working environment or conditions, suitable accommodation to facilitate him/her in performing the work has yet been put in place on the day of assessment, etc. As the list of circumstances cannot be exhaustive, listing them out in L.N.2 would hinder the approved assessor from making an upward adjustment for warranted cases in accordance with section 5(4). We shall include

such information as illustrative examples in the administrative guidelines for approved assessors and enhance the guidelines in this regard based on actual operational experience after the commencement of the MWO.

- (i) The certificate of assessment will include other details such as the particulars of the person with disabilities and the employer, post title and duties of the work concerned.
- (j) The issue of whether persons with disabilities who have their degree of productivity assessed should have a review in the form of a second assessment has been thoroughly discussed when the Minimum Wage Bill was examined by LegCo. As stated in paragraph 5 of the LegCo Brief, the majority view gauged during consultations with stakeholders is that the assessment mechanism should not be complicated, otherwise it would create undue pressure on the persons with disabilities, which would in turn affect their performance during the assessment, and/or dampen employers' willingness to employ persons with disabilities. In view that Statutory Minimum Wage (SMW) is a novel regime for Hong Kong and the issue of review assessment has its controversies, the Administration will review the special arrangement for persons with disabilities, including the need for the review assessment, in the light of operational experience within two years after the implementation of SMW.

*Other matters*

- (k) The LegCo Brief has stated that the Government will take on the responsibility to pay for the assessment cost. We plan to remunerate the approved assessors after completion of the assessment at a standard rate out of the general revenue. Given the administrative nature of the payment arrangements, we consider it not necessary to make subsidiary legislation specifically on these matters. We will include such details in the administrative guidelines for approved assessors.
- (l) Apart from L.N.1 and L.N.2, we do not envisage any other items of subsidiary legislation which are required to be made for the purpose of implementing the provisions of the MWO.

2. We hope the above is useful to you in scrutinizing the captioned Notices. As spoken on 11 January 2011, please accept our apologies for not being able to meet your deadline. If you have any queries, please feel free to call me at 2852 3842.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized, cursive 'C' followed by a loop and a short horizontal stroke.

(Charles HUI)  
for Commissioner for Labour

c.c. Department of Justice  
(Attn: Ms Amy CHAN, SGC, and Ms Grace LEUNG, SGC)  
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