

**Subcommittee on Subsidiary Legislation of
the Minimum Wage Ordinance Relating to
Productivity Assessment of Persons with Disabilities**

**Administration's Response to Issues Raised at
the Subcommittee Meeting Held on 21 January 2011**

Introduction

This paper provides information requested by Members of the Subcommittee at its meeting held on 21 January 2011.

Cost of Productivity Assessment

2. The Minimum Wage Ordinance (MWO) establishes that employees with disabilities and able-bodied employees are similarly protected by the statutory minimum wage (SMW). Nevertheless, taking account of the possible employment difficulties encountered by some persons with disabilities, the MWO also provides for a special arrangement for them. Specifically, persons with disabilities whose productivity may be impaired by their disabilities will have the right to choose to have their productivity assessed to determine whether they should be remunerated at not lower than the SMW level or at a rate commensurate with their productivity. To forestall abuse, the right to invoke the assessment is vested in the persons with disabilities rather than the employers. The Administration decided to bear the costs of the assessments. We plan to pay the assessment fee at a standard rate to the approved assessor after the completion of an assessment in accordance with the MWO and its relevant subsidiary legislation. We are working on the amount of the assessment fee and the financial expenses involved will be reflected in the Estimates of the relevant years.

Approved Assessors

3. After discussion with stakeholders, we propose that an approved assessor should, in addition to meeting the other specified requirements, possess the requisite years of experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities, such as the provision of vocational training

and placement services for persons with disabilities. The lengths of relevant working experience are as follows:

- (a) For registered occupational therapists, registered physiotherapists and registered social workers, they must, in the professional capacity concerned, possess in aggregate not less than 3 years' working experience in the provision of the above relevant services; and
- (b) For vocational rehabilitation practitioners, they must possess in aggregate not less than 5 years' working experience in the provision of the above relevant services.

4. Approved assessors already have experience and professional knowledge on vocational rehabilitation and other services in relation to the employment of persons with disabilities. To facilitate the approved assessors in completing the assessment aptly and to ensure the quality of the assessment, the Labour Department (LD) will provide the approved assessors with training and administrative guidelines on the operational details of the assessment. In the event of misconduct on the part of an approved assessor, the LD will take follow-up actions. The LD may withdraw the approval so granted to an assessor if he/she is considered unable or unfit to carry out the duties of the approved assessor owing to poor performance or other justifiable causes.

5. The training arranged by the LD will assist the assessors to fully appreciate and have a good grasp of the relevant provisions of the MWO and its subsidiary legislation, the principles of the productivity assessment as well as details of the procedures and methods of the assessment, with a view to ensuring the smooth and effective implementation of the assessment mechanism. The LD will finalise the content and other details of the training for approved assessors in consultation with stakeholders, including the relevant professional associations of the approved assessors.

6. To ensure the quality of approved assessors, the Commissioner for Labour will set a validity period for approval granted to assessors and require those who intend to continue to become approved assessors to complete training. After discussions with stakeholders, we plan to appoint the first batch of approved assessors for a term of three years.

Employment Protection for Employees with Disabilities

7. Employees with disabilities are entitled to relevant employment protection in accordance with the Employment Ordinance (EO) and the Disability Discrimination Ordinance (DDO). When seeking to terminate a contract of employment with an employee (including an employee with disabilities), the employer must comply with the EO, other relevant legislation in force and the relevant terms of the employment contract. The exemption from the DDO relating to dismissal under the MWO is limited to the situation where the dismissal is on account of the outcome of the assessment. If the employee is dismissed on ground of his/her disability rather than his/her failure to satisfy inherent requirements of the particular employment, the MWO does not affect his/her claim under the DDO.

Labour and Welfare Bureau
January 2011