

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

**Administration's Response to the Submission
from the Office of Hon. Raymond WONG Yuk-man to the Subcommittee**

Introduction

This paper provides the Administration's response to the submission from the Office of Hon. Raymond WONG Yuk-man to the Subcommittee (LC Paper No. CB(2)909/10-11(02)).

Approved assessors

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. 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. In the course of consultations with stakeholders to devise the assessment mechanism, there have been views that the quality of approved assessors is key to the smooth and effective implementation of the assessment mechanism. Assessors will be approved by the Commissioner for Labour (the Commissioner) on a personal basis, not as representatives of their organisations. In addition, as specified in the proposed assessment methods, an approved assessor must ensure that no conflict will arise between his/her duties involved in conducting the assessment and his/her other interests. For instance, the assessor should not conduct the assessment for a person with disabilities who works for the employing organisation of the assessor.

3. A person with disabilities who considers that the approved assessor has committed misconduct or malpractice when discharging the duties may lodge a complaint with the Labour Department (LD) and/or the professional association of the approved assessor concerned. The

Commissioner may withdraw the approval granted to an assessor who is considered unable or unfit to carry out the duties of the approved assessor owing to poor performance or any justifiable cause. The person with disabilities or the employer may also lodge a complaint to the professional authority concerned.

4. The LD will put information of all the approved assessors in a register of approved assessors before the implementation of SMW so that persons with disabilities who decide to invoke the assessment mechanism may select an approved assessor to conduct the assessment. To facilitate persons with disabilities to select the approved assessor, we plan to display in the register the information on the personal particulars of approved assessors, types of their professions and expertise in disabilities, working experience, employing and recommending organisations (where applicable), contact means, etc. Our paper on the Administration's Response to Issues Raised at the Subcommittee Meeting Held on 27 January 2011 also provides information about the administrative guidelines for approved assessors.

Right of persons with disabilities to invoke the assessment

5. According to the MWO, the right to invoke an assessment is vested in the person with disabilities, not the employer. To safeguard this, the approved assessor is required under the proposed assessment methods to explain, prior to conducting the assessment, to the person with disabilities and the employer their respective rights and responsibilities under the relevant provisions of the MWO, in particular, the right to invoke an assessment is vested in the person with disabilities rather than the employer. A complaint against the productivity assessment mechanism may be lodged with the LD.

Cost of assessment

6. The Government has decided to bear the cost of the assessment. 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.

7. Under the MWO, persons with disabilities may choose whether

to receive wages not lower than the SMW or to undergo a productivity assessment. Serving employees with disabilities who opt for an assessment under the transitional arrangement prior to the commencement of the MWO may invoke the assessment at any time after the implementation of SMW. They may reserve the right to invoke the assessment until they are no longer employed by the same employers to do the same work. Therefore, the actual number of persons with disabilities invoking the assessment will depend on the choice of individual persons with disabilities and the timing of serving employees with disabilities undergoing the assessment. Thus, it is difficult to make accurate calculations for the time being.

Review of the productivity assessment

8. The Legislative Council has thoroughly discussed, during the scrutiny on the Minimum Wage Bill, the issue as to whether persons with disabilities who have their degree of productivity assessed should have a review in the form of a second assessment. Hong Kong has no experience in implementing an SMW, particularly the assessment mechanism for persons with disabilities under the SMW regime. We will review the special arrangement for persons with disabilities, including the need for an appeal or review mechanism, in the light of operational experience within two years after the implementation of SMW.

Labour and Welfare Bureau
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