

**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 27 January 2011**

Introduction

This paper provides information requested by Members of the Subcommittee at its meeting held on 27 January 2011.

Procedures for withdrawing approval granted to an approved assessor

2. To ensure the quality of productivity assessment conducted by approved assessors for persons with disabilities, the Commissioner for Labour (the Commissioner) may approve a relevant person as approved assessor under the Minimum Wage Ordinance (MWO) and the Minimum Wage (Criteria for Approved Assessors) Notice. The Commissioner may withdraw¹ the approval so granted to an approved assessor if he/she is considered unable or unfit to carry out the duties of approved assessor owing to poor performance or any justifiable cause.

3. We shall formulate the procedures for withdrawing approval granted to an approved assessor in accordance with administrative law principles. We shall provide detailed administrative guidelines and appropriate training for approved assessors to enable them to fully appreciate the responsibilities and requirements when discharging the duties of approved assessor. For a decision to withdraw the approval to be justified and well-grounded, we may regulate the performance of approved assessors through different channels such as undertaking surprise checking, monitoring the performance of approved assessors, collecting feedback from persons with disabilities and employers, and investigating into complaints thoroughly. To ensure that a decision is made in a fair and impartial manner, we will set up an advisory

¹ Section 40(2) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that "... where any Ordinance confers power - (c) to approve any person or thing, such power shall include power to withdraw approval thereof".

committee (the advisory committee), with members drawn from stakeholders and relevant professional associations, to advise the Commissioner on whether approval granted to individual approved assessors should be withdrawn. We shall allow the assessor concerned to make representation and take the representation into account before arriving at a decision. After coming up with a decision, we shall also give the assessor concerned the reason for decision and the avenue for appeal. The advisory committee will also offer its views to the Commissioner in respect of the appeal.

Administrative guidelines for approved assessors

4. The purpose of preparing the administrative guidelines for approved assessors is to assist the approved assessors, through the provision of information and operational details in respect of the productivity assessment available for persons with disabilities to invoke under the statutory minimum wage regime, to have a good understanding of the principles of the assessment mechanism and to adopt consistent procedures and methods in conducting the assessment. This is to facilitate the smooth and effective operation of the assessment mechanism.

5. We are consulting stakeholders and relevant professional bodies on the administrative guidelines which cover mainly the details and application of the special arrangement for persons with disabilities under the MWO; general duty of approved assessors and fundamental principles to follow, quality control and assessment fee; procedures and operational details of the productivity assessment; administrative procedures; and information and channels for enquiries on relevant legislation and related matters. Illustrative examples will be drawn up to facilitate the understanding of the approved assessors. The draft outline of contents of the administrative guidelines for approved assessors is at [Annex 1](#).

Other information

6. We propose that an approved assessor under the vocational rehabilitation practitioner category should have relevant work experience in the organisation(s) recognised by the Labour Department that provides vocational rehabilitation or other services in relation to the employment of persons with disabilities and have a recommendation of the organisation(s) to become an approved assessor. The recognised

organisations may include the Social Welfare Department (SWD), the Hospital Authority, the Vocational Training Council, non-governmental organisations providing vocational rehabilitation services with subvention from the SWD during the immediately preceding 10 years (e.g. New Life Psychiatric Rehabilitation Association, Hong Kong Society for the Blind, Hong Kong Down Syndrome Association, Tung Wah Group of Hospitals, Caritas Hong Kong, Po Leung Kuk), training bodies appointed by the Employees Retraining Board to provide training courses for persons with disabilities and people recovering from industrial accidents during the immediately preceding 10 years (e.g. Hong Kong Confederation of Trade Unions, Hong Kong Rehabilitation Power, Hong Kong Workers' Health Centre Limited, Hong Kong Society for Rehabilitation, Hong Kong Federation of Handicapped Youth), self-help groups providing vocational rehabilitation or other services in relation to the employment of persons with disabilities during the immediately preceding 10 years (e.g. Rehabilitation Alliance Hong Kong), etc. We may add more recognised organisations with reference to the information collected, for instance, through verifying the information provided by approved assessor applicants on organisations by which they have been engaged in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities.

7. In response to the request of a Member of the Subcommittee, the draft certificate of assessment on the degree of productivity of persons with disabilities is attached at Annex 2.

Labour and Welfare Bureau
February 2011

**Special Arrangement for Persons with Disabilities
under the Minimum Wage Ordinance:
Productivity Assessment for Persons with Disabilities
Administrative Guidelines for Approved Assessors**

Draft Outline of Contents

- I Special arrangement for persons with disabilities under the Minimum Wage Ordinance**
 - I.1 Rights and benefits of persons with disabilities under the Minimum Wage Ordinance
(including the right to invoke the productivity assessment vested in persons with disabilities rather than the employers)
 - I.2 Definition of “person with disabilities”
 - I.3 Transitional arrangement for persons with disabilities already in employment prior to the implementation of the Minimum Wage Ordinance
 - I.4 Trial period of employment
 - I.5 Selection of approved assessor and undergoing productivity assessment
(including how to obtain the updated list of approved assessors)
 - I.6 Certificate of assessment
 - I.7 Results of the productivity assessment
 - I.8 Statutory minimum wage of persons with disabilities
 - I.9 Flowchart of the major procedures involved for persons with disabilities in electing and undergoing productivity assessment

- II Approved assessors**
 - II.1 Criteria for approved assessors
 - II.2 General duty of approved assessors and basic principles to follow
(including to advise proactively employers and persons with disabilities concerned on auxiliary aids and facilities to facilitate persons with disabilities to demonstrate their full potential in the assessment)
 - II.3 Possible circumstances with examples that may affect the credibility of approved assessors and involve a conflict of interest
 - II.4 Procedures of applying and granting approval for approved assessors
 - II.5 Training for approved assessors arranged by the Labour Department
 - II.6 Information to be displayed in the register of approved assessors

(information on approved assessors would include their personal particulars, types of professions and expertise in disabilities, working experience, employing and recommending organisations (where applicable), contact means, etc.)

- II.7 Regulating the quality of approved assessors
(including complaint handling methods and procedures)
- II.8 Fee for approved assessors

III Methods and procedures of productivity assessment

- III.1 Purpose and basic principles
- III.2 Invoking the productivity assessment
(including how to ensure that the right to invoke the productivity assessment is vested in a person with disabilities and not the employer)
- III.3 Selection of approved assessor by a person with disabilities to conduct productivity assessment
- III.4 Approved assessor to conduct productivity assessment for a person with disabilities

Step 1: Confirming and collecting assessment-related information with the person with disabilities, employer and other relevant person(s)
(including confirming the intention and eligibility of the person with disability to opt for productivity assessment, explaining relevant legislation and assessment procedures, offering advice on the provision of auxiliary aids and facilities which facilitate the person with disabilities in performing the work, setting the date and time for productivity assessment, and gathering information on the duties, requirements and procedures of the work and those of other employee(s) of the employer performing the same or similar work)

Step 2: Selecting appropriate factor(s) to be considered in the assessment
(e.g. quality of work, working speed, quantity of work, other requirements for performing the work, etc, to be illustrated with examples)

Step 3: Adopting suitable means to assess the degree of productivity of the person with disabilities in performing the work
(e.g. on-site observation, analysing performance data, etc.)

Step 4: Considering, with the facts and evidence available, whether the person with disabilities has not been performing at full potential in the assessment for some reasons and an upward adjustment in the degree of productivity should be made
(to illustrate by examples the justifiable circumstances and standards for upward adjustment in the degree of productivity)

Step 5: Elucidating to the person with disabilities and employer the major considerations in making the assessment, collecting supplementary information and concluding the assessment result

- III.5 Approved assessor to sign and issue the certificate of assessment
- III.6 Countersigning of the certificate of assessment by the person with disabilities and employer
- III.7 Records to be kept by the approved assessor on assessments made and the relevant requirements under the Personal Data (Privacy) Ordinance

IV Administrative matters

- IV.1 Procedures of application for assessment fee by approved assessors
- IV.2 Approved assessors to assist in obtaining the consent of employees for verification on their Registration Card for People with Disabilities and collecting information concerning the employers for statistical purpose
- IV.3 Operating guidelines on the computer system for approved assessors

V Enquiries

- V.1 On the Minimum Wage Ordinance
- V.2 On the Employment Ordinance and conditions of employment
- V.3 On the Disability Discrimination Ordinance
- V.4 On the Registration Card for People with Disabilities

Forms

- 1 Option Form on Transitional Arrangement for Persons with Disabilities Already in Employment Prior to the Implementation of Statutory Minimum Wage
- 2 Checklist on Procedures and Factors to be Considered in the Productivity Assessment
- 3 Certificate of Assessment on the Degree of Productivity of Persons with Disabilities
- 4 Application Form on Assessment Fee
- 5 Authority for Payment to a Bank

References

- 1 Minimum Wage Ordinance and relevant subsidiary legislation
- 2 Promotional leaflet on the special arrangement for persons with disabilities under the Minimum Wage Ordinance

- 3 Application form, guidance notes and sample of the Registration Card for People with Disabilities
- 4 A Concise Guide to the Employment Ordinance
- 5 Code of Practice on Employment under the Disability Discrimination Ordinance
- 6 List of organisations providing technical assistance of employment auxiliary aids, transportation, sign language interpretation services for persons with disabilities and their contact means

Minimum Wage Ordinance (Chapter 608) Section 7 of Schedule 2

Certificate of Assessment on the Degree of Productivity of Persons with Disabilities

Important Notes:

1. This Certificate of Assessment (this Certificate) is only applicable to the employee concerned for performing the work and duties for the employer as specified in Part 1 of this Certificate.
2. This Certificate should be completed in triplicate. The employee with disabilities and the employer should each keep an original copy and the remaining one be submitted to the Labour Department by the approved assessor (the assessor). The employer should keep this Certificate in the workplace for inspection by authorised officers of the Labour Department.
3. The assessment of the degree of productivity (the assessment) of the employee is completed when this Certificate is signed by the assessor.
4. **If (i) the assessment is completed during the trial period of employment as stipulated in Section 2 of Schedule 2 to the Minimum Wage Ordinance (MWO), or the employee is not required to undergo the trial period of employment, the statutory minimum wage applicable to the employee should be commensurate with the assessed degree of productivity as stated in this Certificate on and from the first day after the countersigning of this Certificate by both the employee and employer; (ii) the assessment is completed after the expiry of the trial period of employment, the minimum wage commensurate with the assessed degree of productivity as stated in this Certificate will take retrospective effect on and from the first day after the expiry of the trial period of employment upon the countersigning of this Certificate by both the employee and employer; (iii) in any circumstances either the employee or the employer fails to sign on this Certificate, the employee should be remunerated at no less than the prescribed minimum hourly wage rate as stipulated in Schedule 3 to the MWO on and from the first day after the completion of the assessment.**

Statement on collection and use of personal data:

1. In addition to providing for use by the assessor in conducting the assessment, the personal data collected by the assessor during the course of assessment will be forwarded to the Labour Department for the handling of matters in relation to the assessment, enforcement of relevant labour legislation or for statistical purpose.
2. All parties concerned (including the employer, the employee, the assessor, etc.) should comply with the requirements of the Personal Data (Privacy) Ordinance in handling the personal data collected through the assessment.

Please use a dark pen and write properly in BLOCK LETTERS.

Part 1 (To be completed by the assessor and all blanks must be filled out)

I hereby confirm that I have conducted this assessment in accordance with Schedule 2 to the MWO and Minimum Wage (Assessment Methods) Notice. The details are as follows:

(I) Particulars of employee

Name in Chinese: _____ HK Identity Card No.: ()

Name in English (*full name in BLOCK LETTERS*): _____

Sex: male/female*

Serial No. of Registration Card for People with Disabilities: _____ Valid to: Permanent/ (dd) (mm) (yy)*

Type(s) of disability (*Please put a ✓ in the appropriate box(es) below according to the information shown on the Registration Card for People with Disabilities, and more than one box can be selected*):

- Hearing impairment Visual impairment Physical handicap Speech impairment
Mental handicap Mental illness Autism Visceral disability/chronic illness
Attention deficit/hyperactivity disorder Specific learning difficulties

(II) Particulars of employer

Name of employer (Chinese): _____

(English): _____

Company/Employer's Business Registration Certificate No./

Other registration no. (please specify the relevant ordinance)*: _____

Address of company/employer*: _____

(III)Details of the assessment of the degree of productivity

Trial period of employment (*only applicable to the trial period of employment undergone in accordance with Section 2 of Schedule 2 to the MWO*)

Yes (from ____ (dd) ____ (mm) ____ (yy) to the day on which the assessor has signed on this Certificate/ ____ (dd) ____ (mm) ____ (yy)*)

No trial period of employment

Date of assessment: ____ (dd) ____ (mm) ____ (yy)

(Please specify the commencement and completion dates respectively if lasting for more than one day)

Post title of employee: _____

Duties of work of employee: _____

Assessed degree of productivity is: _____ %

Signature of the assessor: _____ Assessor No.: _____

Name of the assessor: _____ Date: _____

Part 2 (To be countersigned by the employee and employer)

1. We have read carefully the "Important Notes" and all parts of this Certificate.
2. We genuinely believe that the assessor has conducted the assessment as stated in Part 1 of this Certificate in accordance with the MWO.
3. Our company/I*, in the capacity as the employer, undertake(s) to handle the performance appraisals and salary reviews of this employee according to the same mechanisms applicable to other staff.

Signature of employee: _____ Date: _____

Contact tel./fax* no.: _____

Signature of company's representative/employer*: _____ Contact tel. no.: _____

Name of company's representative/employer*: _____ Date: _____

Post title of company's representative: _____

Company/Employer chop: _____

**Please delete as appropriate*