

19 April 2011

The Hon Matthew Cheung Kin-chung, GBS, JP
Secretary for Labour and Welfare
Labour and Welfare Bureau
8th Floor, West Wing, Central Government Offices
11 Ice House Street
Central
Hong Kong

(By fax 2537 3539 & mail)

Dear the Hon Mr. Cheung,

Re: HKRMA's Views on Statutory Minimum Wage (SMW)

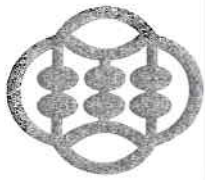
The Hong Kong Retail Management Association would like to express serious concern about the implementation of the SMW, in particular in its concept and calculation, which has triggered diverse views in the community.

Under the Minimum Wage Ordinance (MWO), employers must pay wages in a wage period that are not less than an amount equal to the number of hours worked multiplied by \$28.

For the calculation of wages for the purposes of the MWO, however, payment for hours not worked, such as rest days and meal breaks, must be deducted from the total wages payable to an employee.

The principle under the MWO of deducting wages paid for hours not worked conflicts with (i) the common understanding in the community; (ii) the Employment Ordinance (where wages paid under contract for hours not worked are not deducted); and (iii) the basis on which the initial SMW rate was calculated. For example:

- The 2009 Annual Earnings and Hours Survey (AEHS) carried out by the Census and Statistics Department (C&SD) derived an hourly wage by dividing total wages earned within the wage period by the number of hours worked. The C&SD did not obtain any information from employers in relation to wages paid for hours not worked.



- The first SMW rate of \$28 per hour worked recommended by the Provisional Minimum Wage Commission (PMWC) was primarily based on the data and definition of wage given in the 2009 Report on AEHS. According to the Report, the number of working hours paid for refers to the number of working hours in accordance with the contract of employment, or with the agreement or at the direction of the employer. Rest time and meal break, if no work is done or to be done during the time period concerned, is not included in the number of contractual/agreed working hours.¹
- The MWO with its first recommended SMW rate based on an evidence-based approach was enacted after consultations with various sectors in the community and scrutinized by both the Executive Council and Legislative Council.

The flawed calculation methodology in the MWO has led to serious impact on wage calculation for all employees.

The situation is further worsened by the Government's recent announcement to subsidize its service contractors by covering rest days pay which will effectively increase the minimum wage rate. As the largest and most influential employer in Hong Kong, the Government's move has seriously distorted the basis of SMW calculation.

This can be illustrated by an example quoted in the paper "Wage Arrangement for Non-skilled workers Engaged Under Government Service Contracts" submitted by the Labour Department to the Legislative Council Panel on Manpower on 11 April 2011 as follows:

	Existing wage requirement (\$)	New wage arrangement (\$)
Cleaner (general) (average number of normal hours of work per day: 8; maximum number of working days per month: 27)		
(i) SMW		6,048 [\$28 x 27 x 8]
(ii) Rest day pay (4 paid rest days per month)		896 [\$28 x 4 x 8]
(iii) Total take home pay	5,682	6,944 (+22%)

¹ As elaborated in p.70 of the "2009 Report on Annual Earnings and Hours Survey"



According to MWO, payment for hours not worked must be deducted from total wages payable to an employee. In this cited example of a monthly paid cleaner, his/her hours not worked but paid, i.e. rest day pay, thereby would have to be deducted from the calculation of hourly rate. As a result, the hourly rate is \$28, calculated as follows:

Hourly rate
= \$6,944 - \$896 [$\$28 \times 4 \text{ days} \times 8 \text{ hours}$] / 216 work hours [$27 \text{ days} \times 8 \text{ hours}$]
= \$6,048 / 216 work hours
= \$28

However, this hourly rate of \$28 is distorted by deducting wages paid for hours not worked (i.e. rest day pay). Taking the total take home pay of \$6,944 into consideration, the effective hourly wage borne by employer will be \$32.15, representing a 14.8% increase from \$28. This is shown by:

Hourly rate = $\$6,944 / 216 \text{ work hours} = \32.15

The above example demonstrates clearly that by deducting wages paid for hours not worked will result in a much greater increase in the effective hourly rate for hours worked, and hence additional costs to all employers, especially SMEs.

The Government did not budget for this extra burden which shows that it was not even aware of this issue until very recently. Accordingly, no enterprises would have anticipated or budgeted for any such a high increase in its wage bill.

It is also foreseeable that attracting and retaining staff will be even more challenging when the Government's service contractors offer wages significantly higher than the current market level.

Accordingly, the Association recommends that the Government should review and amend the MWO such that wages paid for hours not worked should not be deductible from total wages for MWO wage calculation purposes.

In the meantime, it is now essential that the Minimum Wage Commission collects data that is appropriate to enable it to set the SMW based on the currently flawed calculation methodology in the MWO. In particular, data must be obtained about



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wages that are payable or not by employers for hours not worked (such as rest days, meal breaks, contractual annual leave and (non-statutory) general holidays).

We urge your immediate attention to this important and controversial matter.

Yours sincerely,

Caroline Mak
Chairman

cc:

Chairman and Members of Minimum Wage Commission
Chairman and Members of Panel on Manpower, Legislative Council
The Hon Vincent Fang, SBS, JP, Legislative Councillor (Wholesale & Retail)
Chairman, The Chinese General Chamber of Commerce
Chairman, The Chinese Manufacturers' Association of Hong Kong
Chairman, The Federation of Hong Kong Industries
Chairman, The Hong Kong General Chamber of Commerce
Chairman, Employers' Federation of Hong Kong
President, Hong Kong Institute of Human Resource Management
Chairman, Hong Kong Catering Industry Association
Chairman, Hong Kong Federation of Restaurants & Related Trades
Chairman, Hong Kong Small and Medium Enterprises Association
President, The Hong Kong General Chamber of Small and Medium Business
Convener, Environmental Services Contractors Alliance (Hong Kong)
Convener, Security Industry Minimum Wage Concern Group
President, Hong Kong Association of Property Management Companies Limited
Chairman, Property Agencies Association
Business Facilitation Advisory Committee
Members of HKRMA Executive Committee