

**LEGISLATIVE COUNCIL BRIEF**

Minimum Wage Ordinance  
(Cap. 608)

**Minimum Wage  
(Criteria for Approved Assessors) Notice**

**Minimum Wage  
(Assessment Methods) Notice**

**INTRODUCTION**

A The Commissioner for Labour has, under section 1 and section 6(5)  
of Schedule 2 to the Minimum Wage Ordinance (Cap. 608) (MWO), made the  
Minimum Wage (Criteria for Approved Assessors) Notice (Annex A) and the  
B Minimum Wage (Assessment Methods) Notice (Annex B) respectively.

**JUSTIFICATIONS**

**(A) Criteria for Approved Assessors**

2. In order to strike a reasonable balance between providing wage protection to persons with disabilities and safeguarding their employment opportunities upon the implementation of the statutory minimum wage (SMW) regime, the MWO provides for a special arrangement so that persons with disabilities will have the right to choose to undergo a productivity assessment to determine whether they should be remunerated at not lower than the SMW level or at a rate commensurate with their productivity.

3. In the course of consultations with stakeholders, there have been views that the quality and quantity of approved assessors are key to the smooth and effective implementation of the assessment mechanism. After discussion with stakeholders, we propose that an approved assessor should fall into any of the following categories:

- (i) a registered occupational therapist who, in that capacity, possesses not less than 3 years’ experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities during the immediately preceding 7 years;
- (ii) a registered physiotherapist who, in that capacity, possesses not less

than 3 years' experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities during the immediately preceding 7 years;

- (iii) a registered social worker who, in that capacity, possesses not less than 3 years' experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities during the immediately preceding 7 years; or
- (iv) a vocational rehabilitation practitioner being currently engaged, or a veteran vocational rehabilitation practitioner who had been engaged, by the organisation(s) recognised by the Commissioner for Labour<sup>1</sup> for not less than 5 years in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities during the immediately preceding 10 years, and with the recommendation of the aforementioned organisation(s) to become an approved assessor.

4. To ensure the quality of productivity assessments conducted by approved assessors, all eligible applicant assessors should complete satisfactorily training arranged by the Commissioner for Labour in order to become approved assessors. We may withdraw the approval so 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 sufficient cause. Information of the assessors would be included in a register of approved assessors. A person with disabilities who decides to invoke the assessment mechanism can select any of the approved assessors from the register to conduct the assessment.

## **(B) Methods of Assessment**

5. 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. Having regard to the multifarious nature and modalities of work of persons with disabilities, only the broad principles and major elements of the assessment methods will be stipulated in the Notice at Annex B. Details of such information as well as the operational procedures of the productivity assessment will be set out in the form of administrative guidelines to be provided to the approved assessors.

### *The basic principles*

6. As the purpose of an assessment is to determine the degree (if any) to which the productivity of the person with disabilities in performing the work

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<sup>1</sup> These organisations will include non-governmental organisations providing vocational rehabilitation services with subvention from the Social Welfare Department (SWD), training bodies appointed by the Employees Retraining Board to provide training courses for persons with disabilities, SWD, the Hospital Authority, the Vocational Training Council, self-help groups, etc.

required under the contract of employment is affected by his/her disability, the assessment must be conducted in the actual workplace of the person with disabilities. Prior to conducting the assessment, the approved assessor must explain 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, not the employer. The approved assessor should be objective and impartial throughout the process of conducting an assessment. It is incumbent on the approved assessor to ensure that no conflict will arise between his/her duties involved in conducting the assessment and his/her other interests.

#### The productivity assessment

7. In conducting the productivity assessment, the approved assessor should collect detailed information on the work of the person with disabilities (including the nature, requirements and procedures of the work) through the employer, the person with disabilities and, if appropriate, any other relevant person(s) conducive to the understanding of the work of the person with disabilities (such as other employee(s) of the employer performing the same or similar work). Based on the detailed information on the work collected, the approved assessor should exercise his/her professional expertise and decide on the appropriate factor(s), namely working speed, quantity and quality of work or other requirements for performing the work, to be considered in the assessment. With reference to the factor(s) selected, the approved assessor should, by adopting suitable means such as observation and analysing performance data, assess the degree of productivity of the person with disabilities.

8. If the approved assessor, having regard to all the facts and evidence available, is of the view that the performance of the person with disabilities and degree of productivity on the day of assessment is adversely affected by any reasons that cause him/her failing to perform at full potential, the approved assessor may reasonably adjust upwards the degree of productivity of the person with disabilities. The approved assessor is required to sign on the assessment certificate after the assessment is completed.

#### **COST OF ASSESSMENT**

9. There are views from most stakeholders that those persons with disabilities whose productivity is affected by their disabilities and thus need to invoke the special arrangement belong to the more vulnerable group and should not be asked to bear the assessment cost. Nor should the employers shoulder the cost so as not to deter them from employing persons with disabilities. After discussion with the relevant professional associations of approved assessors and careful consideration on the quantum of the assessment cost involved, the Government has decided to take on the responsibility and pay the assessment cost.

## **THE NOTICES**

10. The Minimum Wage (Criteria for Approved Assessors) Notice at Annex A specifies the kinds of persons and the lengths of experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities for the purposes of the definition of approved assessor in Schedule 2 to the MWO. The Minimum Wage (Assessment Methods) Notice at Annex B specifies the methods for assessing the degree of productivity of a person with disabilities in performing the work required under his/her contract of employment. These Notices will come into operation on the day on which Schedule 2 comes into operation.

## **LEGISLATIVE TIMETABLE**

11. The legislative timetable will be –

Publication in the Gazette	7 January 2011
Tabling at the Legislative Council (LegCo)	12 January 2011

## **IMPLICATIONS OF THE PROPOSALS**

12. The Notices are in conformity with the Basic Law, including the provisions concerning human rights, and have no productivity, environmental, economic or civil service implications.

13. The special arrangement for persons with disabilities to undergo productivity assessment under the SMW regime helps preserve their employment opportunities, thereby enabling them to contribute to the society and fulfill their potential by providing access to social infrastructure.

14. Resources required by the Labour Department (LD) for implementing the productivity assessment of persons with disabilities under the SMW regime including the assessment cost will be reflected in the Estimates of the relevant years.

## **PUBLIC CONSULTATION**

15. The productivity assessment of persons with disabilities under the SMW regime has been devised after discussion involving persons with disabilities, parent groups, rehabilitation organisations, employers of persons with disabilities, relevant professional associations of approved assessors and the Equal Opportunities Commission. The Labour Advisory Board unanimously supported the proposals at the meeting on 6 December 2010 and emphasised that the assessment mechanism should be simple so as not

to dampen employers' willingness to employ persons with disabilities. The LegCo Panel on Manpower also supported the proposals in general at the meeting on 16 December 2010.

## **PUBLICITY**

16. A press release will be issued on the day of the gazettal of the Notices. A spokesman from the LD will be made available to handle press enquiries.

## **BACKGROUND**

17. As enshrined in the MWO passed by LegCo on 17 July 2010, employees who are persons with disabilities, like their able-bodied counterparts, will be protected by the 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 persons with disabilities rather than their employers.

18. Under the MWO, the Commissioner for Labour may, by notice published in the Gazette, specify the kinds of persons for the purposes of the definition of approved assessor and the requisite lengths of experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities as well as the methods of assessment.

## **ENQUIRIES**

19. Enquiries on this brief may be addressed to Mr Charles HUI, Chief Labour Officer (Statutory Minimum Wage) of the LD, at 2852 3842.

Labour and Welfare Bureau  
January 2011

## Minimum Wage (Criteria for Approved Assessors) Notice

(Made by the Commissioner for Labour under section 1 of Schedule 2 to the Minimum Wage Ordinance (Cap. 608))

### 1. Commencement

This Notice comes into operation on the day on which Schedule 2 to the Minimum Wage Ordinance (Cap. 608) comes into operation.

### 2. Kinds of persons who may become approved assessors

(1) The following kinds of persons are specified for the purposes of paragraph (a) of the definition of *approved assessor* in section 1(1) of Schedule 2 to the Ordinance—

- (a) an occupational therapist—
  - (i) whose name is entered in Part I of the register kept under section 10 of the Supplementary Medical Professions Ordinance (Cap. 359) for the profession of occupational therapist;
  - (ii) who holds a valid practising certificate as an occupational therapist issued under section 16 of the Supplementary Medical Professions Ordinance (Cap. 359);
  - (iii) who has experience of a type described in section 3 of not less than 3 years in the aggregate gained during the 7 years immediately before the relevant date; and
  - (iv) who has completed the arranged training to the satisfaction of the Commissioner;
- (b) a Part Ia physiotherapist or Part Ib physiotherapist as defined by section 2 of the Physiotherapists

(Registration and Disciplinary Procedure) Regulation (Cap. 359 sub. leg. J)—

- (i) who holds a valid practising certificate as a physiotherapist issued under section 16 of the Supplementary Medical Professions Ordinance (Cap. 359);
  - (ii) who has experience of a type described in section 3 of not less than 3 years in the aggregate gained during the 7 years immediately before the relevant date; and
  - (iii) who has completed the arranged training to the satisfaction of the Commissioner;
- (c) a registered social worker as defined by section 2(1) of the Social Workers Registration Ordinance (Cap. 505)—
- (i) who has experience of a type described in section 3 of not less than 3 years in the aggregate gained during the 7 years immediately before the relevant date; and
  - (ii) who has completed the arranged training to the satisfaction of the Commissioner;
- (d) a person—
- (i) who has worked for any recognized person in providing 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;
  - (ii) who is recommended to be an approved assessor by any recognized person for whom the person has worked in providing the services mentioned in subparagraph (i) during the 10 years immediately before the relevant date; and

(iii) who has completed the arranged training to the satisfaction of the Commissioner.

(2) The Commissioner may, in the manner that the Commissioner thinks fit, recognize any person as a recognized person for the purposes of subsection (1)(d).

(3) In this section—

**arranged training** (經安排培訓) means the training arranged by the Commissioner for the purpose of making assessments under Schedule 2 to the Ordinance;

**recognized person** (認可人士) means any person recognized under subsection (2);

**relevant date** (有關日期), in relation to a person, means the date on which the person seeks the Commissioner's approval as an approved assessor;

**work** (工作) means work, whether or not under a contract of employment and whether or not in a paid capacity.

### 3. Relevant working experience

(1) The experience referred to in section 2(1)(a), (b) and (c) is the experience in providing vocational rehabilitation or other services in relation to the employment of persons with a disability gained in any one or more of the following sets of circumstances—

(a) while practising as an occupational therapist whose name is entered in Part I, II or III of the register kept under section 10 of the Supplementary Medical Professions Ordinance (Cap. 359) for the profession of occupational therapist and while holding a valid practising certificate as an occupational therapist issued under section 16 of that Ordinance;

(b) while practising as a Part Ia physiotherapist, Part Ib physiotherapist or Part II physiotherapist as defined by section 2 of the Physiotherapists (Registration and

Disciplinary Procedure) Regulation (Cap. 359 sub. leg. J) and while holding a valid practising certificate as a physiotherapist issued under section 16 of the Supplementary Medical Professions Ordinance (Cap. 359);

(c) while practising as a registered social worker as defined by section 2(1) of the Social Workers Registration Ordinance (Cap. 505).

(2) If a person gains experience in more than one set of circumstances described in subsection (1) concurrently in a period of time, that period of time is only to be counted once in calculating the person's length of experience for the purposes of section 2(1)(a)(iii), (b)(ii) or (c)(i).

### 4. Lengths of experience required for becoming approved assessors

The following lengths of experience in providing vocational rehabilitation or other services in relation to the employment of persons with a disability are specified for the purposes of paragraph (b) of the definition of **approved assessor** in section 1(1) of Schedule 2 to the Ordinance—

(a) for a person of the kind specified in section 2(1)(a), (b) or (c), not less than 3 years in the aggregate gained during the 7 years immediately before the relevant date as defined by section 2(3);

(b) for a person of the kind specified in section 2(1)(d), not less than 5 years in the aggregate gained during the 10 years immediately before the relevant date as defined by section 2(3).

Commissioner for Labour

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**Explanatory Note**

The purpose of this Notice is to specify the kinds of persons and the lengths of experience for the purposes of the definition of *approved assessor* in section 1(1) of Schedule 2 to the Minimum Wage Ordinance (Cap. 608). A person who satisfies the specified criteria may be approved by the Commissioner for Labour under section 6(4) of that Schedule as an approved assessor for the purpose of making assessments under that Schedule.

## Minimum Wage (Assessment Methods) Notice

(Made by the Commissioner for Labour under section 6(5) of Schedule 2 to the Minimum Wage Ordinance (Cap. 608))

### 1. Commencement

This Notice comes into operation on the day on which Schedule 2 to the Minimum Wage Ordinance (Cap. 608) comes into operation.

### 2. Interpretation

In this Notice—

*work* (工作) means the work required to be performed under a contract of employment by a PWD whose degree of productivity in performing it is being assessed.

### 3. General duty of approved assessor

An approved assessor—

- (a) must be objective and impartial in making an assessment; and
- (b) must ensure that there is no actual or potential conflict between his or her duties as an approved assessor and either his or her personal interests or the interests of any person by whom he or she is engaged (whether or not under a contract of employment and whether or not in a paid capacity).

### 4. Initial procedures

- (1) At the beginning of an assessment, the approved assessor must explain to the PWD and the employer—
  - (a) their respective rights and obligations in the assessment under the Ordinance; and
  - (b) the procedures for the assessment.

- (2) The approved assessor must acquire sufficient understanding of the PWD's work, including the nature, requirements and procedures of the work.
- (3) The approved assessor may, for the purposes of subsection (2), interview the PWD, the employer of the PWD, any person performing any work that is the same as or similar to the work, and any person who has knowledge of or experience in the work.

### 5. Assessment

- (1) The degree of productivity of a PWD in performing the work is to be assessed by reference to the PWD's performance of the work at his or her place of employment.
- (2) The approved assessor must, having regard to the details of the work and all the circumstances of the case, decide which one or more of the following factors are relevant in the assessment—
  - (a) the quality of the work done by the PWD;
  - (b) the quantity of the work done by the PWD;
  - (c) the PWD's speed of work;
  - (d) the PWD's ability to meet the other requirements of the work.
- (3) The approved assessor may assess the PWD's degree of productivity by any means he or she thinks fit, including on-site observation and analysing any performance data.
- (4) The approved assessor may make any upward adjustment he or she thinks fit to the PWD's degree of productivity on being satisfied that, due to particular circumstances, the PWD failed to demonstrate his or her full potential in the assessment.
- (5) The approved assessor must, in the certificate of assessment required to be provided under section 7 of Schedule 2 to the Ordinance, state—

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- (a) the PWD's assessed degree of productivity (if an adjustment has been made under subsection (4), the PWD's assessed degree of productivity as adjusted); and
  - (b) the other details required by the certificate.

**Explanatory Note**

The purpose of this Notice is to specify the methods for assessing the degree of productivity capable of being achieved by a person with a disability in performing the work required under his or her contract of employment.

Commissioner for Labour

2011

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