

For information on
16 December 2014

Legislative Council Panel on Manpower

Results of Review of the Special Arrangement for Employees with Disabilities under the Statutory Minimum Wage Regime

Purpose

The Labour Department (LD) has conducted a review on the special arrangement for employees with disabilities under the Statutory Minimum Wage (SMW) regime. This paper reports to Members on the results of the review.

Special arrangement for employees with disabilities

2. Coming into effect since 1 May 2011, the Minimum Wage Ordinance (Cap. 608) (MWO) has established the SMW regime which seeks to strike an appropriate balance between forestalling excessively low wages and minimising the loss of low-paid jobs while sustaining the economic growth and competitiveness of Hong Kong.

3. In accordance with MWO, employees with disabilities and able-bodied employees are protected by SMW alike. A special arrangement is also provided in MWO so that employees with disabilities whose productivity may be impaired by their disabilities have the right to undergo a productivity assessment (assessment) to determine whether they should be remunerated at no less than the SMW rate or at a rate commensurate with their productivity. According to MWO, the right to invoke the assessment is solely vested in the employees with disabilities, not their employers. Details of the assessment mechanism are set out in **Annex I**. The provision of this special arrangement seeks to strike an appropriate balance between providing wage protection to employees with disabilities and safeguarding their employment opportunities in view of the concern of the community and relevant organisations about the possible employment difficulties of some employees with disabilities. The Government has undertaken to conduct a review of the special arrangement, including whether there is a need for an appeal mechanism and the impact of SMW on the employment opportunities of persons with disabilities, in the light

of the operating experience and to report the findings to the Legislative Council (LegCo) Panel on Manpower.

Information on employees with disabilities who had undergone assessment and their employers

4. During the period from 1 May 2011 to 30 June 2014, 389 cases of assessment were conducted under MWO. The productivity level assessed ranged from 34% to 100%. Of these cases, the assessment results of the great majority showed productivity of 50% or above. Over 30% of the cases were assessed with productivity of 80% or above. In terms of disability type (with some employees having more than one type of disability), about 60% of the cases were associated with intellectual disability, 20% with mental illness, and other types of disability (e.g. autism, speech impairment, physical handicap, etc.) each accounted for less than 7%.

5. Categorized by occupation, the majority of the assessments involved employees with disabilities engaged in elementary occupations, followed by service and sales workers. Most employees were aged 20 to 29, followed by those aged 30 to 39; most were with education level at Secondary 4 to 5, followed by Secondary 1 to 3; and the majority belonged to employees with disabilities employed after the implementation of MWO. Regarding the industry of employers, most assessments concerned the sector of accommodation and food service activities, followed by public administration, social and personal services; a majority of the employers had a total employment size of 10 to 29, followed by that of 1 to 9; and slightly more than half were non-governmental organisations (NGOs) or their social enterprises.

6. Breakdowns of the assessment cases are provided in **Annex II**.

Results of review of the special arrangement

7. Since the implementation of SMW on 1 May 2011, LD has been closely monitoring the operation of the special arrangement, collecting and analysing relevant information and data of the assessment cases, and maintaining contact with relevant organisations for views on the assessment mechanism. LD has gathered the following data, information and views:

- (a) data and information of the assessments, and feedback from the concerned employees with disabilities, their employers and approved assessors;

- (b) data and information collected in the course of the enforcement of MWO;
- (c) data and information of LD and concerned government departments and organisations in providing employment assistance for persons with disabilities; and
- (d) views, studies and suggestions of stakeholders.

8. The assessment mechanism has been functioning smoothly since its implementation. During the period from 1 May 2011 to 30 November 2014, LD did not receive any complaints against the operation of the assessment mechanism, performance of approved assessors, abuse of the special arrangement by employers and/or dismissal of employees with disabilities on account of the outcome of assessment, etc. Out of 146 168 inspections conducted by LD to enforce MWO during the same above-mentioned period, two cases of suspected underpayment of SMW to employees with disabilities were detected, and the employers concerned settled the shortfall of wages after our explanation of the requirements of MWO.

Provision of the assessment mechanism

9. The stakeholders held diverse views on the implementation of the assessment mechanism. Some stakeholders suggested that the assessment mechanism should be scrapped in the light of the small number of assessments. There were also views that employees with disabilities should be exempted from MWO. Separately, some stakeholders considered that the assessment mechanism had been put in place to strike an appropriate balance in upholding wage protection and preserving employment opportunities for employees with disabilities and its effectiveness should not be measured simply by the number of assessments. According to relevant organisations in the disability and rehabilitation sector, most of the newly employed persons with disabilities could earn wages at or above the SMW rate and thus needed not undergo the assessment. For serving employees with disabilities who had opted for the transitional arrangement under MWO before the implementation of SMW to retain their contractual wage rates below SMW, they could invoke the assessment at any time having regard to their individual circumstances and needs.

10. For the 389 assessments mentioned in paragraphs 4 to 6 above, LD collected views from the concerned employees with disabilities, their employers and approved assessors. Among those employees with disabilities or their family members and their employers who expressed views on the assessment mechanism, the majority considered the existing assessment mechanism

appropriate and simple to invoke and it helped protect or promote job opportunities of employees with disabilities and facilitate their continued employment. Some rehabilitation organisations, parent groups and relevant survey results indicated that the assessment mechanism had helped employees with disabilities retain their work, enhance their job opportunities, prove their working abilities and earn more wages. We therefore consider that the assessment mechanism should be retained under MWO as an option for employees with disabilities to balance their wage protection and employment opportunities.

Procedures and methods of assessment and appeal/review arrangement

11. The assessment mechanism available for employees with disabilities to invoke under MWO had been the result of extensive discussions between the Government and relevant organisations in the disability and rehabilitation sector, including persons with disabilities, parent groups, rehabilitation organisations and employers of persons with disabilities, etc. before it was introduced in May 2011. According to the majority view gauged therein, the procedures and methods of assessment should not be complicate. As reflected from LD's follow-up with employees with disabilities undergoing assessment or their family members and their employers, over 80% of the employees with disabilities and employers were satisfied or very satisfied with the assessment results.

12. A few stakeholders proposed that different assessment guidelines and criteria should be designed for different categories of jobs. There were, however, views that the job types and industries of employees with disabilities could vary and many employers would make adjustment to the duties of the job to suit the ability of the employees with disabilities concerned. It would therefore be difficult and impracticable to formulate strictly normative benchmarks which might also create undue pressure on the employees with disabilities during the assessment. According to the relevant professional associations of approved assessors, the existing procedures and methods of assessment were appropriate, and approved assessors should be able to make their professional judgment based on their relevant experience and knowledge after collecting information and details about the work of the employees with disabilities to be assessed. In view of the diversity of the job nature and mode of work of employees with disabilities, and as the fundamental principles and key elements of the assessment procedures and methods have already been stipulated in MWO and its subsidiary legislation, we consider that the methods of assessment should not become rigid and inflexible.

13. As to whether an appeal/review arrangement should be introduced, the subject were discussed thoroughly when the Minimum Wage Bill and its subsidiary legislation were examined by LegCo. Views among stakeholders on this issue remained diverse since the implementation of the assessment mechanism. On the one hand, some considered that the absence of an appeal/review arrangement was unfair to employees with disabilities, particularly those assessed with relatively low level of productivity. There were also views that employees with disabilities assessed with higher productivity level should not be allowed to undergo another assessment lest they would resort to reassessment upon pressure from employers. On the other hand, some stakeholders in the rehabilitation sector were of the view that the assessment mechanism should be kept simple and easy to implement. An appeal/review arrangement would complicate the assessment mechanism and could create undue psychological pressure on employees with disabilities, which would in turn affect their performance during the assessment. The arrangement of periodic reviews after commencing employment could also impose a labelling effect on the employees with disabilities concerned or dampen employers' willingness to employ persons with disabilities. Some rehabilitation organisations reflected that productivity of individual employees with disabilities could worsen owing to their changing disability conditions and the result of the second assessment would not necessarily excel the first one. There were views that salary review of employees with disabilities upon employment was related to their performance appraisal whereas reassessment should not be taken as a tool for wage adjustment.

14. Should an appeal/review arrangement be set up, a number of operational issues must be resolved in the first place. Examples are: whether only an upward adjustment of productivity level, but not a downward one, would be acceptable as outcome of appeal/review; whether both the employees with disabilities and their employers could seek appeal/review; whether the number of appeal/review and/or the cycle of review should be subject to any limit, etc.

15. Of the 389 assessments mentioned above, only a minority of the employees with disabilities and employers had expressed their wish for an appeal/review arrangement while other employees with disabilities and employers considered such arrangement not necessary. For those 40 assessment cases where the employees with disabilities were dissatisfied with the assessment result, the post-assessment wage levels of the employees concerned in 80% of such cases was still higher than those before assessment. As for assessments conducted in the period from May 2011 to June 2013, LD had issued questionnaires to the employees with disabilities and employers concerned. According to the information collected, over 60% of the responding employees with disabilities and employers indicated that the

employees with disabilities had received pay rise one year after the assessment. Over 85% of the responding employers also advised that they had put in place performance appraisal and salary review mechanism that were applied to all employees, including employees with disabilities.

16. There has been no consensus on the setting up of an appeal/review arrangement or otherwise. Having regard to the need to strike a reasonable balance between providing wage protection to employees with disabilities and safeguarding their employment opportunities, we consider it more appropriate to maintain the simple mode of operation of the existing assessment mechanism and will continue to explore appropriate measures for its enhancement (as referred to in paragraph 25 below).

Approved assessors

17. As at the end of November 2014, 438 approved assessors had been appointed to conduct assessment for employees with disabilities under MWO. They included 146 registered occupational therapists, 118 registered social workers, 90 registered physiotherapists and 84 vocational rehabilitation practitioners. Those 389 assessments mentioned above were conducted by 166 approved assessors, with the majority of them being registered social workers and vocational rehabilitation practitioners. Based on the information collected from employees with disabilities who had undergone assessment and their employers, about 90% of them respectively were satisfied or very satisfied with the performance of approved assessors. While a few employees with disabilities and employers were discontent with the performance of their approved assessors, it was found upon follow-up that such discontent largely stemmed from inadequate communication. Moreover, the concerned professional bodies of approved assessors had not received any complaint against the performance of approved assessors. Nor had LD received any complaint involving conflict of interest of approved assessors.

18. A relatively large number of assessments had been conducted by approved assessors in the categories of registered social workers and vocational rehabilitation practitioners. There were views that this arose from the more frequent contacts between these approved assessors and employees with disabilities, and many of the latter were inclined to have their assessment conducted by those approved assessors whom they were more familiar with. As revealed by employees with disabilities who had undergone assessment, more than 60% of them selected approved assessors by browsing through the "Register of Approved Assessors" on LD's webpage. For the rest, the employees with disabilities relied on referral by colleagues or NGOs from which they were receiving/had received service, and some chose case officers,

placement officers, training instructors, etc. of their acquaintance who were also approved assessors. Some employees with disabilities or their family members mentioned that they had experienced difficulties in contacting approved assessors and some considered that the Government should assign approved assessors for them. Nonetheless, as the majority of the employees with disabilities concerned have selected approved assessors out of their own choice or personal knowledge, assignment of approved assessor by the Government may not be suitable to individual employees with disabilities. This notwithstanding, we will enhance the measures in assisting employees with disabilities with the procedure for opting to undergo assessment (as referred to in paragraph 25 below).

Trial period of employment

19. Of the 389 assessments conducted, over 90% of the newly employed persons with disabilities had agreed with their employers to undergo a trial period of employment. Based on the data of the assessment cases, there was no correlation between the duration of the trial period of employment and the assessed level of productivity; and a longer trial period did not necessarily lead to a higher level of productivity assessed. LD has been closely monitoring those assessments with a relatively short trial period of employment to ensure that the employees concerned only conducted the assessment when they got accustomed to their work. It was found upon follow-up that these employees with disabilities had a relatively short trial period of employment mainly because they had received relevant job training or had worked for related jobs beforehand and were more familiar with their working conditions and environment. In overall terms, the existing trial period of employment of not more than four weeks is considered appropriate. It enables employees with disabilities to become acclimatised to their work before assessment and allows them to decide on their timing of invoking assessment having regard to their personal circumstances.

20. Regarding the wage level during the trial period of employment, about 65% of the employees with disabilities concerned had agreed with their employers to be remunerated at 50% of the SMW rate, and the remaining at more than 50% to 100% of the SMW rate. About 80% of the employees with disabilities who had agreed with their employers to undergo a trial period of employment subsequently got pay rise after assessment. Employees with disabilities who had undergone assessment or their family members did not express specific views on the lower limit of wage level during the trial period of employment (i.e. 50% of the SMW rate). Only one employer found it too high in the light of the performance of the employee with disabilities concerned. We consider it suitable to maintain this lower limit of wage level during the trial

period of employment with which employees with disabilities can negotiate with their employers for higher wage levels.

Transitional arrangement

21. Among those 389 assessments conducted, about 20% (81 assessments) involved serving employees with disabilities who had been in employment and opted for transitional arrangement prior to MWO taking effect, of which some 90% were conducted shortly after the implementation of MWO. For the assessments of serving employees with disabilities who had opted for transitional arrangement, the post-assessment wage levels of the employees concerned in 90% of the cases were higher than those before the implementation of MWO. Some suggested that the small number of assessments reflected that serving employees with disabilities who had opted for transitional arrangement had reservation in undergoing assessment and were concerned about the possibility of dismissal owing to wage increase after assessment. Nevertheless, there were also views that many employees with disabilities who had opted for transitional arrangement did not invoke the assessment as they were content with the status quo or individual situations and needs, or they found employment opportunities more important for social integration.

22. It must be noted that according to MWO, serving employees with disabilities who had opted for transitional arrangement may, prior to assessment, retain their original wage rate which will follow the same percentage of adjustment of the SMW rate, if any. For example, these employees were also entitled to an increase of 7.1% in their original wage rate upon the uprating of SMW by 7.1% with effect from 1 May 2013. The option of transitional arrangement made by a serving employee with disabilities will lapse if he is no longer engaged by the same employer or the kind of work to be done has changed under the employ by the same employer. As serving employees are not required under MWO to notify LD of their election for transitional arrangement, statistics on these employees are not available. However, as learnt from relevant organisations in the disability and rehabilitation sector, the number of employees with disabilities under transitional arrangement who are yet to invoke assessment should not be significant as they may have changed jobs or be receiving wages not lower than the SMW rate. We consider that the transitional arrangement should be retained so that these serving employees with disabilities may continue to invoke assessment at any time having regard to their individual circumstances and needs.

Exemptions under the Disability Discrimination Ordinance

23. In connection with the assessment mechanism, the Disability Discrimination Ordinance (Cap. 487) (DDO) provides for the following exemptions:

- (a) only a person holding a valid “Registration Card for People with Disabilities” may seek assessment;
- (b) in accordance with MWO, an employer may pay to an employee with disabilities minimum wage that is less than that payable to an employee without disabilities; and
- (c) an employer terminates an employment contract on account of the outcome of the assessment.

The above exemptions enable employees with disabilities and their employers to understand clearly that acts done in connection with the assessment would not be in breach of DDO so that employers would not be discouraged from employing persons with disabilities upon the implementation of SMW.

24. For the 389 assessments conducted, information as consolidated from employees with disabilities and employers revealed that among those cases with cessation of employment, the employees concerned left employment of their own accord with various personal reasons in more than half of the cases; the contract of employment was terminated by the employers concerned in some 20% of the cases only, mainly on account of the employees’ poor performance or misconduct in workplace or the expiry of outsourced service contract awarded to the employers; and in more than 20% of the cases, the employment relationship was terminated upon the expiry of fixed-term employment contract, or the employees were transferred to other companies or units owing to their satisfactory performance, operational needs of the employers, etc. As at the end of November 2014, LD had received neither complaints from employees with disabilities against dismissal on account of the outcome of assessment nor calls to remove the above exemptions from employees with disabilities who had undergone assessment. As regards DDO, the Equal Opportunities Commission (EOC) had not received any complaint from employees with disabilities about the implementation of SMW.

Enhancement measures for the special arrangement

25. With the limited experience of implementing SMW and the related special arrangement in Hong Kong, it is considered prudent and appropriate to maintain the assessment mechanism. LD will continue to widely publicise the

rights of employees with disabilities to receive SMW and to choose to undergo assessment¹, closely monitor the implementation of the assessment mechanism and launch the following enhancement measures:

(a) Enhancing the assistance for employees with disabilities on the procedure of opting assessment

- to enhance information and guidelines on the assessment mechanism for employees with disabilities to assist them in understanding how to prepare for assessment, how to use the on-line “Register of Approved Assessors” on LD’s webpage to search for approved assessors, the appropriate timing for approaching approved assessors, etc;
- to step up communication with NGOs providing services to persons with disabilities and enhance knowledge about the assessment mechanism on the part of service providers like social workers and case officers who have close contact with persons with disabilities so that assistance can be offered to employees with disabilities who wish to invoke assessment; and
- to require approved assessors to notify LD of changes in their contact means expeditiously to facilitate timely update of information in the “Register of Approved Assessors”, remind them to confirm assessment arrangement with employees with disabilities as soon as practicable, and follow up closely any cases of approved assessors refusing to conduct assessment.

(b) Improving the quality of approved assessors in conducting assessment

- to refine administrative guidelines for approved assessors in consultation with relevant organisations in the disability and rehabilitation sector and professional associations of approved assessors to enable approved assessors to collect detailed information on the work of employees with disabilities for assessment; and

¹ LD has organised various publicity activities. Examples are: displaying posters, distributing leaflets or advertising messages through the offices and webpages of relevant government departments and statutory bodies (e.g. EOC, Mandatory Provident Fund Schemes Authority, etc.), organisations in the disability and rehabilitation sector, self-help groups, parent organisations and trade unions; displaying posters at Rehab Bus and advertising at public transport; advertising through various media channels and placing advertisements and articles in the publications of organisations in the disability and rehabilitation sector and trade unions; broadcasting television and radio Announcement of Public Interest; inserting promotional message in public utilities bills, etc.

- to maintain close communication with approved assessors through follow-up of assessments and issue of newsletters for approved assessors, etc.
- (c) Strengthening communication among employees with disabilities, employers and approved assessors
- to remind approved assessors to explain in detail the major factors under consideration, the suitable means adopted and the rationale for arriving at the productivity level assessed, confirm with both parties on their need to provide supplementary information and arrange further time slots of assessment to consider all related factors when warranted by circumstances;
 - to provide points-to-note on assessment procedures for approved assessors to explain to employees with disabilities and employers on how an assessment is conducted, how to get prepared for the assessment, etc; and
 - to require approved assessors to remind employers to handle performance appraisals and salary reviews of employees with disabilities according to the pay system which equally applies to employees with or without disabilities.

Impact of SMW on employment opportunities of persons with disabilities

26. After the implementation of SMW, views gathered from many stakeholders of the rehabilitation sector suggested that SMW had not brought about a significantly adverse impact on the employment opportunities of persons with disabilities. According to their practical experience, although some employers were more reserved in recruitment at the early stage of SMW implementation, they adapted gradually and many were willing to offer the SMW rate to persons with disabilities owing to the buoyant economy and the insignificant wage difference involved. Some organisations offering rehabilitation services, vocational training and employment services to persons with disabilities reflected that employment prospects of their graduate trainees or service users had not been adversely affected and some had even recorded increases in the placement rates for their users. In addition, against the tight labour market, more chances had been opened up for persons with disabilities to fill vacancies such as those in catering and cleaning industries. The higher income in general also encouraged more persons with disabilities to enter or re-enter the labour market. However, some organisations and stakeholders in the rehabilitation sector were concerned that in the event of an economic downturn, the employment opportunities of persons with disabilities would be

affected and the less competitive job-seekers would be harder hit, and the situation should thus be closely observed for a longer time.

27. To facilitate the employment of persons with disabilities, the Government will continue to provide employment support and vocational training services to equip them with job skills and assist them in securing employment commensurate with their abilities. The placement figures for persons with disabilities recorded by LD in recent years stayed at a level similar to that recorded before the implementation of SMW. Some organisations engaged in vocational training for persons with disabilities reportedly experienced a similar situation. Moreover, there were no obvious changes in the demands for various vocational rehabilitation services provided by the Social Welfare Department (SWD) before and after the implementation of SMW. Regarding employment statistics of persons with disabilities, the Census and Statistics Department conducted a new round of Special Topic Enquiry on Persons with Disabilities and Chronic Diseases in 2013. Reference can be made to the relevant statistics on employment upon the release of this thematic study report.

Measures to facilitate employment of persons with disabilities

28. The Government will continue to closely monitor the impact of SMW on the employment of persons with disabilities and enhance various support and services for promoting the employment for persons with disabilities to ensure that they have equal access to participation in productive and gainful employment in the open employment market. The new and enhanced initiatives rolled out by the Government in recent years include:

- (a) Enhanced “Work Orientation and Placement Scheme” (WOPS): LD has further enhanced WOPS since June 2013 by introducing a two-month work adaptation period. An employer who employs persons with disabilities having employment difficulties is entitled to an allowance equivalent to the amount of actual salary paid to an employee with disabilities less \$500 per month during the first two months of adaptation period, subject to a monthly ceiling of \$5,500. After the adaptation period, the employer is entitled to an allowance equivalent to two-thirds of the actual salary paid to the employee concerned, subject to a ceiling of \$4,000 per month, and for a maximum payment period up to six months. Besides, if a mentor appointed by the employer to coach the employee with disabilities has successfully assisted the employee to continue with employment after the first two months of employment, the amount of cash award

granted to the mentor has been increased from \$500 for one month to a total of \$1,000 for two months;

- (b) Enhanced “On the Job Training Programme for People with Disabilities” and the “Sunnyway - On the Job Training Programme for Young People with Disabilities”: Since July 2013, SWD has increased the job attachment allowance and job trial wage subsidy under both schemes. The job attachment allowance has been raised from \$1,250 to \$2,000 per month, and the cap of job trial wage subsidy has been raised from \$3,000 to \$4,000 per month with the maximum subsidy period extended from three months to six months;
- (c) Implemented the “Support Programme for Employees with Disabilities” (SPED): SWD has since June 2013 launched SPED to provide subsidies to employers of persons with disabilities for procuring assistive devices and carrying out workplace modification works. This will help persons with disabilities secure open employment and enable employees with disabilities to work more efficiently. An employer may receive a maximum subsidy of \$20,000 for each employee with disabilities. Taking into account the views of stakeholders, SWD has implemented enhanced initiatives since 28 April 2014 including raising the maximum support level of \$40,000 for procurement of a single assistive device and its essential accessories; and
- (d) Implemented the Talent-Wise Employment Charter and Inclusive Organisations Recognition Scheme: The Labour and Welfare Bureau, in collaboration with the Rehabilitation Advisory Committee, Hong Kong Council of Social Service and Hong Kong Joint Council for People with Disabilities, launched the Talent-Wise Employment Charter and Inclusive Organisations Recognition Scheme to mobilise the Government, business sector as well as public and subvented bodies to make collective efforts to promote the employment of persons with disabilities through a host of sustainable measures commensurate with their modes of operation. Examples of these measures include employing persons with disabilities and introducing policies and measures to ensure equal opportunities for persons with disabilities; publishing periodically in corporate publications/ publicity materials on the number of employees with disabilities and on measures or indicators pertaining to the employment of persons with disabilities; providing barrier-free working environment and assistive devices for employees with disabilities; providing internship and on-the-job training to persons with disabilities; using products or services provided by rehabilitation social enterprises and suppliers

employing persons with disabilities; assisting employees with disabilities to acquire job skills, adapt to the working environment and build rapport with their colleagues; and setting aside shops or stalls for social enterprises or self-employed persons with disabilities to run business or sell their products, etc.

Consultation with Rehabilitation Advisory Committee and Labour Advisory Board

29. The Rehabilitation Advisory Committee (RAC) and the Labour Advisory Board (LAB) discussed the results of review of the special arrangement at their meetings held on 25 November and 1 December 2014 respectively. RAC noted the smooth functioning of the assessment mechanism with fewer assessments as compared with the initial stage of implementation. Some members considered that all employers should engage employees with disabilities at SMW. Nevertheless, RAC was in principle of the view that the current simple operation of the assessment mechanism could be maintained. LAB also supported the results of the review of the special arrangement and agreed that the operation of the assessment mechanism should continue and be kept simple so as to avoid dampening employers' willingness to engage persons with disabilities. RAC and LAB noted that LD would continue to monitor implementation of the assessment mechanism and adopt enhancement measures as appropriate.

Advice Sought

30. Members are invited to note the content of this paper and provide their views.

Labour and Welfare Bureau
Labour Department
December 2014

**Productivity Assessment Mechanism for
Employees with Disabilities under the Minimum Wage Ordinance**

The provisions on productivity assessment (assessment) are stipulated in Schedule 2 to the Minimum Wage Ordinance (Cap. 608) (MWO), the Minimum Wage (Criteria for Approved Assessors) Notice (Cap. 608A) and the Minimum Wage (Assessment Methods) Notice (Cap. 608B). The right to invoke assessment is entirely vested in the employees with disabilities but not the employers. For employees with disabilities who do not opt to undergo assessment, their employers must pay them at not lower than the Statutory Minimum Wage (SMW) rate. A flow chart of employees with disabilities invoking the assessment is as follows:

The employee with disabilities must hold a valid “Registration Card for People with Disabilities” issued by the Central Registry for Rehabilitation of the Labour and Welfare Bureau when invoking the assessment.



The employee with disabilities may, before commencing employment, agree with the employer to undergo a trial period of employment of not more than four weeks¹ to adapt and settle into the work before assessment. The wage level during the trial period of employment as agreed between the employee with disabilities and the employer should not be lower than 50% of the SMW rate.



The employee with disabilities invokes the assessment and contacts the approved assessor² to be selected from the “Register of Approved Assessors” of the Labour Department (LD) to conduct the assessment.



The approved assessor conducts the assessment in the actual workplace of the employee with disabilities, collects detailed information on the work and selects appropriate factors to be considered and suitable methods of assessment.



The approved assessor explains the assessment result and issues the “Certificate of Assessment on the Degree of Productivity” to the employee with disabilities and the employer. The fee of the approved assessor is borne by LD. After the completion of the assessment, the employee with disabilities shall not have further assessment made for the same work with the same employer. The assessment result of the certificate is only applicable to the work required under the contract of employment performed by the employee with disabilities for the employer as specified in the certificate.

¹ If there are special reasons, the employee with disabilities and the employer may jointly make an application for extension to LD before the end of the trial period of employment. The Commissioner for Labour may, in exceptional circumstances, extend the trial period of employment by up to four weeks (i.e. not more than eight weeks in total).

² Approved assessors include registered occupational therapists, registered physiotherapists, registered social workers and vocational rehabilitation practitioners with necessary relevant experience and are appointed by the Commissioner for Labour.

2. A transitional arrangement is also provided under MWO to serving employees with disabilities earning below the initial SMW rate before the implementation of SMW. Those employees who opted for the transitional arrangement by completing and jointly signing with their employers the “Option Form” specified by LD before 1 May 2011 may invoke the assessment at any time after the implementation of MWO, having regard to their individual circumstances and needs. Before the completion of assessment, these serving employees with disabilities may retain their original wage rate. Adjustment of the SMW rate in the interim will also be applicable to them, i.e. to multiply the percentage of the original wage rate over the initial SMW rate by the revised SMW rate.

3. In conducting the assessment, the approved assessor should collect detailed information on the work of the employee with disabilities, including the nature, requirements and procedures of the work, through the employee with disabilities, the employer and any other relevant persons conducive to the understanding of the work (such as other employees of the employer performing the same or similar work). Based on the detailed information on the work collected, the approved assessor should exercise professional expertise to select the appropriate factors to be considered in the assessment, including the quality of work, quantity of work, working speed and/or other requirements for performing the work. With reference to the factors selected, the approved assessor should, by adopting suitable methods of assessment (such as on-site observation and analysing performance data of the above factors), assess the degree of productivity of the employee with disabilities. If the approved assessor, having regard to all the facts and evidence available, is of the view that the performance and degree of productivity of the employee with disabilities on the day of assessment is adversely affected by any reasons that cause him/her failing to perform at full potential, an upward adjustment in the assessed degree may be made as appropriate.

4. With the completion of assessment and from the first day after the “Certificate of Assessment on the Degree of Productivity” is countersigned by the employee with disabilities and the employer, the employee with disabilities should be paid at no less than a wage rate commensurate with the degree of productivity stated in the certificate, viz.:

$$\begin{array}{l} \text{Minimum wage level} \\ \text{that the employer should pay} \\ \text{to the employee with} \\ \text{disabilities} \end{array} = \begin{array}{l} \text{Assessed degree of} \\ \text{productivity stated in the} \\ \text{certificate} \end{array} \times \begin{array}{l} \text{SMW} \\ \text{rate}^3 \end{array}$$

³ To be calculated according to the latest SMW rate in force.

5. If either the employee with disabilities or the employer fails to countersign the certificate, the employer should pay the employee with disabilities at not less than the SMW rate on and from the first day after the completion of assessment. After the assessment, the employee with disabilities is still required to hold a valid “Registration Card for People with Disabilities” to enable the assessed degree of productivity stated in the certificate to remain valid. Otherwise, the employer should pay at not lower than the SMW rate when the “Registration Card for People with Disabilities” of the employee has become invalid.

Productivity Assessments under the Minimum Wage Ordinance
(as at 30 June 2014)

(1) Degree of productivity

Degree of productivity	No. of assessments	Percentage out of all assessments (%)
30% to less than 40%	2	0.5
40% to less than 50%	8	2.1
50% to less than 60%	44	11.3
60% to less than 70%	112	28.8
70% to less than 80%	99	25.4
80% to less than 90%	84	21.6
90% to less than 100%	31	8.0
100%	9	2.3
Total	389	100

(2) Type of disability of employees

Type of disability¹	No. of employees with this type of disability	Percentage out of all disability types (%)
Intellectual disability	264	56.3
Mental illness	86	18.3
Autism	30	6.4
Speech impairment	22	4.7
Physical disability	21	4.5
Visceral disability / Chronic illness	17	3.6
Hearing impairment	17	3.6
Visual impairment	5	1.1
Attention Deficit / Hyperactivity Disorder	4	0.9
Specific Learning Difficulties	3	0.6
Total	469	100

¹ With some employees having more than one type of disability.

(3) Occupation of employees

Occupation	No. of assessments	Percentage out of all assessments (%)
Elementary occupations	243	62.5
Service and sales workers	105	27.0
Clerical support workers	26	6.7
Craft and related workers	6	1.5
Others	9	2.3
Total	389	100

(4) Age group of employees

Age group (years)	No. of assessments	Percentage out of all assessments (%)
15 to 19	18	4.6
20 to 29	200	51.4
30 to 39	85	21.9
40 to 49	60	15.4
50 to 59	23	5.9
60 or above	3	0.8
Total	389	100

(5) Educational level of employees

Educational level	No. of assessments	Percentage out of all assessments (%)
Primary 6 or below	49	12.6
Secondary 1 to 3	139	35.7
Secondary 4 to 5	152	39.1
Secondary 6 to 7	40	10.3
Others	9	2.3
Total	389	100

(6) Category of employment of employees

Category of employment		No. of assessments		Percentage out of all assessments (%)
Employed after implementation of MWO	with trial period of employment	259	285	66.6
	without trial period of employment	26		6.7
Employed before implementation of MWO	with transitional arrangement	81	104	20.8
	without transitional arrangement	23		5.9
Total		389		100

(7) Industry of employers

Industry	No. of assessments	Percentage out of all assessments (%)
Accommodation and food service activities	144	37.0
Public administration, social and personal services	97	24.9
Financing, insurance, real estate, professional and business services	52	13.4
Import/export trades and wholesale, retail	44	11.3
Manufacturing	36	9.3
Transportation, storage, postal and courier services	4	1.0
Others	12	3.1
Total	389	100

(8) Total number of employees engaged by employers

No. of employees engaged	No. of assessments	Percentage out of all assessments (%)
1 to 9 persons	114	29.3
10 to 29 persons	121	31.1
30 to 49 persons	46	11.8
50 to 99 persons	47	12.1
100 persons or above	61	15.7
Total	389	100

(9) Business categories of employers

Business category	No. of assessments	Percentage out of all assessments (%)
NGOs or their social enterprises	203	52.2
Private organisations	186	47.8
Total	389	100