

For information on
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Legislative Council Panel on Manpower

Preparatory Work for Introducing a Statutory Minimum Wage for Cleaning Workers and Security Guards if the Wage Protection Movement Fails to Yield Satisfactory Results

Composite Report on the Practical Issues Discussed

Purpose

This paper provides a consolidated report on the practical issues relating to the preparatory work for the possible introduction of a statutory minimum wage (SMW) for cleaning workers and security guards which Members of the Manpower Panel have discussed in the previous four meetings.

Background

2. The Chief Executive stated in his 2007-08 Policy Address that an overall review of the Wage Protection Movement (WPM) would be conducted in October 2008 and that if the WPM fails, the Administration would introduce a bill on an SMW for cleaning workers and security guards as early as possible in the 2008-09 legislative session.

3. In taking forward the preparatory work for the possible introduction of an SMW for cleaning workers and security guards, the Administration briefed Members at the Manpower Panel meetings held in February, April, May and June 2008 the progress so far of the Administration's study of five major issues, namely definition of cleaning workers and security guards; special measures, if any, for vulnerable groups; definition of an SMW; mechanism for setting and reviewing the level of an SMW; and enforcement and penalty in relation to the implementation of an SMW.

Major Issues Discussed

(A) Definition of cleaning workers and security guards

4. The introduction of an SMW legislation would require clarity and certainty in coverage for compliance by employers and employees as well as for investigation and prosecution by law enforcement agencies since breaches may, similar to breaches of wage provisions under the Employment Ordinance (EO), entail criminal liability involving fines and imprisonment.

5. The future SMW legislation would need to be specific on whether the SMW should (i) follow the definition of “cleaning workers” and “security guards” for the WPM¹; (ii) include those types of cleaning work and security guard tasks which demand a lower level of skills but not covered in the WPM; or (iii) cover all types of cleaning workers and security guards irrespective of their sectors and skill levels. On this, based on discussion to date with Members, the Labour Advisory Board (LAB) and relevant stakeholder groups, it would seem that the preference is to include all types of cleaning workers and base the definition of security guards on the licensing regime provided for in the Security and Guarding Services Ordinance. Nevertheless, given the nebulous coverage of “cleaning workers”, we would need to further refine the coverage for the purpose of identifying a legally and operationally clear definition. In particular, how to handle multi-tasking, which is not an uncommon practice among cleaning workers, may involve legal and enforcement complications.

6. Noting that cleaning work normally forms an integral part of the duties of domestic helpers (both foreign and local), we need to specify in a possible SMW legislation whether cleaning duties in a domestic context should be covered, bearing in mind relevant considerations, including the present employment terms and hourly wages of domestic workers as well as the fact that foreign domestic helpers are accorded various unique employment conditions such as free accommodation, free passage, a Minimum Allowable Wage, etc.

(B) Special measures, if any, for vulnerable groups

7. Consideration needs to be given to special treatment, if any, for people with disabilities (PWDs) and young people. In respect of young workers, there are comments in favour of a reduced minimum wage rate. However, we would need to assess whether it is appropriate in the local context.

¹ The WPM adopts the definition of “cleaning workers” and “security guards” in the Quarterly Report of Wage and Payroll Statistics published by the Census and Statistics Department, which are confined to certain types of cleansing and guarding services only.

8. In respect of PWDs employed or seeking employment in the open market, taking into account their possible reduced productivity and to minimize the possible impact of SMW on their employment opportunities, initial feedback from rehabilitation and labour groups is that, as a matter of principle, PWDs should also be remunerated at at least the SMW level, though some flexible arrangements should be allowed for those PWDs whose productive capabilities are impaired by their disabilities. Drawing reference from the experience of other places, we will further explore the desirability and feasibility of having an assessment system to help ensure that PWDs' pay is commensurate with their productivity. In respect of PWDs placed under the vocational rehabilitation services operated by non-government organizations and the like, the inclination of rehabilitation and labour groups is to exempt them from SMW application.

(C) Definition of an SMW

9. In practical terms, SMW, as a wage floor, would only guarantee employees a minimum remuneration but would not detract from their other rights and benefits under the EO. Hence, the definition of wages for the purpose of SMW should be aligned as closely as possible with that under the EO. This would also facilitate compliance by employers and employees as well as enforcement by public sector agencies. Discussions so far suggest that this position is shared by the LAB and stakeholder groups that we have consulted.

10. To help forestall exploitation of employees, we need to ensure that their pay would be commensurate with the duration of work at rates no lower than the SMW level. Defining SMW on an hourly basis would be in line with the above and would also cater for the specific work nature of part-time workers. Though there are suggestions of including weekly or monthly SMW, we consider such unnecessary as weekly/monthly SMW levels can be deduced as multiples of hourly SMW.

11. Consistent with the spirit of SMW, in calculating statutory benefits for minimum wage earners, it would be logical to adopt the EO approach of using the average daily wages earned by an employee in the 12-month² period as the basis and the no "contracting out" principle for such earners who agreed to be paid below the SMW rate prevailing during the 12-month period. Based on the consultations we have so far conducted, this proposal seems to enjoy widespread support.

² If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

(D) Mechanism for setting and reviewing the level of an SMW

12. An appropriate and ideal SMW wage level in Hong Kong should be one that is effective in providing a wage floor to forestall the payment of excessively low wages on the one hand, and does not have significant adverse effect on the employment opportunities of the less competitive workers and the business viability of the employers concerned on the other.

13. The WPM has five reference wage rates. Which one to apply in specific cases requires detailed examination of the circumstances of each case. This has given rise to compliance misunderstanding occasionally. For clarity, effective compliance and enforcement as well as to facilitate subsequent reviews of the SMW wage levels, there are merits in adopting a single SMW wage rate for the two covered occupations. This proposal is supported by employee members of the LAB and certain stakeholder groups that we have consulted so far.

14. Adopting a “basket of indicators” approach to set and review the wage level of SMW would allow us to take account of all pertinent social, economic and employment factors that could reflect the situation of the concerned workers and the holistic needs of the Hong Kong economy. The elements within the basket will be further considered taking into account the data that can be meaningfully collected in Hong Kong and the experiences of other places with SMW.

15. In determining the frequency of review of the wage level of SMW, a sensible balance needs to be drawn among the relevant considerations. Such considerations may include the need to ensure the currency of the SMW level, the implications for compliance and enforcement as well as the time required to assess the impact of the SMW level last revised and for collecting relevant data within the “basket of indicators”. Relevant to note is the fact that our current statistical compilation was not designed to support the SMW and there is a real need to enhance the current surveys for collection of additional and more precise information for the purpose of implementing the SMW.

(E) Enforcement and Penalty in relation to the Implementation of an SMW

16. Following the approach of aligning the definition of wages for the purpose of SMW as closely as possible with that under the EO, the existing penalty and enforcement provisions for wages (including under-payment, non-payment and delayed payment of wages as well as illegal deductions from wages) and statutory benefit offences (such as the calculation of benefits for statutory holidays, annual leave, sickness allowance, maternity protection, etc.) under the EO should also apply under the SMW legislation. This is supported by stakeholder groups and LAB.

17. Under the EO, employers are legally obliged to keep a minimum of 12 months' wage record. To ensure effective enforcement of SMW, there should be comparable provisions and data such as the number of hours worked and the wages paid for the relevant periods should be kept. Employees should also have the right to access their own wage records. These proposals are supported by stakeholder groups and LAB.

Study Visit to the United Kingdom (UK)

18. A delegation comprising nine Members³ of the LAB and staff members of Labour Department, Economic Analysis and Business Facilitation Unit (EABFU) and Census and Statistics Department (C&SD) visited the UK to study its experience in implementing the statutory National Minimum Wage (NMW) in mid-June 2008.

19. During the visit, the group met with representatives of various government departments, relevant organizations, employers' associations as well as labour unions. Issues discussed include factors considered in setting the minimum wage level, review mechanism of the wage level, frequency of review, enforcement and impact of minimum wage on employment, the economy and employers, in particular small and medium sized enterprises. LAB Members' general feedback revealed that the visit was very useful and the information obtained was of great reference value.

20. The people met by the group considered that the success of the NMW introduced in 1999 is partly due to the mutual trust established between employers and employees in the process of handling the minimum wage issues. In determining the level of the minimum wage, they adopted an evidence-based approach in considering the indicators in the basket⁴. Significance is attached to the relevant economic indicators and statistical data. LAB Members noted that the UK was very cautious in determining the first minimum wage and the wage level thus set was fairly conservative thus helping to minimize the adverse impact on business. They also noted that a sound enforcement regime was of prime importance if a minimum wage system is to be successful.

21. The UK's study visit did provide useful reference for Hong Kong should SMW for cleaning workers and security guards be introduced. Nevertheless, in formulating our own SMW, we should also bear in mind Hong Kong's unique circumstances.

³ Six employee representatives and three employer representatives of the LAB.

⁴ The indicators include economic conditions, pay differentials, business costs, competitiveness of economy, inflation rate and employment level.

Way Forward

22. The LD is expediting the preparatory work for the possible introduction of an SMW for cleaning workers and security guards in consultation with the LAB and stakeholders. Meanwhile, we are also in parallel drawing expertise, where relevant, from the Department of Justice, EABFU and C&SD in working out the details of the possible SMW legislation. Should the WPM eventually be assessed to be ineffective, the Administration will introduce a bill on an SMW for cleaning workers and security guards as early as possible in the 2008-09 legislative session.

23. Members are invited to note the content of this paper.

Labour and Welfare Bureau
Labour Department
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