

立法會
Legislative Council

LC Paper No. CB(2)1621/09-10
(These minutes have been seen
by the Administration)

Ref : CB2/BC/11/08

Bills Committee on Minimum Wage Bill

Minutes of meeting
held on Friday, 19 March 2010, at 8:30 am
in the Chamber of the Legislative Council Building

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Chairman)
 - Hon Paul CHAN Mo-po, MH, JP (Deputy Chairman)
 - Hon LEE Cheuk-yan
 - Hon LEUNG Yiu-chung
 - Hon Miriam LAU Kin-ye, GBS, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon LI Fung-ying, BBS, JP
 - Hon Tommy CHEUNG Yu-yan, SBS, JP
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon Vincent FANG Kang, SBS, JP
 - Hon WONG Kwok-hing, MH
 - Hon Jeffrey LAM Kin-fung, SBS, JP
 - Hon Andrew LEUNG Kwan-yuen, SBS, JP
 - Hon Ronny TONG Ka-wah, SC
 - Hon Cyd HO Sau-lan
 - Dr Hon LAM Tai-fai, BBS, JP
 - Hon CHAN Kin-por, JP
 - Dr Hon Priscilla LEUNG Mei-fun
 - Dr Hon LEUNG Ka-lau
 - Hon CHEUNG Kwok-che
 - Hon WONG Kwok-kin, BBS
 - Hon IP Wai-ming, MH
 - Hon Mrs Regina IP LAU Suk-ye, GBS, JP
 - Hon Paul TSE Wai-chun
 - Dr Hon Samson TAM Wai-ho, JP
- Members absent** :
- Hon Albert HO Chun-yan
 - Hon Abraham SHEK Lai-him, SBS, JP
 - Hon Frederick FUNG Kin-kee, SBS, JP
 - Hon WONG Ting-kwong, BBS, JP

Hon CHIM Pui-chung
Hon WONG Sing-chi
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou

Public Officers attending : Mr Alan WONG Kwok-lun, JP
Deputy Commissioner for Labour (Labour Administration)

Mr FONG Ngai
Assistant Commissioner for Labour (Policy Support and
Strategic Planning)

Miss Mabel LI Po-yi
Chief Labour Officer (Statutory Minimum Wage) (Acting)
Labour Department

Ms Queenie TANG Yuen-shan
Senior Labour Officer (Statutory Minimum Wage) (Acting)
Labour Department

Mr Eamonn MORAN, JP
Law Draftsman
Department of Justice

Ms Amy CHAN Wing-yan
Senior Government Counsel
Department of Justice

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2) 4

Mr Ian CHOW
Council Secretary (2) 1

Ms Camy YOONG
Clerical Assistant (2) 1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to -
 - (a) further explain, with reference to the example given by a member at the meeting, on the application of the provisions on hours worked in the Bill for the purpose of computing statutory minimum wage ("SMW");
 - (b) explain which provision under the Bill enabled an employer to apportion commission in some wage periods to meet the SMW level and correspondingly reduce such commission in other wage periods;
 - (c) advise whether a term in the contract of employment in making the commission apportionable and payable in different wage periods would contradict clause 14 and clause 5(2), (3) and (4);
 - (d) consider reviewing the drafting of clause 5(5) with a view to enhancing clarity and certainty to employers and employees in reckoning commission payment for the purpose of SMW computation;
 - (e) consider advising on the specific wording to be written into a contract of employment to apportion commission payable among different wage periods;
 - (f) consider limiting clause 14 of the Bill only to an employee's right to be paid not less than the amount of SMW;
 - (g) consider stipulating in the Bill that the contractual working hours of employees should be counted as hours worked for the purpose of computing SMW;
 - (h) consider providing an exemption clause in the Bill to the effect that employers would not be required to keep record of the total number of hours worked for employees who earned more than a specified income;
 - (i) provide information on any other overseas jurisdiction with SMW denominated on an hourly basis as in clause 7(1) and (2) of the Bill and operating under a framework of monthly wage payment; and

- (j) consider measures to resolve practical difficulties in implementing SMW as raised by members at the meeting.

3. The Bills Committee noted that the Administration was exploring measures to reduce the administrative costs of employers with regard to the requirement for the keeping of record on the total number of hours worked of employees. The Administration was requested to report to the Bills Committee when ready.

II. Dates of future meetings

4. Members agreed to schedule more meetings in May and June 2010 as follows -

- (a) 13 April 2010 at 8:30 am;
- (b) 29 April 2010 at 8:30 am;
- (c) 13 May 2010 at 8:30 am; and
- (d) 27 May 2010 at 8:30 am.

5. At the suggestion of Ms Emily LAU, the Chairman instructed the Clerk to explore the possibility of extending the meetings scheduled for 4:30 pm to end at 7:30 pm.

(Post-meeting note: With the concurrence of the Chairman, the meetings on 4 May, 18 May and 15 June 2010 which are scheduled from 4:30 pm to 6:30 pm would be extended to end at 7:30 pm. An updated schedule of all future meetings of the Bills Committee was issued to members vide LC Paper No. CB(2)1141/09-10 on 23 March 2010.)

6. At the suggestion of Ms LI Fung-ying, the Chairman said that members might raise written questions on the Bill for the Administration's early response in order to expedite the work of the Bills Committee.

7. The Bills Committee noted that the next meeting would be held on 31 March 2010 at 10:45 am.

8. The meeting ended at 10:35 am.

**Proceedings of meeting of the
Bills Committee on Minimum Wage Bill
on Friday, 19 March 2010, 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 001533	Chairman Hon LEE Cheuk-yan Hon LI Fung-ying Hon Emily LAU Hon IP Wai-ming Hon Audrey EU Hon WONG Kwok-kin	Opening remarks Schedule of future meetings	
001534 - 002736	Chairman Admin	Briefing on the Administration's response to issues raised at the Bills Committee meeting held on 25 February 2010 (LC Paper No. CB(2)1103/09-10(01))	
002737 - 003344	Chairman Hon LEE Cheuk-yan Admin	<p>Issues raised by Hon LEE Cheuk-yan -</p> <p>(a) whether the working hours of an employee under a contract of employment should be counted as hours worked for the purpose of computing statutory minimum wage ("SMW") under the Bill;</p> <p>(b) if the contractual working hours of an employee were from 9:00 am to 6:00 pm and on a day the employer directed the employee to be off duty from 4:00 pm to 6:00 pm, whether the time from 4:00 pm to 6:00 pm would be counted as hours worked for the purpose of computing SMW; and</p> <p>(c) whether the time during which an employee was directed by his employer to be on standby in a place would be counted as hours worked</p> <p>Response of the Administration -</p> <p>(a) given the multifarious work</p>	Admin to further explain the provisions on hours worked under the Bill with reference to the example given

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		<p>patterns of employees, clause 3 did not seek to give an exhaustive list of the precise circumstances of hours worked for the purpose of computing SMW;</p> <p>(b) in the example cited by the member, the time from 4:00 pm to 6:00 pm did not fall within clause 3. However, if the employer and the employee, by virtue of the contract of employment or their agreement, regarded this period as hours worked by the employee, then it would be included in the computation of SMW; and</p> <p>(c) whether standby time was hours worked under clause 3 depended on whether the employee was in attendance at a place of employment as defined in clause 2. Apart from clause 3, the question as to whether any time or period including standby period was hours worked by the employee for the computation of SMW had to be decided by reference to any agreement or contract between the employer and the employee and to all other relevant circumstances of the case</p> <p>The Administration was requested to consider stipulating in the Bill that contractual working hours should be counted as hours worked for the purpose of computing SMW</p>	Admin to consider
003345 - 004009	Chairman Hon Paul TSE Admin	<p>Issues raised by Hon Paul TSE -</p> <p>(a) as far as an escort guide was concerned, his place of employment could be anywhere in the world and it would be the norm for him to be on call or</p>	

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		<p>standby anytime while in overseas. It was doubtful whether implementing SMW on an hourly basis would be viable in the tourism industry; and</p> <p>(b) clause 14 provided that any provision in a contract of employment that purported to extinguish or reduce any right, benefit or protection conferred on the employee by the Bill was void. Given that an employer would be held legally liable if he paid below SMW, consideration should be given to exempt the tourism sector from the Bill</p> <p>Response of the Administration -</p> <p>(a) the Administration would meet with Hon Paul TSE and the tourism sector later in the month to further explain the Bill and to understand further its concerns;</p> <p>(b) prior to the implementation of SMW, the Labour Department ("LD") would vigorously launch promotional activities with publicity materials to illustrate the application of the principles in the SMW law. For effective communication with staff and to avoid dispute, employers should, where appropriate, consider adapting their in-house systems in relation to the hours worked of employees especially those working overseas or working not in their usual place of employment; and</p> <p>(c) the question as to whether an employee was in attendance at a place of employment for the purpose of doing work or</p>	

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		<p>receiving training would be determined with reference to the contract of employment, the agreement or the direction of the employer, and clause 14 prevented the parties to a contract of employment from contracting out of the provisions of the Bill</p>	
<p>004010 - 005046</p>	<p>Chairman Hon Miriam LAU Admin</p>	<p>Issues raised by Hon Miriam LAU with reference to the examples quoted in the Administration's paper -</p> <ul style="list-style-type: none"> (a) whether the real estate agent was required to record the time calling the customer for the purpose of computing SMW (Example (A)); (b) whether the study time spent by an employee after receiving training in accordance with the contract of employment, or with the agreement or at the direction of the employer would be counted as hours worked for the purpose of computing SMW; and (c) whether a term in a contract of employment could provide for the payment of commission in different wage periods for the purpose of alleviating the financial burden of the employer. For instance, topping up the payment by paying commission in advance in October and November in Example (F) when the wage payable was below the SMW level <p>Response of the Administration on counting of commission payment -</p> <ul style="list-style-type: none"> (a) there was a wide variety of commission systems among 	

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		<p>different trades and establishments as employers and employees were free to agree on when commission was payable under the contract of employment so as to cater for their individual circumstances and needs. The Bill sought neither to vary the arrangement nor to reduce the flexibility currently enjoyed by the employer and the employee to agree on how the commission would be payable in respect of different wage periods;</p> <p>(b) when the commission was apportioned, payable and paid in respect of different wage periods according to the contract of employment, the amount of commission paid would be counted in respect of the relevant wage period under the Bill when determining whether the employee was remunerated not less than the SMW; and</p> <p>(c) the Administration would vigorously launch publicity and promotional activities before the SMW commenced so that both employers and employees would understand how the amount of commission payable and paid according to the contract of employment was counted under the SMW legislation when determining the employee's entitlement to SMW</p> <p>The Administration was requested to consider advising on the specific wording to be written into a contract of employment to apportion commission payable and paid in different wage periods</p>	<p>Admin to respond</p>

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005047 - 005559	Chairman Dr Hon Priscilla LEUNG Admin	<p>Issues raised by Dr Hon Priscilla LEUNG -</p> <ul style="list-style-type: none">(a) whether it was permissible for an employer to apportion evenly the commission earned in each month over some wage periods;(b) whether the time during which a driver was laid idle would be counted as hours worked for the purpose of computing SMW;(c) concern about the strained relationship between a driver and his employer if the former was required to record the driving time; and(d) whether the time during which a social worker working after office hour to follow up on a case would be counted as hours worked for the purpose of computing SMW <p>Response of the Administration -</p> <ul style="list-style-type: none">(a) whether commission was apportioned and payable in respect of some wage periods was subject to the contract of employment agreed between the employer and the employee concerned; and(b) whether the time during which an employee was laid idle or working after office hours would be counted as hours worked for SMW computation would be subject to clause 3 and the "place of employment" as defined in clause 2, the contract of employment and all other relevant circumstances of the case such as the industry practice concerned. For good people management and harmonious labour relations,	

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		<p>employers were always encouraged to have effective communication with employees on various work arrangements</p>	
<p>005600 - 011007</p>	<p>Chairman Hon Audrey EU Admin SALA2</p>	<p>Issues raised by Hon Audrey EU -</p> <p>(a) whether any clause in the Bill allowed an employer to apportion commission in some wage periods to meet the SMW level and correspondingly reduce commission in other wage periods; and</p> <p>(b) in respect of the example quoted by Dr Hon Priscilla LEUNG, whether the Employment Ordinance ("EO") permitted an employer to defer an employee's commission payment</p> <p>Response of the Administration -</p> <p>(a) employers and employees were free to agree on when and how commission was payable under the contract of employment. The Bill did not seek to change that arrangement;</p> <p>(b) whether commission could be apportioned and payable in respect of different wage periods was subject to the contract of employment, not the provisions in the Bill; and</p> <p>(c) when the commission was so apportioned, payable and paid according to the contract of employment, there was no question of the employer deferring commission payment or the arrangement contravening EO. The amount of commission paid would be counted in respect of the relevant wage period under the Bill when determining whether</p>	<p>Admin to explain on (a)</p>

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		<p>the employee was remunerated not less than SMW</p> <p>View of SALA2 on the possibility of specifying in the contract of employment the setting up of a sinking fund so that the commission earned would be set aside, apportioned and payable in different wage periods. Where necessary, it would be used to top up the salary of a certain month if it fell below the SMW level. By doing so, an employer would not be regarded as deferring an employee's commission payment</p> <p>Views of the Chairman that the current discussion of counting hours worked and commission payment under the SMW regime arose from the long-standing practice of Hong Kong to pay wages of most employees on a monthly basis, while SMW was denominated on an hourly basis</p> <p>The Administration was requested to -</p> <p>(a) consider exempting the requirement for keeping record on the total number of hours worked for employees who earned more than a specified income; and</p> <p>(b) consider exempting certain sectors from the SMW regime</p>	
011008 - 011106	Chairman Hon LEE Cheuk-yan	Hon LEE Cheuk-yan expressed support for requiring employers to keep record on the total number of hours worked of employees	
011107 - 011857	Chairman Hon Emily LAU Admin	Issues raised by Hon Emily LAU - (a) the relationship between SMW and the maximum working hours of employees;	

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		<p>(b) whether other jurisdictions with SMW legislation had imposed a ceiling on the number of working hours of employees; and</p> <p>(c) response of different sectors towards the proposal on SMW during consultation</p> <p>Response of the Administration -</p> <p>(a) in the course of preparing the Bill, the Administration had undertaken intensive and extensive engagement and consultations with various stakeholders in different sectors, including the tourism sector. The Administration had explained to stakeholders in the course of consultations how hours worked would be counted for the purpose of computing SMW;</p> <p>(b) the Bill did not seek to regulate the number of working hours of employees, which was a separate issue having far-reaching implications;</p> <p>(c) apart from the SMW legislation, France, Guangdong and Shenzhen, Japan, United Kingdom and United States had put in place statutory regulations on the number of working hours of employees (Annex IV to the Administration's paper); and</p> <p>(d) the Administration did not intend to exempt any sector from the Bill, other than live-in domestic workers and student interns as specified in clause 6 which had taken into account all relevant factors and circumstances as well as views</p>	

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012617 - 013011	Chairman Hon Jeffrey LAM Admin	<p>Issues raised by Hon Jeffrey LAM -</p> <p>(a) difficulties in counting the number of hours worked by some sectors such as the catering sector where employees were required to be off duty say for a few hours in the afternoon before resuming work before dinner; and</p> <p>(b) whether guidelines would be issued for different industries to illustrate how hours worked should be recorded</p> <p>Response of the Administration -</p> <p>(a) if an employee was not in attendance at a place of employment for the purpose of doing work or receiving training in accordance with the contract of employment, or with the agreement or at the direction of the employer, such time was not hours worked under clause 3 for the purpose of computing SMW. The concern raised by the member was related to the work patterns of employees in different trades and industries, and the application of the principles in clause 3 was subject to the facts and circumstances of the case. LD would include in the publicity materials illustrative examples on the application of the provisions in different industries; and</p> <p>(b) in accordance with EO, employers and employees were free to agree between themselves the working hours</p>	
013012 - 013725	Chairman Hon Miriam LAU Admin	<p>Views of Hon Miriam LAU -</p> <p>(a) given the difficulties in</p>	

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		<p>counting hours worked and commission payment, the proposal to impose a ceiling on the number of working hours of employees would only complicate the implementation of SMW;</p> <p>(b) United Kingdom and United States did not impose any ceiling on the number of working hours of employees;</p> <p>(c) the Administration should consider exempting the requirement for keeping record on the total number of hours worked for employees who earned more than a specified income;</p> <p>(d) whether the time during which an employee worked less than one hour should be counted as one hour for the purpose of computing SMW; and</p> <p>(e) whether the study time spent by an employee after receiving training in accordance with the contract of employment, or with the agreement or at the direction of the employer would be counted as hours worked for the purpose of computing SMW</p> <p>Response of the Administration -</p> <p>(a) the Administration was exploring measures to reduce the administrative costs of employers with regard to the requirement for the keeping of record on the total number of hours worked of employees;</p> <p>(b) clause 7(2) provided that the total number of hours worked included any part of an hour; and</p>	

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		<p>(c) for example, if an employee was directed by an instructor, who represented the employer, to study the training course materials at a place of employment for the purpose of receiving training, the time spent for such study would be counted as hours worked under clause 3. The facts and circumstances of the case should be taken into account in determining the application of clause 3</p>	
013726 - 014004	Chairman Hon WONG Kwok-hing	Major findings of the 2009 Annual Earnings and Hours Survey to be discussed by the Panel on Manpower on 23 March 2010 at which members of the Bills Committee were invited to attend	
014005 - 014653	Chairman Hon Tommy CHEUNG Admin	<p>Issues raised by Hon Tommy CHEUNG -</p> <p>(a) if a waiter worked on his own accord while he was off duty, whether such time should be counted as hours worked for the purpose of computing SMW;</p> <p>(b) whether guidelines on counting of hours worked would be issued for the catering industry; and</p> <p>(c) how part of an hour worked in a wage period should be recorded for the purpose of computing SMW</p> <p>Response of the Administration -</p> <p>(a) the time reckoned as hours worked under clause 3 would be included in determining the employee's entitlement to SMW. It would be a good practice for employers and employees to enhance communication and</p>	

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		<p>stipulate clearly the employment terms in the contract of employment to prevent disputes;</p> <p>(b) prior to the implementation of SMW, LD would vigorously launch promotional activities with publicity materials to illustrate the application of the provisions;</p> <p>(c) at the industry level, LD had established industry-based tripartite committees involving employers and employees in major industries including the catering industry to promote good people management practices;</p> <p>(d) at the enterprise level, LD maintained regular communication with human resources managers of different trades to facilitate information sharing on good people management practices; and</p> <p>(e) employers were required under the Bill to keep record of the total number of hours (including any part of an hour) worked by employees in a wage period. For good people management, employers were encouraged to have good communication with employees on the matter</p>	
014654 - 014937	Chairman Hon LEE Cheuk-yan Admin	<p>Views of Hon LEE Cheuk-yan -</p> <p>(a) while United Kingdom and United States did not impose a ceiling on the number of working hours of employees, they had put in place statutory regulations on the number of working hours of employees; and</p>	

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		<p>(b) the Administration should consider including in the Bill the requirement for employers to provide pay slips setting out how wages in a wage period were calculated to facilitate employees' understanding</p> <p>Response of the Administration -</p> <p>(a) the Bill did not seek to create unnecessary administrative burden on employers; and</p> <p>(b) letting employees know how their wages were calculated was a good people management practice and employers were encouraged to do so. Providing pay slips to employees was one of the means to realize that practice</p>	
014938 - 020002	Chairman Hon Miriam LAU Admin	<p>Views of Hon Miriam LAU -</p> <p>(a) whether a term in a contract of employment in making the commission apportionable and payable in different wage periods would contradict clause 5(2), (3) and (4);</p> <p>(b) clause 5(5) had not expressly provided the flexibility to allow an employer to apportion commission in some wage periods. The Administration should review drafting of the provision with a view to enhancing clarity;</p> <p>(c) whether a term in a contract of employment in making the commission apportionable and payable in different wage periods would contradict clause 14; and</p> <p>(d) the Administration should consider limiting clause 14 only</p>	Admin to respond to (a)-(d) in writing

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		<p>to the employee's right to be paid not less than the amount of SMW</p> <p>Response of the Administration -</p> <p>(a) having regard to the concerns raised by different industries and trades during consultations and in view of the great diversity of commission systems, the intention of clause 5(5) was to provide clear guiding principles to determine whether the employer had remunerated the employee not below the SMW level. The Administration would consider member's views on the drafting of clause 5(5);</p> <p>(b) a contractual provision to apportion and pay commission in respect of different wage periods did not reduce the obligation of an employer to pay not below SMW, and hence it would not contravene clause 14, nor was there contradiction with clause 5(2), (3) and (4); and</p> <p>(c) clause 14 went beyond the right of an employee to be paid not less than the amount of SMW. For instance, if a provision in the contract of employment excluded the time during which the employee had worked from hours worked for computing SMW, clause 14 would operate to render the provision void</p>	
020003 - 020437	Chairman Hon Paul TSE Admin	<p>Views of Hon Paul TSE -</p> <p>(a) he concurred with the views of Hon Miriam LAU;</p> <p>(b) the difficulties in implementing SMW arose from the different</p>	

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		<p>basis adopted for the framework of the SMW regime and the application of SMW as set out in clause 7(1) and (2) of the Bill. While the former was based on a monthly wage payment, the latter was based on an hourly wage rate;</p> <p>(c) whether the undertaking by LD to launch publicity and promotional activities to both employers and employees would fully address the possible grey areas raised by members; and</p> <p>(d) some jurisdictions did impose a ceiling on the number of working hours of certain employees such as pilot</p> <p>The Administration was requested to -</p> <p>(a) provide information on any other overseas jurisdiction with SMW denominated on an hourly basis as in clause 7(1) and (2) of the Bill and operating under a framework of monthly wage payment; and</p> <p>(b) consider measures to resolve practical problems in implementing SMW as raised by members at the meeting</p>	<p>Admin to provide information</p>
020438 - 020525 -	Chairman	Date of next meeting	