Bills Committee on Minimum Wage Bill

Administration's Response to Issues Raised at the Bills Committee Meeting Held on 31 March 2010

Introduction

This paper provides information requested by Members of the Bills Committee at its meeting held on 31 March 2010 in examining the Minimum Wage Bill (the Bill).

Counting of commission payment

2. The Administration was requested to explain whether clause 5(5) of the Bill would limit the flexibility for commission to be apportioned and payable in different wage periods to meet the statutory minimum wage (SMW) level, and whether it was compatible with section 23 of the Employment Ordinance (EO) on the time of payment of wages.

3. There is a wide variety of commission systems in place as employers and employees are free to agree on when commission is payable under the contract of employment so as to cater for their individual circumstances and needs. As we have explained during the discussions at previous Bills Committee meetings, under the EO, an employer and an employee can agree between themselves that a particular commission is payable in respect of a certain wage period or a number of wage periods. The Bill will not change this. Specifically, the Bill seeks neither to vary the arrangement nor to reduce the flexibility currently enjoyed by the employer and the employee to negotiate and specify in the employment contract how the commission would be payable in respect of different wage periods. In other words, how commission is determined and when it is payable over different wage periods remain a matter for contractual agreement between the employer and the employee. As a corollary, when commission is paid in accordance with the terms of the employment contract should not give rise to the issue of advancement or reduction of commission. Clause 5(5) only sets out how commission should be counted for SMW computation in respect of a wage period in order to provide clear guiding principles to determine whether the employee is remunerated at not less than the SMW

rate.

4. Under the Bill, the definition of “wages” is aligned with that in the EO[1]. Commission is required to be paid in compliance with the contract of employment and the wage provisions under the EO, except commission which is gratuitous or payable only at the discretion of the employer. According to section 23 of the EO, where the commission is payable under the contract of employment in respect of a wage period, say, the wage period of January, then it shall become due on the expiry of the last day of January and should be paid as soon as practicable, in no case more than seven days afterwards[2]. For the Bill, if the employer pays the commission, say, on the seventh day after January, it would be counted in respect of the wage period of January for the purpose of SMW computation. We do not see any contradiction with section 23 of the EO in this respect.

5. We would carefully consider Members’ views and suggestions on clause 5(5) with a view to ensuring clarity and certainty to employers and employees in counting commission payment when determining entitlement to SMW in the Bill.

Labour and Welfare Bureau
April 2010

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1 In accordance with section 2 of the EO, “wages” means all remuneration, earnings, allowances, tips and service charges, however designated or calculated, capable of being expressed in terms of money, payable to an employee in respect of work done or to be done under his contract of employment. Commission falls within the definition of wages. However, wages do not include any commission which is of a gratuitous nature or which is payable only at the discretion of the employer.

2 Under section 23 of the EO, wages shall become due on the expiry of the last day of the wage period and shall be paid as soon as is practicable but in any case not later than seven days thereafter.