



Labour Department (Headquarters)

勞工處（總處）

Your reference 來函編號 :

Our reference 本處檔案編號 :

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18 June 2010

Mr Arthur CHEUNG
Senior Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

[Fax: 2877 5029]

Dear Mr CHEUNG,

Minimum Wage Bill

Thank you for your letter dated 11 June 2010 regarding the Minimum Wage Bill (the Bill).

Your letter requests elaboration on how clause 7 of the Bill would confer on an employee the right to sue his employer for the difference between the wages payable under his employment contract and the minimum wage to which he is entitled under the Bill in case of a shortfall.

Under section 23 of the Employment Ordinance (Cap. 57) (EO), wages must be paid as soon as practicable after the end of the wage period and no later than 7 days thereafter. Section 2(1) of the EO defines “wages” as all money

payable to an employee in respect of work done or to be done under his contract of employment subject to certain specified exclusions. Section 63C of the EO makes it an offence for an employer wilfully and without reasonable excuse to contravene section 23. Section 65 of the EO makes it clear that a conviction, or indeed an acquittal on the grounds that the default was not wilful or without reasonable excuse, of an offence under section 63C does not affect the liability of the employer to pay any outstanding wages and the convicting/acquitting court may order that they be paid.

The Minor Employment Claims Adjudication Board Ordinance (Cap. 453) gives the Minor Employment Claims Adjudication Board jurisdiction to determine a monetary claim of up to \$8,000 arising from the breach of a term of a contract of employment or a failure to comply with the EO. The Labour Tribunal Ordinance (Cap. 25) gives the Labour Tribunal jurisdiction to determine monetary claims of more than \$8,000 arising from the breach of a term of a contract of employment or a failure to comply with the EO. It is to those bodies that employees bring claims seeking civil enforcement of unpaid wages. An award or order made by either of these bodies may be enforced as a judgment of the District Court.

Leaving aside the issue of minimum wage, it is clear that an employee who has not been paid the wages due to him under his contract of employment can claim for his payment from either the Minor Employment Claims Adjudication Board or the Labour Tribunal depending on the amount outstanding.

As explained by the Administration at the Bills Committee, clause 7 creates an entitlement to be paid wages of not less than the minimum wage in respect of any wage period. Clause 9 enables that entitlement to be enforced. As noted in your letter, clause 9 deals only with the amount of the additional remuneration to which an employee may be entitled because of the Minimum Wage Bill to bring his wages up to the level of the minimum wage. It is unnecessary for the Bill to deal with the enforcement of the payment of ordinary contractual wages as that is adequately catered for under existing law as explained above.

The Minimum Wage Bill covers comprehensively the additional remuneration by deeming the contract of employment to provide an entitlement to it (clause 9(1)) and expressly providing that it forms part of the wages payable to the employee under the EO and that a failure to pay it may be dealt with in the same way as a failure to pay any other portion of those wages (clause 9(3)). Thus, there can be no doubt that a failure to pay this additional remuneration may be dealt with as an offence under section 63C of the EO, that a court dealing with the criminal charge may order its payment and that the employee

may claim for it from either the Minor Employment Claims Adjudication Board or the Labour Tribunal depending on its amount. Indeed, clauses 19 and 22 amend the Labour Tribunal Ordinance (Cap. 25) and the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) respectively to ensure that the Tribunal/Board has jurisdiction to deal with a claim for the additional remuneration.

There is thus comprehensive enforcement coverage for the whole minimum wage as a package. The Bill does not seek to duplicate existing provisions in the EO or any other Ordinance dealing with the payment of wages. It only seeks to ensure that any top-up payment to which an employee is entitled under it to bring his wages up to the minimum wage may be enforced.

With respect to clause 3 and the particular issue raised in your letter, it is unnecessary to deal with it as the Administration proposes to substitute a new clause 3 by way of a Committee Stage Amendment to deal with broader issues raised by Members of the Bills Committee. As the new clause is not divided into subclauses, no issue arises as to the relationship between subclauses.

Yours sincerely,



(FONG Ngai)

for Commissioner for Labour

c.c. Clerk to Bills Committee on Minimum Wage Bill

Department of Justice

(Attn: Mr Eamonn MORAN, JP

Ms Amy WY CHAN)