

立法會
Legislative Council

LC Paper No. LS103/08-09

Paper for the House Committee Meeting on 10 July 2009

**Legal Service Division Report on
Minimum Wage Bill**

I. SUMMARY

1. **Objects of the Bill** To provide for a statutory minimum wage (SMW) at an hourly rate for certain employees and to establish a Minimum Wage Commission.
2. **Comments**

As it is the Administration's intention to help ensure that employees' take-home pay would be commensurate with their working hours, the proposed SMW will be expressed as an hourly rate.

To avoid reduction in training opportunities, internship programmes for training and education purposes will not be covered. SMW will also not be applicable to all live-in domestic helpers (local and foreign) due to their distinctive working pattern, enjoyment of in-kind benefits and other reasons.

There will also be special arrangements for persons with disabilities whose productivity is impaired. Their productivity will be assessed to help determine whether the SMW rate should be discounted.

A Minimum Wage Commission will be established to study the level of SMW and the review mechanism.
3. **Public Consultation** The Labour Department has consulted various stakeholders on different issues under the Bill, including the Equal Opportunities Commission and Vocational Training Council and briefed the Labour Advisory Board.
4. **Consultation with LegCo Panel** The Administration briefed the Panel on Manpower on the proposals in the Bill at its meetings on 20 November 2008 and 19 February and 16 April 2009. Views were expressed on the level of the SMW. There was support for exempting live-in foreign domestic helpers amidst concerns that the exemption might be challenged legally.
5. **Conclusion** The Bill introduces a major policy change of significant public interest. Members may wish to set up a Bills Committee to thoroughly examine its provisions and their policy and practical aspects.

II. REPORT

Objects of the Bill

To provide for a statutory minimum wage (SMW) at an hourly rate for certain employees and to establish a Minimum Wage Commission.

LegCo Brief Reference

2. LD SMW 1-55/1/4(C) issued by the Labour and Welfare Bureau on June 2009.

Date of First Reading

3. 8 July 2009.

Comments

4. In view of the limitations of promoting wage protection through voluntary participation, the Chief Executive announced in his 2008-09 Policy Address that a bill on SMW would be introduced in the current legislative session.

5. The LegCo Brief explains the purpose of the Bill as only to guarantee a minimum remuneration without detracting from the existing rights and benefits of employees under current employment-related legislation, including mainly the Employment Ordinance (Cap. 57). SMW is not intended to change the nature of wages and will only set the lowest level permissible under the law. Further, to ensure that employees' take-home pay would be commensurate with their working hours, the SMW rate will be expressed as an hourly rate.

6. Two categories of employees will be exempted from the SMW requirement due to the special nature of their work. As some internship programmes may involve employer-employee relationship, it is necessary to address the concerns of universities and other education institutions. It is therefore proposed that student interns undergoing a period of work arranged or endorsed by a specified education institution in connection with an accredited programme for which the work is a compulsory or elective component of the programme requirements will be exempted from SMW.

7. Live-in domestic workers, local and foreign, will also be exempted. The Administration has listed in paragraph 15 of the LegCo Brief the four following major considerations for this proposed exemption –

- (a) distinctive working pattern;
- (b) enjoyment of in-kind benefits;

- (c) possible significant and far-reaching socio-economic ramifications; and
- (d) fundamental erosion of the foreign domestic helpers policy.

8. Special arrangements are also proposed in the Bill in respect of persons with disabilities (PWD) in recognition of the possible employment difficulties encountered by some PWD so as to minimise any possible adverse impact of SMW on their employment opportunities. A mechanism will be set up to assess a PWD's productivity in the actual workplace during a trial period of employment (which must not exceed 4 weeks) to help determine whether the SMW should be discounted. For a PWD undergoing the trial period of employment, the discount is 50% (or less, subject to mutual agreement).

9. The SMW rate will be prescribed by the Chief Executive in Council having regard to the recommendation of the Minimum Wage Commission (MWC), subject to negative vetting by LegCo. Non-compliance with SMW will constitute a wage offence which is subject, on conviction, to a maximum fine of \$350,000 and imprisonment for three years.

10. The MWC to be set up will comprise not more than 10 non-public officers and not more than 3 public officers appointed by the Chief Executive (CE). The Chairperson must be a non-public officer member. The main functions of MWC are to report, when required by CE, to the Chief Executive in Council:

- (a) the amount of the prescribed minimum hourly wage rate; and
- (b) the timing and frequency of rate reviews.

11. The Trade Boards Ordinance (Cap. 63), which allows minimum wages to be fixed for trades in which the wage standards are unreasonably low, the power for which has never been invoked, will be repealed.

Public Consultation

12. The Labour Department has consulted various stakeholders on different issues under the Bill, including the Equal Opportunities Commission and Vocational Training Council and briefed the Labour Advisory Board. Please see paragraphs 37 to 39 of the LegCo Brief for details.

Consultation with LegCo Panel

13. The Administration briefed the Panel on Manpower on the proposals in the Bills at its meetings on 20 November 2008 and 19 February and 16 April 2009.

14. Regarding the SMW level, some Panel members held the view that it should not be set too low, as that might discourage self-reliance and increase dependence on the Comprehensive Social Security Assistance allowance. They considered that the SMW should be set at a level that would provide a safety net for the low-income group. Some members considered that the SMW should be enough to support a family of two.

15. On the coverage of employees, there was no objection to the exclusion from SMW of students undertaking internship programmes for academic purposes. Some members also expressed support for exempting live-in foreign domestic helpers. However, they were concerned about the socio-economic implications of a successful judicial review of the exemption. Some other members held the contrary view that live-in foreign domestic helpers should be covered by SMW.

16. As regards the proposed special arrangement for persons with disabilities, members generally supported its direction. One member considered that those persons should receive the SMW rate. Members may wish to refer to the minutes of the three meetings in LC Paper Nos. CB(2)681/08-09, CB(2)1273/08-09 and CB(2)1570/08-09.

Conclusion

17. The Bill introduces a major policy change of significant public interest. Members may wish to set up a Bills Committee to thoroughly examine its provisions and their policy and practical aspects.

18. Scrutiny of the legal and drafting aspects of the Bill is continuing.

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7 July 2009