



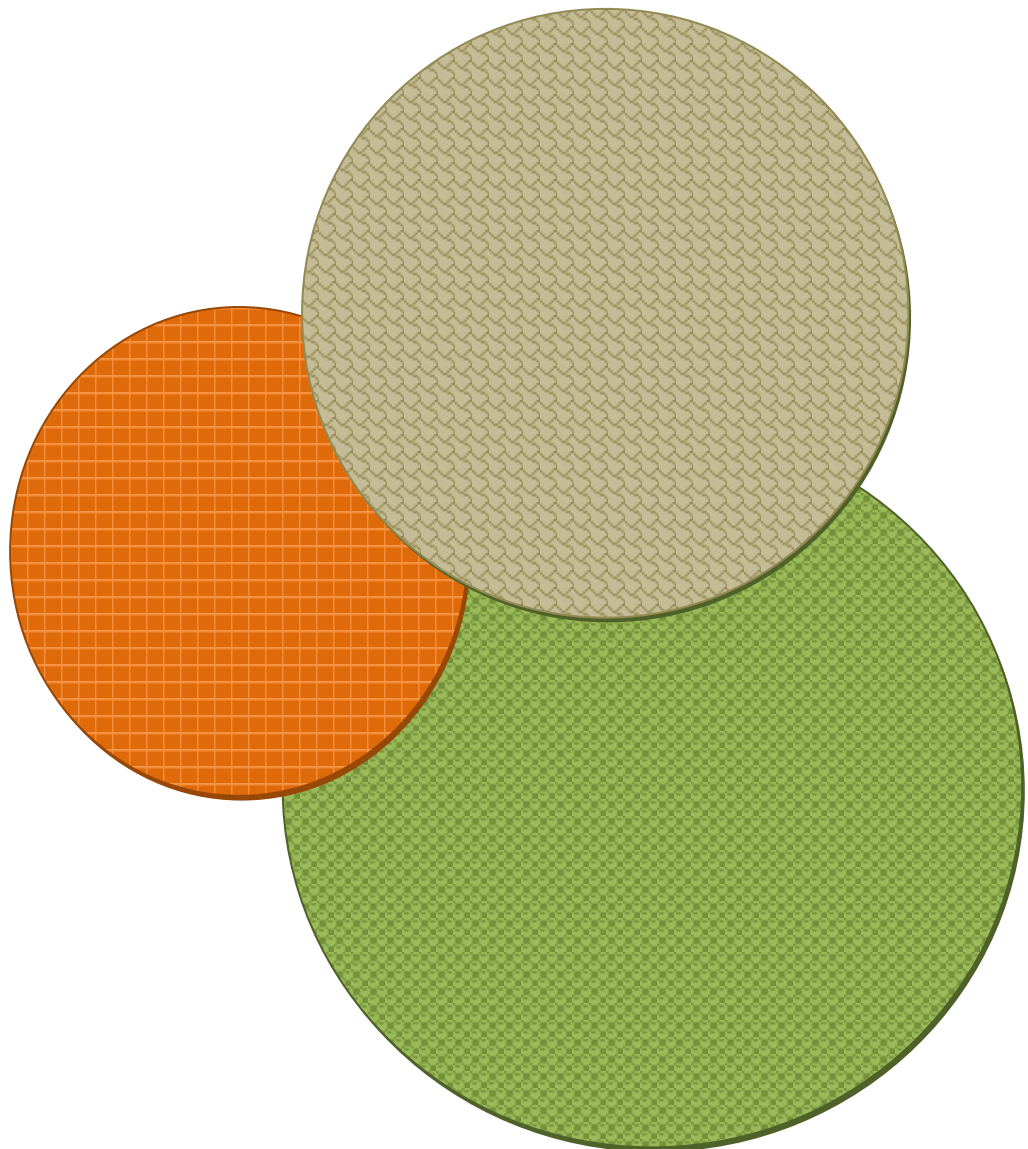
社區發展動力培育

**Community
Development
Initiative (CDI)**

為殘疾人士創造就業機會及落實最低工資

Creating Employment Opportunities &

Realizing of Minimum Wage for the Disabled



行政撮要

- I. 經勞工界和基層團體多年的爭取，最低工資已開始展開立法程序，但對於殘疾人士，政府最初之主張是不把他們納入保障範圍，結果在響應團體爭取後才改變初衷。但把殘疾僱員納入最低工資，卻要引入對他們的生產力評估機制，若現在僱員被評為生產力低於「正常」，會根據其相應生產力的最低工資打折。我們認為此舉實違反最低工資的精神。
- II. 現時，在 347,000 名 15 歲以上殘疾人士中(不包括智障人士)，只有 45,800 人(13.2%)從事受薪工作。在未能於就業市場覓得工作的 302,100 名殘疾人士當中，有絕大部份因苦無工作機會而無奈地選擇退休，並依靠申領綜援或家人支持來支付其日常生活開支。由此可見，殘疾人士顯然未被市場廣泛接納。
- III. 礙於各種因素，在職的殘疾人士目前大多受聘於非牟利的政府機構，他們大多在庇護工場和社會企業工作，這些機構為維持在市場上的競爭力，只能提供較低的薪酬。正因如此，殘疾人士的收入亦普遍低於整體人口，有近三成就業的殘疾人士收入少於\$4,000，反映殘疾人士即使「自力」也未必可以「更生」。
- IV. 正因為現行機制並未能全面解決殘疾人士的就業問題，因此我們建議政府實行先自願後強制的殘疾人士配額制度，為殘疾人士提供更友善和更多的就業空間，建議如下：
 - 逐步推行殘疾人士的配額制度，首先要求政府部門及所有公營部門，受資助機構推行 2%配額，每年匯報結果，在財政上鼓勵達標之部門；
 - 推動商界及其他機構推行自願配額制，但豁免僱用 50 人以下之中小企
 - 容許機構用購買傷殘人士社會企業之服務和產品再代替僱用傷殘人士；
 - 考慮提供稅務優惠及其他支援，以獎勵達標之機構；
 - 最後通過立法會制度化以上的措施。
- V. 此外，要改善殘疾人士的生活，單純提供就業機會並不足夠，因為若受聘的殘疾人士只能獲得低薪工作，連應付自己的生活開銷也不足夠，那對解決殘疾人士所面對的困難並無幫助。因此，為殘疾人士制訂最低工資必需與以上創造就業職位的建議同步進行，缺一不可。
- VI. 最低工資的訂立是確保每一名勞工均獲得能應付生活所需的工資，確保他們能有尊嚴地生活。若勞工是指任何勞動付出者，我們不認為殘疾人士有

被豁免的理據。更何況，為確保企業的營運成本不會被大幅拉高，各國政府在訂立最低工資時，通常設在一個甚低的水平，若殘疾人士工資需按其工作能力在最低工資的水平上再打折，究竟最低工資的設定對保障殘疾人士又有何意義？

- VII. 為保護傷殘人士的就業機會不受到負面影響，我們願接受殘疾員工可自願進行生產力評估的安排。這樣僱主不會因最低工資的推行而蒙受任何損失。但因本港沒有傷殘社會保險，傷殘僱員若接受打了折的最低工資，他們的基本生活也不保。因此政府有責任去填補傷殘人士被評估後的打折工資和最低工資的差額。如殘疾人士被評為生產力只及健全人士的一半，那僱主按結果給予殘疾人士 50%最低工資，而其餘的 50%則由政府支付。

Executive Summary

- I. After years of battle by the labour sector and grass-root groups, the issue of minimum wage is already in the process of legislation. However, if the capability assessment mechanism is introduced to the disabled employees, according to their below “normal” productivity, their wages will be discounted. We believe allowing the disabled to receive wages below the minimum wage violates the spirit of minimum wage.
- II. Currently, among the 347,000 disabled (excluding the Intellectual Disabled) aged above 15, 45,800 (13.2%) disabled engage in paid employment. For the other 302,100 disabled who are unemployed, most of them are forced to retire due to the lack of work opportunities. Thus we can conclude that, the disabled are not widely accepted by the market.
- III. Because of many different reasons, most of the employed disabled are currently employed in Non-Government Organizations (“NGOs”). A majority of them are working at sheltered workshops and social enterprises which could only provide comparatively lower salaries to maintain their competitiveness in the market. Hence, the income of the disabled is generally lower than the work force. Almost 30% of the employed disabled are making below \$4,000 per month. Obviously, even the disabled could become self-reliant, they could not “rehabilitate their lives”.
- IV. As the current mechanism cannot solve the disabled’s employment problems comprehensively, we would like to suggest the HKSAR government to impose a “Voluntary First, Mandatory Second” Disabled Employee Quota System to provide a larger and more user-friendly employment space for the disabled, our suggestions are as follow:
 - Gradual enforcement of the disabled employment quotas system. At the beginning, only the government divisions, public sectors and subsidized organizations are required to employ 2% of disabled employees, and the results are reported every year. Departments which meet the target are rewarded financially.
 - Encouraging the business sector and other organizations to impose their own voluntary quota system. Small and Medium Enterprises with less than 50 people are exempted
 - Buying products and services from social enterprises to replace direct

employment of the disabled is also allowed.

- May provide tax concessions and other support to reward the organizations that meet the target.
- Finally, institutionalizing the above measures through the legislative system when the society has a common consent on employing the disabled.

V. Apart from the above mentioned, for the improvement of livelihood of the disabled, it is not enough by simply providing them with employment opportunities alone. If the disabled could only make low incomes, they could not even support their own daily livings, and their difficulties are not resolved. Hence, both the legislation of minimum wages and the creation of employment opportunities for the disabled are indispensable and should be carried out at the same time.

VI. Nevertheless, the legislation of minimum wage is to guarantee each labour is paid with adequate income for making a living and to ensure he labour could lead a decent life. If the meaning of “labour” is those who contribute their effort in production, it is not justifiable that the disabled are to be exempted. In order to make sure the operational cost of enterprises will not soar, governments in different countries usually set the minimum wage at a comparatively low level. If the disabled are to be paid at a discount of the minimum wage according to their capability assessment, what is the ultimate meaning for protecting them in accordance with the minimum wages?

VII. The arrangement for the disabled to call for a voluntary capability assessment is an acceptable solution to protect the employment opportunities of the disabled from negative impact. In this case the employer will not need to bear the cost of the enforcement of minimum wage, but since there is no disability social security in Hong Kong, if the disabled take the discounted wage, they cannot even maintain their basic livings. Therefore the government is responsible to fill the gap between the discounted wage rate and the minimum wage. If the disabled are evaluated as possessing half of productivity of an able-bodied worker, that particular employer may give 50% of the minimum wages to that employee, while the remaining 50% should be paid by the government.

1. 引言

- 1.1 經勞工界和基層團體多年的爭取，最低工資已開始展開立法程序，相信香港在不久將來應可落實最低工資。不過，仍有部份商界人士和勞顧會的資方代表表示最低工資只會增加成本，變相影響勞工的就業機會。而過去普遍不太願意聘用殘疾人士的部分資方代表更表示，如將殘疾人士納入最低工資的保障範圍，僱主極可能因此而棄用殘疾人士，令殘疾人士的就業情況更為困難。為此，有商界人士主張最低工資應豁免殘疾人士，以保障他們的就業機會。
- 1.2 就商界和資方提出的建議，我們不禁要問，若政府政策維持現狀，殘疾人士在就業市場上是否得到充足的就業機會？即使有就業機會，他們又是否可以得到足夠他們過有尊嚴生活的合理待遇？而制訂最低工資的理念又可否同時應用在殘疾人士身上？為此，社區發展動力培育希望藉此立場書表達我們對上述問題的立場和建議方案。

2. 殘疾人士的現況

2.1 根據政府統計處在 2008 年出版的《第 48 號專題報告書：殘障人士及長期病患者》，全港有 67,000-87,000*名智障人士和 361,300 名殘疾人士。在殘疾人士當中，以肢體殘疾、視障、聽障和精神病佔大多數，同時，有約 238,900 名人士(66.5%)表示自己只有單一種殘疾類別，其餘約 122,400 名人士(3.9%)表示自己有多於一種殘疾類別(表一)。

表一：按選定的殘疾類別及數目

	只有一種數目	多於一種數目	總數	佔人口百分比
肢體殘疾	92,700	95,100	187,800	2.7
視障	50,200	72,300	122,600	1.8
聽障	37,400	54,800	92,200	1.3
言語障礙	2,800	25,600	28,400	0.4
精神病	48,100	38,500	86,600	1.3
自閉	1,400	2,300	3,800	0.1
學習障礙	4,400	5,500	9,900	0.1
注意力不足/ 過度活躍	1,900	3,600	5,500	0.1
智障人士	/	/	67,000-87,000	1 - 1.3*
總數	238,900	122,400	428,300 - 448,300	6.3 -6.6

資料來源：政府統計處

*基於統計時較難取得準確的智障人士的資料，智障人士的總人數推算為 67000-87000 人

2.2 殘疾人士即使能克服身體上的缺憾，也不代表他們能自力更生。因為就業市場上提供予殘疾人士的機會明顯不多，即使有機會工作，亦不代表他們所得的工資足夠他們過有尊嚴的生活。現時，在 347,000 名 15 歲以上殘疾人士中(不包括智障人士)，只有 45,800 人(13.2%)從事受薪工作，遠遠低於一般市民 60.2%的勞動參與率。在未能於就業市場覓得工作的 302,100 名殘疾人士當中，有絕大部份因苦無工作機會而無奈地選擇退休，並依靠申領綜援或家人支持來支付其日常生活開支。因此，退休人士在殘疾人士的比率為 63.7%，遠遠高於一般市民的 16.7%(表二)。明顯地，殘疾人士仍未被市場廣泛接納。

表二：按年齡和經濟活動身份劃分的殘疾人士數目

	數目	百分比	整體人口百分比
15 歲以下	13,400	3.7	13.3
15 歲以上	347,900	96.3	86.7
從事受薪工作	45,800	13.2	60.6
沒有工作	302,100	86.8	39.4
退休	221,500	(63.7)	(16.3)
料理家務	21,400	(6.2)	(11.1)
學生	5,100	(1.5)	(8.4)
其他	54,100	(15.5)	(3.7)
總數	361,300	100.0	100.0

資料來源：政府統計處

*智障人士不包括在內

2.3 礙於身體缺憾，殘疾人士大多未能適應主流教育制度，致使他們的教育程度明顯較整體人口為低。在知識型經濟下，沒有殘疾的低學歷勞工在市場上找一份長工也困難重重，更何況學歷水平相對較低的殘疾人士呢？這不但解釋了殘疾人士的低勞動參與率，更解釋為何殘疾人士大多從事非技術工人的基層工作(表三)。

表三：按職業劃分的殘疾人士數目

	數目	百分比	整體人口百分比
經理、行政和專業人員	8,900	21.6	36.3
文員	6,700	16.3	15.6
服務或銷售人員	5,700	13.8	15.4
工藝及相關人員	2,300	5.6	7.5
機械操作及裝配員	1,900	4.5	6.2
非技術工人	15,600	37.9	18.8
總計	41,000	100.0	100.0

資料來源：政府統計處

*智障人士不包括在內

2.4 礙於各種因素，在職的殘疾人士目前大多受聘於非牟利的政府機構，他們大多在庇護工場和社會企業工作，這些機構為維持在市場上的競爭力，只能提供較低的薪酬。正因如此，殘疾人士的收入亦普遍低於整體勞動人口，有近三成就業的殘疾人士每月收入少於\$4,000(表四)，可見，殘疾人士即使「自力」也未必可以「更生」。

表四：按收入劃分的殘疾人士數目

	數目	百分比	整體人口百分比
<4,000	11,500	28.0	11.7
4,000-6,999	9,100	22.2	14.8
7,000-9,999	6,600	16.2	20.9
10,000-14,999	5,700	13.9	18.9
15,000-19,999	2,400	5.8	10.5
>20000	5,700	13.9	23.2
總計	41,000	100.0	100.0
收入中位數	\$6,800		\$10,100

資料來源：政府統計處

*智障人士不包括在內

- 2.5 基於上述原因，殘疾人士若希望自力更生，他們普遍面對就業機會不多和工資過低的問題。工資過低還可透過最低工資立法保障，但就業機會不足就只能透過政府政策，為有能力工作的殘疾人士提供額外的就業職位。不過，社會究竟要額外創造多少個職位才能滿足現時的潛在需求？
- 2.6 或許我們可以用以下的推算方法為參考。現時有 41,000 名在職殘疾人士，他們大多散居住在住戶內，且不需要別人照顧其日常生活和協助其往返工作地點。若我們以此準則作為殘疾人士外出工作的基本條件，那現時殘疾人士的潛在勞動人口肯定遠遠在 41,000 名以上。因為現時有 295,400 名殘疾人士居住在住戶內，無需別人協助照顧其日常生活的有 169,800 名，而當中最多只有一成外出時需要他人協助。可見，最少有 150,000 名殘疾人士有絕對的自我照顧能力，撇除當中有兩成已達退休之年，即現時香港殘疾人士的潛在勞動參與人口可能高達 120,000 人(智障人士還未計算在內)。
- 2.7 由於商界缺乏誘因聘用殘疾人士，如我們真的希望協助殘疾的潛在勞動人口就業和自力更生，那非靠政府的政策協助不可。究竟政府現行在有關方面的政策有沒有改進的地方？如有，又應如何改進？

3. 政府現行鼓勵殘疾人士就業的政策

3.1 政府表示，現時已為殘疾人士提供一系列就業和職業康復服務，為他們獲取切合市場需要的工作技能。這些服務包括：

- 為暫時未具能力於公開市場就業的殘疾人士提供職業康復服務，以提供他們提升他們的工作能力和公開就業機會；
- 透過技能訓練中心、綜合職業訓練中心、僱員再培訓計劃、輔助就業服務和在職培訓計劃為有能力公開就業的殘疾人士提供切合市場需要的職業訓練或再培訓課程；
- 成立康復服務市場顧問辦事處，向公私營機構推介殘疾人士的工作能力及宣傳由庇護工場、輔助就業、綜合職業康復服務中心和殘疾人士社會企業所提供的服務和產品；
- 為正在求職的殘疾人士和有意聘用殘疾人士的僱主提供就業選配服務，並為投考政府職位的殘疾人士提供多項優先受聘的安排；
- 推行一系列的專題計劃以協助殘疾人士受聘和鼓勵僱主聘用殘疾人士。計劃包括：殘疾人士在職培訓計劃、「陽光路上」培訓計劃、「創業展才能」計劃、「就業展才能」計劃和殘疾人士試工計劃等。

3.2 單看所涵蓋的範圍(職業訓練、服務推介、配對職位)，政府提供的服務確實看似全面。不過，有關服務的深度明顯不足。在職業訓練方面，殘疾人士所缺乏的並不是受訓機會，而是工作機會，即使政府作為香港聘用最多殘疾人士的僱主，受聘的數目也不過是區區數千人。試問單靠政府自行聘用，又怎能滿足現時殘疾人士的潛在勞動需求？

3.3 在服務推介方面，無疑社會企業和庇護工場對促進殘疾人士工作不遺餘力，但礙於競爭力始終不及健全人士，服務單位只能透過超低價來增加競爭力。就 02/03 年度看，殘疾人士在庇護工場工作，平均月入\$588，輔助就業的平均月入為\$2693。這顯示殘疾僱員就算勤奮工作，最終只能領取低微的薪酬。若政府讓專為殘疾人士提供就業機會的社會企業和庇護工場在自由市場下競爭，即使政府再加強在服務推介方面的工作，也未必可以改善殘疾人士的就業現況。

3.4 在配對職位方面，現時勞工處展能就業科有為殘疾人士提供就業配對服務，但礙於服務人手和僱主對聘用殘疾人士的意欲不大，令每年只有約 3000 名殘疾人士能透過有關服務成功找尋工作，相較於潛在殘疾勞動人口的數量，有關服務明顯只是杯水車薪。更何況，即使政府為有意聘用殘疾人士的僱主在試工期間提供津貼，但在缺乏人手跟進下，究竟有幾多殘疾人士能在工作上適應下來，而當中又有幾多僱主能提供協助予

受聘的殘疾人士，讓他們適應工作環境？若整套機制缺乏監管，不法商人便可利用有關漏洞來騙取津貼。

3.5 正因為現行機制並未能全面解決殘疾人士的就業問題，因此我們建議政府實行先自願後強制的就業配額計劃，為殘疾人士提供更友善和更多的就業空間，具體建議如下：

3.6 如今，有很多國家，包括中國、印尼等發展中國家，已實施殘疾人士就業配額制度：

國家	機構僱員人數	最低殘疾僱員比例
意大利	36	15%
法國	20	6%
德國	16	6%
波蘭	50	6%
盧森堡	政府	5%
	25-49	1%
	50-299	2%
	300+	4%
匈牙利	20	5%
奧地利	25	4%
愛爾蘭	政府	3%
西班牙	政府	3%
	50	2%
台灣	政府 50	2%
	100	1%
韓國	300	2%
日本	政府 56	1.8%
	300	
越南	未注明	2%
中國	按地區	1.5-2%
印尼	100	1%
泰國	200	0.5%

資料來源：香港理工大學應用社會科學系非政府機構聘用殘疾人士簡報

各國規定機構的最低殘疾僱員比例由 0.5% - 15% 不等；而需要按比例僱用殘疾人士的機構僱員人數為 16 至幾百不等。我們認為香港政府除了可參考以上各國的要求去制定其配額制度外，也需要長期注視就業市場的供求情況去制定政策。上文計算出香港現時最少有 120000 適齡的殘疾人士有相當的工作能力去投入勞動市場；而根據香港統計處的數字，二零

一零年二月全港的總勞動人口為 3 672 700。那即是說，大約每一百個勞動人口裡面便最少有 3 個有工作能力的殘疾人士。因此，香港政府應將殘疾人士配額制度中受僱率的目標訂在每間公司的 2%，然後日後逐步提升至 3%或以上。

- 首先要求政府部門及所有公營部門，受資助機構推行 2%配額，每年匯報結果，並推動商界及其他機構推行自願配額制。政府可考慮提供稅務優惠及其他支援，以獎勵達標之機構。；
- 為加強私人企業的社會責任，凡僱員人數超過 100 人的企業應最少聘用 2 名殘疾人士。根據公司註冊處資料，截至 2009 年 10 月，香港共有約 15,000 間企業聘用 100 人或以上，以此推算，可額外增加 30,000 個職位；
- 為未有殘疾人士就業配額要求的中、小型企業提供優惠，鼓勵它們聘用殘疾人士，例如有關聘用殘疾人士的薪金開支可享有 100%的稅務減免；
 - 如合乎資格的企業基於各種原因無法聘用足額的殘疾人士，企業可選擇購買由專門聘用殘疾人士的社會企業和庇護工場所提供的服務，唯每年合約額不能低於殘疾僱員在市場上的平均工資乘以所需聘用的殘疾僱員總和。
 - 由於香港就業市場對於為殘疾人士創造就業仍不是抱很開放的態度，香港政府可以考慮按步就班，先鼓勵公司每一百人聘請 2 名殘疾人士，長遠而言讓市場逐漸接受及認同殘疾人士的工作能力後，才要求公司每一百人聘請 3 名殘疾人士。
 - 最後，當社會上對這種做法有一定認知時，可考慮跟隨其他國家以立法去制度化以上的配額制度，進一步保障殘疾人士的工作機會。

4 為殘疾人士提供收入保障的需要

- 4.1 要改善殘疾人士的生活，單純提供就業機會並不足夠，因為若受聘的殘疾人士只能獲得低薪工作，連應付自己的生活開銷也不足夠，那對解決殘疾人士所面對的困難並無幫助。因此，為殘疾人士制訂最低工資必需與以上創造就業職位的建議同步進行，缺一不可。
- 4.2 在釐訂最低工資額時，外國政府均採用大致相若的準則，包括當前的經濟表現、工人的基本需要、平均工資、勞動生產力、通脹率及就業情況。在廣東及深圳，有關方面亦會考慮社會保障福利金額。縱使各國政府釐訂金額的準則有異，但確保勞工付出勞力獲得合理和足夠生活的報酬之目標卻始終如一。
- 4.3 不過，有輿論認為殘疾人士的工作能力不可與健全人士相提並論，若劃一實施最低工資，對僱主、健全和殘疾的員工都不公平，因此，商界有聲音要求將殘疾人士剔除出最低工資的保障範圍內，或通過工作能力評核機制讓勞動者獲得一個以百分比計算的最低工資。連有聘用殘疾人士的非政府機構也曾提出以聘用殘疾人士為主的社會企業和庇護工場應獲豁免，確保他們可以低廉價錢在市場上競爭，變相保障殘疾人士的就業機會。
- 4.4 可是，最低工資的訂立是確保每一名勞工均獲得能應付生活所需的工資，確保他們能有尊嚴地生活。若勞工是指任何勞動付出者，君不見殘疾人士有被豁免的理據。更何況，為確保企業的營運成本不會被大幅拉高，各國政府在訂立最低工資時，通常設在一個甚低的水平，若殘疾人士工資需按其工作能力的水平上再打折，究竟最低工資的設定對保障殘疾人士又有何意義？
- 4.5 我們不禁要問，當香港已發展至相當富裕的水平時，社會是否仍能容忍一個每周辛勤工作 44 小時，但只獲發一份不足應付生活所需的工資？為何有人願意辛勤工作，卻要淪為朝不保夕？為何「自力」不能「更生」？難道身體出現缺憾的人就註定要過著貧窮的生活，而社會面對如此境況亦只可以坐以待斃？
- 4.6 相信外國政府在訂立最低工資時也曾面對上述問題，或許香港可以從其他國家的經驗中找到一些靈感。綜觀各國例子，外國政府大多對將殘疾人士納入最低工資持三大取向，分別為：豁免殘疾、評審機制和一視同仁。

- 4.7 **豁免殘疾(南韓、廣東、深圳)**：殘疾人士不是最低工資的保障範圍，如企業聘請他們作員工，可不用支付最低工資，不論所聘請的殘疾員工在履行職責時，其工作表現是否與健全人士有異。我們認為此做法與訂立最低工資的原意背道而馳，對殘疾人士有歧視之嫌。
- 4.8 **評審機制(澳洲、台灣、美國、新西蘭)**：如殘疾僱員因傷殘而影響其工作能力，以致履行職責時未能達到其工作要求，那該僱員須接受生產力評估，僱主按其相較於健全人士生產力的百分比作為最低工資的計算準則。在新西蘭，如勞資雙方有自願協議，經有關政府部份核實後，僱主可向殘疾顧員發放低於最低工資的薪金。我們認為若評估工具運用不宜，很容易出現濫用情況，如一名殘疾人士的生產力可能與健全人士無異，但測試時卻被要求同時處理數項與工作崗位無關的事務。更何況，打折後的最低工資是否仍足夠殘疾人士支付其日常生活所需也不得而知。
- 4.9 **一視同仁(日本、英國、愛爾蘭、西班牙)**：在日本，只要殘疾人士能在履行職責就可收取最低工資。在英國，殘疾人士被視為工人，而所有工人不論其能力、生產力和效率，均能享有最低工資。我們認為從保障殘疾人士的角度出發，此做法確實可取。不過，若殘疾僱員的生產力礙於其身體缺憾而較健全人士低，強制僱主給予他們劃一的最低工資確實對僱主不公平。更有可能發生的情況是，由於無論聘請一個普通的工人或是一個殘疾人士做同一份低技術工作，僱主都需支付一樣的薪酬，僱主便會更加趨向不聘請傷健人士，令傷健人士在自由市場裡的工作機會大為減少。
- 4.10 究竟，有甚麼方法既可顧及殘疾人士的就業需要，又可確保他們所取得的工資足以支付生活所需，更讓僱主能公平地按員工的工作表現支付工資？我們認為殘疾人士的議價能力比其他邊緣勞工還要低，他們更需要受到最低工資保障，所有企業(包括社會企業及庇護工場)都應向殘疾僱員繳付最低工資。因為最低工資的精神在於不讓任何願意努力工作的人，在付出勞力後所得的報酬連基本生活也維持不到。但不能否認，若硬性規定僱主予生產能力弱的殘疾員工劃一的最低工資，即使實施就業配額和提供其他誘因，僱主也未必會甘心聘用要求以外的殘疾人士。
- 4.11 為此，我們建議政府向聘用殘疾僱員的僱主提供補助，補助金額應透過由第三者負責的評核機制決定，確保機制不被濫用。如殘疾人士被評為生產力只及健全人士的一半，那僱主按結果給予殘疾人士 50%最低工資，而其餘的 50%則由政府支付。若最低工資最終定於全港入息中位數

的一半，即約\$5,000。政府向每名殘疾人士提供的補助金額定必低於社會福利署向殘疾人士發放的標準綜援金額，可見此建議亦有利於庫房和社會大眾。

- 4.12 政府應設立相應的上訴機制，若果殘疾僱員認為殘疾僱員的生產力評估結果不能反映真實工作時的生產力，可以提出上訴要求。基於僱員的生產力可能有所改變，僱員有權要求最快每六個月再進行評估，避免「一試定生死」，這樣對勞資雙方都較公平。生產力評估的機制沒有上限，若一個殘疾員工能執行比一個健全人士更多的工作，評估所得的生產力可以多於 100%。
- 4.13 此外，有些僱主可能會以「試用期」為由，以低於最低工資的水平聘請殘疾人士。根據《最低工資條例草案》，一個正常僱員有權就任何工資期獲支付不少於最低工資的工資¹，而「工資期」包括了試工期。我們認為政府應一視同仁，讓殘疾人士也視受同樣保障，讓他們能在試用期取得最低工資，防止僱主以「試用期」為由去剝削殘疾僱員，符合最低工資保障基本生活為理念的精神。
- 4.14 當試用期完結後，僱傭關係應維持正常，法例不應特別容許僱主終止此關係，甚至準備修訂《殘疾歧視條例》去容許僱主這樣做，保障殘疾人士不會因為自己的殘障弱勢而被利用及剝削。

¹ 《最低工資條例草案》第 7 條

5 結語：創造就業及最低工資需同步進行

5.1 工資偏低和就業機會不足同樣是殘疾人士目前面對的就業難題。如只推行最低工資，僱主定必捨難取易，放棄聘用殘疾人士，因此我們建議政府實施殘疾人士配額制度，以先自願後強制的方式令殘疾人士的就業機會不因為最低工資的確立而消失。另一方面，殘疾人士也應與其他人一樣有基本的生活保障。讓殘疾人士自願透過生產力評核制度去衡量應得的工資，其餘的由政府補貼，可以確保殘疾人士能獲得最低工資之餘，減少僱主因為生產力的問題而為之卻步的情況。最後，我們相信一個願意勤奮工作的殘疾人士的應有自力更生的機會，而合理工資是社會公義的踐行。希望政府在制訂政策時，不要漠視殘疾人士目前面臨的困境。

Introduction

1.1 After years of battle by the labour sector and grass-root groups, the issue of minimum wages is already in the process of legislation. It is believed that the realization of minimum wage is possible in the near future of Hong Kong. However, some representatives from the commercial sector and the employers of Labour Advisory Board still consider such law would increase their costs, which may subsequently affect the employment opportunities of the labours. For those employers who are generally not willing to recruit the disabled have even indicated that, they may minimize the chances of recruiting them if they are under the protection of minimum wage. Subsequently, it may worsen the employment opportunities of the disabled. Hence, some representatives from the commercial sector have proposed that the disabled should be exempted from the protection of minimum wages, with a view to protect their employment opportunities.

1.2 Based on the proposal from the commercial sector and the employers, we want to know, if the HKSAR government maintains its current policies, will those disabled have adequate employment opportunities? If this is the case, will they be rewarded with reasonable wages for a decent life? Would the conceptual idea of minimum wage be applicable to those disabled? Therefore, Community Development Initiative (“CDI”) would like to declare our stand and present our proposal on this particular issue.

1. Current Situation of the Disabled

2.1 According to the “Special Topics Report No. 48: Persons with Disabilities and Chronic Diseases” published by the Census and Statistics Department on 22 December 2008, there are 67,000-87,000* people with intellectual disability (“ID”) and 361,300 people with one or more than one disabilities. Among those with physical disabilities, those with deficiency in limbs, seeing difficulty, hearing difficulty and psychological disorder are the majority. At the same time, there are approximately 238,900 people (66.5%) who declared they have single disability, the rest of approximately 122,400 people (3.9%) declared that they have more than one disability (please see Table 1).

Table 1 : Numbers of selected categories of disability

	No. with single disability	No. with multiple disabilities	Total	As % of total population
Limbs disabilities	92,700	95,100	187,800	2.7
Seeing difficulty	50,200	72,300	122,600	1.8
Hearing difficulty	37,400	54,800	92,200	1.3
Speech difficulty	2,800	25,600	28,400	0.4
Mental illness	48,100	38,500	86,600	1.3
Autism	1,400	2,300	3,800	0.1
Learning difficulty	4,400	5,500	9,900	0.1
Attention Deficit/Hyperactivity Disorder	1,900	3,600	5,500	0.1
Intellectual Disability	/	/	87000	1 - 1.3*
Total	238,900	122,400	428300 - 448,300	6.3 -6.6

Source: Census and Statistics Department

*Due to the difficulty to obtain accurate information regarding the Intellectual disabled, the estimated total number of the intellectual disabled is 67000 - 87000

2.2 Even the disabled can overcome their own physical disabilities, it does not mean they could make their living independently. It is obvious because the employment opportunities for them are very limited. Even if they are given work opportunities, it does not guarantee they could lead a decent life with the inadequate wages. Currently, among the 347,000 disabled (excluding the Intellectual Disabled) aged above 15, 45,800 (13.2%) engage in paid employment. It is far below the overall labour employment rate of 60.2%. For the other 302,100 disabled who are not employed, most of them are forced to retire due to the lack of work opportunities. They can only rely on Comprehensive Social Security Assistance or their families for their living. Therefore, the retirement rate of 63.7% among disabled is far above the standard retirement rate of 16.7% (Table 2). Apparently, disabled are not widely accepted by the market.

Table 2 : Numbers of Disabled according to their age and economic activities

	Number	%	As % of total population
Age below 15	13,400	3.7	13.3
Age above 15	347,900	96.3	86.7
Employed & Paid	45,800	13.2	60.6
Unemployed	302,100	86.8	39.4
Retired	221,500	(63.7)	(16.3)
Home-makers	21,400	(6.2)	(11.1)
Students	5,100	(1.5)	(8.4)
Others	54,100	(15.5)	(3.7)
Total	361,300	100.0	100.0

Information source: Census and Statistics Department

* Persons with "ID" are not inclusive

2.3 Due to their physical disabilities, most of the disabled are not adaptive to the mainstream education system, causing them a lower education level when compared with the population as a whole. Under the knowledge-based economy, those with lower education level without physical disabilities are difficult to get a permanent job in the market, not to mention the disabled. It does not only explain why the disabled have a lower rate of labour participation, it also explains why most of the disabled are recruited as non-skilled workers at the grass-root level (Table 3).

Table 3 : Numbers of Disabled Persons according to their occupation

	No. of persons	%	As % of total population
Managers, administrators and professionals	8,900	21.6	36.3
Clerks	6,700	16.3	15.6
Service workers and shop sales workers	5,700	13.8	15.4
Craft and related workers	2,300	5.6	7.5
Machine operators and assemblers	1,900	4.5	6.2
Elementary occupations	15,600	37.9	18.8
Total	41,000	100.0	100.0

Information source: Census and Statistics Department

* Persons with "ID" are not inclusive

2.4 Because of many different reasons, most of the employed disabled are currently employed in Non-Government Organizations (“NGOs”). A majority of them are working at sheltered workshops and social enterprises which could only provide comparatively lower salaries as to maintain their competitiveness in the market. Hence, the income of disabled is generally lower than the work force. Almost 30% of the employed disabled are making below \$4,000 per month (Table 4). Obviously, even the disabled could become self-reliant; they could not “rehabilitate their lives”.

Table 4 : Number of Disabled according to their income

	No. of persons	%	As % of total population
<4,000	11,500	28.0	11.7
4,000-6,999	9,100	22.2	14.8
7,000-9,999	6,600	16.2	20.9
10,000-14,999	5,700	13.9	18.9
15,000-19,999	2,400	5.8	10.5
>20000	5,700	13.9	23.2
Total	41,000	100.0	100.0
Median Income	\$6,800		\$10,100

Information source: Census and Statistics Department

* Persons with “ID” are not inclusive

2.5 Based on the above reasons, if the disabled expect to rehabilitate their lives through working, they generally have to face the challenges of inadequate employment opportunities and low income. The problem of low income can be secured via the legislation of minimum wages; while inadequate employment opportunities could only be dealt with governmental policies, as to provide extra employment capacities for those eligible disabled. However, how many employment capacities have to be created as to satisfy the current potential demand?

2.6 Currently, there are 41,000 working disabled. Most of them are living in their own residences scattered in different areas, and they do not need special care on their daily lives as well as delivery assistance to and from their workplaces. If we take this as the basic requirement for the disabled to work outside their home to calculate the potential disabled labour population, the number is far more than the current 41,000. 169,800 out of 295,400 disabled who live in their residences do not need special care from a third party on their daily lives. Among the 169,800 disabled, only 10% of them require assistance when they go out. Thus, at least 150,000

disabled have the ability to take care of themselves. Subtracting 20% of them who have reached their retirement age, the current disabled population in Hong Kong which can potentially enter the job market is probably 120,000 (excluding those with Intellectual Disabilities).

- 2.7 Due to the lack of incentives for the commercial sector to recruit the disabled, if we want to help these potential disabled labour to secure employment and to develop their self-reliant abilities, it is indispensable for the government to take action through policies implementation. Is there any room for the government to improve in this area? If so, in what ways should it be improved?

2. HKSAR Government's Current Policies to Encourage Employment of the Disabled

2.1 The government has indicated that it has provided a series of employment and occupational rehabilitation services for the disabled, which aims to enhance their skills to cope with the market need. They are as follows:

- to provide occupational rehabilitation services to those who temporarily lack ability to work in the market to increase their competitiveness and employment opportunities in the open market;
- to provide the disabled who are eligible to be recruited in the public through the Skills Centre, Integrated Vocational Training Centre, Employee Retaining Programmes and On-the-Job Training Programmes with occupational training and re-training courses meeting the market needs;
- to establish Market Consultancy Office (Rehabilitation) for promotion of the work abilities of the eligible disabled to both public and private entities; to promote the services and products manufactured and provided by sheltered workshops, supported employment, Integrated Vocational Rehabilitation Services Centres and social enterprises;
- to provide matching services between the disabled and the employers who are willing to recruit them, as well as to provide arrangements so that those disabled who apply for government positions have higher priority to be employed; and
- to carry out a series of special topics plan to support employment of the disabled and to encourage employers to recruit them. The plans include: On-the-Job Training Programme for the People with Disability, Sunnyway – On-the-Job Training Programme for Young People with Disabilities, Enhancing Employment of People with Disabilities through Small Enterprise' Project, Work Orientation and Placement Scheme and Trial Placement Scheme for People with a Disability.

2.2 Although it looks like the areas covered by the HKSAR government (occupational training, services referral, matching services) are quite comprehensive, these services in many ways are not in depth enough. Regarding occupational training, inadequacy appears not in training opportunities but employment opportunities. Even the HKSAR government is the largest employer of disabled in Hong Kong, it only employs a few thousand of them. If we depend on the sole recruitment from the HKSAR

government itself, how can the potential employment demand from the disabled be satisfied?

2.3 On the service referral side, social enterprises and sheltered workshops have definitely contributed to the promotion of recruiting the disabled. Due to their relatively lack of competitiveness comparing with ordinary people, service units can only increase their competitiveness through accepting offers and work orders at extremely low quotation, causing disabled employees to obtain petty wages eventually. If the HKSAR government allows social enterprises and sheltered workshops to compete for contracts under the free market for the disabled, it may not improve the employment conditions of the disabled even the government has strengthened the task force on service referral

2.4 On the side of matching services, the Selective Placement Division of the Labour Department does provide such services to the disabled. Unfortunately, due to vacancy shortage and employers' lack of interest to employ the disabled, there are only 3,000 disabled per year who could seek their job via the related services. Comparing to the potential disabled labour population, those related services are undoubtedly under provisioned. In addition, even the HKSAR government is willing to provide allowances to the employers during the probation period of the disabled, without the follow-up work of staff, how many disabled people could cope with the work? How many of the employers are able to provide assistance to help them to adapt to the working environment? If there is insufficient monitoring over the whole mechanism, unscrupulous businessmen may take advantages to cheat for allowances from the loopholes.

2.5 As the current mechanism cannot solve the disabled's employment problems comprehensively, CDI would like to suggest the HKSAR government to take the "Voluntary first, Mandatory Second" Disabled Employment Quota System to provide a larger and more user-friendly employment space for the disabled, our suggestions are as below:

2.6 Nowadays, many countries, including China and Indonesia which are developing countries, have enforce employment quotas and compulsory policies on scaled enterprises to employ disabled people on a pro-rata basis.

Countries	No. of Employees in An Entity	Minimum Disabled Employee Proportion
Italy	36	15%
France	20	6%
Germany	16	6%
Poland	50	6%
Luxemberg	Government	5%
	25-49	1%
	50-299	2%
	300+	4%
Hungary	20	5%
Austria	25	4%
Ireland	Government	3%
Spain	Government	3%
	50	2%
Taiwan	Government	2%
	50	1%
	100	
Korea	300	2%
Japan	Government	1.8%
	56	
	300	
Vietnam	Not Specified	2%
The People's Republic of China	According to Region	1.5-2%
Indonesia	100	1%
Thailand	200	0.5%

Source: Hong Kong Polytechnic University Department of Applied Social Science Investigation Report on Disabled Recruitment Situation in Non-government Organization

The minimum disabled employee proportion varies from 0.5% to 15% internationally; and entities are required to employ a certain proportion of disabled if the number of employees a company reaches 16 to a few hundred. We think that the other than taking these statistics as a reference to draft its compulsory employment quotas policies, HKSAR government also has to pay attention to the supply and demand of the job market in the long term. We have calculated that Hong Kong has at least 120000 disabled people of the appropriate age with the competence to enter the labour market. And according to the Census and Statistics Department of Hong Kong, there were 3672700 labour in total in February, 2010. That means, in every 100 of the labour force, 3 of them are disabled. Therefore, the HKSAR government

should set the target employment rate of the disabled in an entity to be 2% of the total number of employees in each entity, with the provision to raise it to 3% or above.

- Firstly, government divisions, public sectors and subsidized organizations are required to employ 2% of disabled employees, and the results are reported every year. The business sectors and other organizations are encouraged to impose their own voluntary quota system. The government can consider providing tax concessions and other support to rewarded the organizations which follow the scheme.
- To strengthen the corporate social responsibilities of private enterprises, whenever a company employs over 100 staff, it should employ at least 2 disabled people. Referring to the data of Companies Registry, there are approximately 15,000 enterprises employing over 100 staff as at October 2009. Based on this, it may create an additional 30,000 positions;
 - To provide privileges to the Small and Medium Enterprises which are not covered by the compulsory employment quota system, for example the wages for recruiting the disabled may be 100% tax exempted
 - If those qualified enterprises are not able to provide employment to the disabled for whatever reasons, they may opt to purchase the services provided by the sheltered workshop or social enterprises for the disabled. The amount of the annual contract should not be lower than the average wages made by the disabled in the market multiplied by the total number of the disabled they are required to employ.
 - Because the Hong Kong job market is still not quite open to the idea of creating job opportunities for the disabled, the HKSAR government can implement the policies step by step. At the beginning, entities with over 100 people are only required to hire 2 disabled people. In the long term, when the market has gradually accepted and recognized the disabled's ability to work, then the government can require the companies to hire 3 disabled people per 100 employees.
 - Finally, when the society has a common consent on the above mentioned goals, we can follow other countries' experience to institutionalize the quota system through legislation, to further protect the disabled's work opportunity.

3. To Provide Income Protection for the Disabled

- 4.1 To improve the livelihood of the disabled, it is not enough by simply providing them with employment opportunities alone. If the disabled could only make low income, and could not even support their own daily spending, their difficulties are not resolved. Hence, both the legislation of minimum wage and the creation of employment opportunities for the disabled are indispensable, and should be carried out at the same time
- 4.2 While setting the minimum wages, foreign governments adopt similar standards and/or yardsticks which include the current economic performances, the workers' basic needs, average wage, labour productivity, inflation rates and employment conditions. Some authorities would also consider the direct payments of social security, for example in Guangdong and Shenzhen. Even various governments have their respective standards, their goals of ensuring labour to be awarded reasonably for a decent living are just identical.
- 4.3 On the other hand, there are criticisms about the discrepancies of working abilities between the disabled and able-bodied people. If minimum wage is imposed universally without considering the discrepancies in their ability, it is unfair to the employers, the able-bodied workers and disabled staff. Thus, there are suggestions made by the commercial sector that the disabled should be excluded from the protection of minimum wages. They also suggest the disabled labour to go through capability assessment at authorities which would calculate their minimum wages on a pro-rata scale based on their abilities. The NGOs recruiting disabled persons have also voiced out that the disabled working at social enterprises and sheltered workshop should be exempted, so that they can still be competitive in the market with their lower salaries, which in turn protect their employment opportunities
- 4.4 Nevertheless, the legislation of minimum wage is to guarantee each labour is paid with adequate income for making a living and to ensure they can lead a decent life. If the meaning of "labour" is those who contribute their effort in production, it is not justifiable that the disabled are to be exempted. Moreover, in order to make sure the operational costs of enterprises will not soar, governments in different countries usually set the minimum wage at a

comparatively low level. If the disabled are paid at a discount according to their capability assessment, what is the ultimate meaning for protecting them in accordance with the minimum wages?

- 4.5 Being a developed region like Hong Kong, is it acceptable when one only receives a pay which could not allow him a decent living after working hard for 44 hours per week? Why can't one secure a job when he dedicates to work hard? Why can't one be "self-reliant"? Is it a curse that people with physical challenges are destined to lead a poor life while the society is not going to give a helping hand?
- 4.6 Foreign countries may have already faced the above mentioned issues when they set the minimum wage. Hong Kong may be inspired from similar experience of other countries. To summarize overseas examples, foreign governments usually categorize their treatments on minimum wages for the disabled persons into 3 types: Disabilities Exemption, Assessment Mechanisms and Treat Equally Without Discrimination.
- 4.7 **Disabilities Exemption (South Korea, Guangdong, Shenzhen):** The Disabled are not included in the protection of minimum wage. If they are employed by the enterprises, they are not paid with minimum wage. No matter how they carry out their duties and how their work performances differentiate from able-bodied workers. We consider it as discriminating the disabled since it defeats the purpose of passing a minimum wage law.
- 4.8 **Assessment Mechanisms (Australia, Taiwan, USA, New Zealand):** If disabled employees' work performances are influenced by their disabilities, causing them a deficiency in fulfilling their job duties, that particular employee should receive productivity assessment. Employers may adjust their minimum wage according to the percentage of their productivity comparing with an ordinary person. In New Zealand, when employers and employees reach mutual agreement, and after the auditing from relevant governmental departments, employers may pay their employees a wage below the minimum wages. Nevertheless, if the assessment tool is not properly functioned, the system will be easily abused. For instance, if the work performance of a disabled person is identical with an able-bodied worker, he may be required to handle other irrelevant tasks simultaneously apart from his expected work practice during the assessment. In addition,

we do not know whether the discounted minimum wages are enough for the disabled to meet their daily expenses.

4.9 Treat Equally Without Discrimination (Japan, UK, Ireland, Spain): In Japan, the disabled are rewarded with minimum wage as long as they perform their duties. In the United Kingdom, the disabled are treated as ordinary workers, and all workers enjoy minimum wages regardless of their capabilities, productivity and efficiency. It is worthwhile for us to take it as a precedent if we look from the perspectives of protecting the disabled. However, if the productivity of a disabled worker is reduced due to his physical challenges, it is unfair to the employers when they are mandated to pay them the standard minimum wage. Moreover, since the employer will need to pay the same minimum wage to non-skilled employee, the employer would become more reluctant to hire a disabled person, hence reducing the job opportunities of the disabled in the free market.

4.10 Eventually, are there any solutions that can cater the disabled's employment needs, to ensure they are paid adequately to meet with daily expenses as well as to allow employers to pay fairly according to performances of various types of employees? We think that the bargaining power of the disabled is far lower than the marginal labour, thus they are supposed to enjoy the protection of minimum wage. All enterprises (including social enterprises and sheltered workshops) should pay minimum wage to the disabled. It is because the essence of minimum wage is to prevent anybody being paid at a rate below the amount needed to maintain their basic living standard while they are willing to work hard. Undeniably, if employers are mandated to pay the minimum wage to those who are less productive, even the employment quota and other incentives are available, employers may be reluctant to recruit other disabled employees apart from fulfilling the quota requirement. .

4.11 Based on the above, we propose that the government should provide assistance to employers recruiting disabled employees. The work performance of the disabled employee should be examined via a third-party assessment authority to ensure the mechanism would not be abused. If the disabled employee is evaluated as possessing half of the ordinary persons' productivity, that particular employer may pay 50% of the minimum wages to that employee, the remaining 50% should be paid by the government.

If the minimum wage is eventually set at half of the median salary in Hong Kong, that is \$5,000, then the allowance amount to be allocated to each disabled by the government is lower than the standard Comprehensive Social Security Assistance payments paid by the Social Welfare Department. It proves to be more beneficial to the fiscal budget, as well as the public.

- 4.12 The government should set up corresponding appeal system, so if the disabled employee thinks that the capability assessment does not reflect the worker's real productivity, they can submit their request to appeal. Base on the possibility that the productivity of the disabled employee may change, the employee can request a re-assessment as soon as every six months. This arrangement seems to be fairer to both parties. The capability assessment mechanism does not have a maximum measurement, which means if a disabled person can carry out more work than a able-bodied person, the result of the capability assessment can be over 100%.
- 4.13 Some employers may use the reason of "probation" to employ disabled employees at a wage below minimum wage. According to "Minimum Wage Bill", an employee is entitled to be paid wages in respect of any wage period of not less than the minimum wage², including probation period. Therefore the government should treat the disabled equal to the able-bodied person so that the disabled are entitled to fully paid minimum wage during probation. This act can prevent employers from using probation as an excuse to exploit disabled employees and preserve the spirit of setting minimum wage of providing basic living.
- 4.14 When probation period ends, the employment relationship should remain normal. Legislation should not allow employers to terminate the relationship, or even attempt to modify "Disability Discrimination Ordinance" to allow disabled employees being dismissed because of their physical disabilities. This is to protect the disabled are not exploited and used because of their physical disadvantages.

² "Minimum Wage Bill" No.7

4. Conclusion: Synchronization of Creating Employment and Minimum Wages

5.1 Low income and inadequate employment opportunities are the major problems for the disabled currently. If only “minimum wage” is imposed, employers will prefer the easy option which is not to recruit the disabled, therefore we propose the disabled employment quota system, with the approach to encourage voluntary participation and gradually making it mandatory, to preserve the working opportunities for the disabled. On the other hand, the disabled’s basic living should be protected just as other normal people. Allowing the disabled to go through the capability assessment scheme voluntarily to judge their deserved wages, and letting the government subsidized the rest, can ensure the disabled workers are protected by minimum wage, as well as reducing the employers’ resistance in employing the disabled because of productivity matter. We believe a hardworking disabled person should be given opportunities to revitalize its lives, and reasonable wages is the realization of social justice. We hope the government won’t ignore the current difficulties the disabled are facing when drafting the policies.

Creating Employment Opportunities & Realizing of Minimum Wage for the Disabled

Community Development Initiative

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