

立法會
Legislative Council

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by the Administration)

Ref : CB2/SS/3/10

Subcommittee on Minimum Wage (Criteria for Approved Assessors)
Notice and Minimum Wage (Assessment Methods) Notice

Minutes of meeting
held on Friday, 21 January 2011, at 8:45 am
in the Chamber of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon LI Fung-ying, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon CHEUNG Kwok-che
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC

Member attending : Hon CHIM Pui-chung

Members absent : Hon WONG Sing-chi
Hon LEUNG Kwok-hung
Hon WONG Yuk-man

Public Officers attending : Item II

Miss Mabel LI Po-yi
Assistant Commissioner for Labour (Development)

Mr Charles HUI Pak-kwan
Chief Labour Officer (Statutory Minimum Wage)
Labour Department

Miss Cindy YIM Lai-kwan
Senior Labour Officer (Statutory Minimum Wage)
Labour Department

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

Ms Grace LEUNG Pui-kay
Senior Government Counsel
Department of Justice

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

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Ms Alice LEUNG
Senior Council Secretary (2) 2

Mr Ian CHOW
Council Secretary (2) 1

Ms Camy YOONG
Clerical Assistant (2) 1

I. Election of Chairman and application for late membership

Mr TAM Yiu-chung was elected Chairman of the Subcommittee.

2. Members accepted the application for late membership by Mr Alan LEONG.

II. Meeting with the Administration

3. The Subcommittee deliberated (index of proceedings attached at **Annex**).
4. The Subcommittee requested the Administration to -
 - (a) provide the administrative guidelines for approved assessors and the certificate of assessment on the degree of productivity of persons with disabilities;
 - (b) provide more information relating to approved assessors, including the assessment fee to be paid to them, the training to be arranged by the Labour Department, the validity period for the approval granted, the avenues for lodging complaints against them, and the circumstances under which an approval granted to an approved assessor would be withdrawn; and
 - (c) advise whether there was any protection available to a person with disabilities if the employer disagreed with the assessment result as determined by the approved assessor and terminated the contract of employment with the person with disabilities concerned.

III. Date of next meeting

Extension of scrutiny period

5. Members noted that the scrutiny period of the Minimum Wage (Criteria for Approved Assessors) Notice (L.N. 1) and Minimum Wage (Assessment Methods) Notice (L.N. 2) had been extended to 2 March 2011 by a resolution of the Council on 19 January 2011.

Schedule of future meetings

6. Members agreed to hold a meeting on 28 January 2011 from 10:45 am to 12:45 pm to receive public views on the two Notices by announcing an invitation on the website of the Legislative Council.
7. Members also agreed to schedule two further meetings for the following dates to continue discussion with the Administration -

- (a) 27 January 2011 from 10:45 am to 12:45 pm; and
 - (b) 14 February 2011 from 2:30 pm to 4:30 pm.
8. There being no other business, the meeting ended at 10:50 am.

Council Business Division 2
Legislative Council Secretariat
4 August 2011

**Proceedings of meeting of the
Subcommittee on Minimum Wage (Criteria for Approved Assessors) Notice and
Minimum Wage (Assessment Methods) Notice
held on Friday, 21 January 2011, at 8:45 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000247	Hon LEUNG Yiu-chung Hon Tommy CHEUNG Hon IP Kwok-him Hon WONG Ting-kwong Hon TAM Yiu-chung	Election of Chairman	
000248 - 000356	Chairman	Opening remarks Application for late membership from Hon Alan LEONG	
000357 - 000800	Chairman Hon Cyd HO Hon LEUNG Yiu-chung Hon LI Fung-ying Hon Audrey EU	Extension of scrutiny period and date to report the Subcommittee's deliberations to the House Committee Dates for holding further meetings to receive public views on and to continue the scrutiny of the Minimum Wage (Criteria for Approved Assessors) Notice (L.N. 1 of 2011) and Minimum Wage (Assessment Methods) Notice (L.N. 2 of 2011) ("the Notices")	
000801 - 001315	Admin	Briefing on the Notices (File Ref.: LD SMW 1-10/8 (C)) which sought to - (a) specify the kinds of persons and the lengths of experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities for the purposes of the definition of approved assessor in Schedule 2 to the Minimum Wage Ordinance (Cap. 608) ("MWO"); and (b) specify the methods for assessing the degree of productivity of a person with disabilities in performing the work required under his contract of employment	
001316 - 002600	Hon LI Fung-ying Admin	Concerns raised by Hon LI Fung-ying - (a) how the conflict of interest issue would be addressed if an assessor worked in the same organization as	

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		<p>the person with disabilities to be assessed;</p> <p>(b) whether all approved assessors had adequate experience and knowledge in conducting productivity assessment for persons with disabilities given the different types of work performed by persons with disabilities; and</p> <p>(c) whether there would be any protection available to a person with disabilities if the employer disagreed with the assessment result as determined by the approved assessor and terminated the contract of employment with the person with disabilities concerned</p> <p>Response of the Administration -</p> <p>(a) approved assessors were not allowed to conduct assessments for persons with disabilities who worked for the same organisations as the assessors;</p> <p>(b) in conducting the productivity assessment, the approved assessor should collect detailed information on the work of the person with disabilities through the employer, the person with disabilities and, if appropriate, any other relevant person(s) who was/were familiar with the work of the person with disabilities; and</p> <p>(c) employees with disabilities were entitled to relevant employment protection in accordance with the Employment Ordinance ("EO") (Cap. 57) and the Disability Discrimination Ordinance ("DDO") (Cap. 487). When seeking to terminate a contract of employment with an employee, including an employee with disabilities, the employer must comply with EO, other relevant legislation in force and the relevant terms of the employment contract. The exemption from DDO relating to dismissal under MWO was limited to the situation where the dismissal was on account of the</p>	

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		<p>outcome of the productivity assessment. If the employee was dismissed on the ground of his disability rather than his failure to satisfy the inherent requirements of the particular employment, MWO did not affect his claim under DDO.</p>	
<p>002601 - 003734</p>	<p>Hon LEUNG Yiu-chung Admin</p>	<p>Whether there would be sufficient number of approved assessors to carry out the assessments for persons with disabilities; detailed background information of assessors would be provided in the register of approved assessors to facilitate the selection of assessors by persons with disabilities; persons with disabilities would be informed of the assessment criteria prior to the assessment; an appeal mechanism would be available in the event of dispute about the assessment result.</p> <p>Considered that a wage subsidy of up to 50% should be provided to persons with disabilities whose productivity was assessed to be less than 100%</p> <p>Response of the Administration -</p> <p>(a) the register of approved assessors would include information of the assessors, including their types of professions, type(s) of disabilities with expertise, relevant working experience, employing and/or recommending organisations, etc;</p> <p>(b) based on the detailed information on the work collected, the approved assessor should exercise his professional expertise and decide the appropriate factor(s), namely working speed, quantity and quality of work and/or the ability to meet other requirements for performing the work, to be considered in the assessment. As the process was interactive and dynamic, it would be difficult to require approved assessors to advise the persons with disabilities concerned of all factors that they would take into account prior to the assessments; and</p>	

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		<p>(c) LegCo had thoroughly discussed, during the scrutiny of MWO, the issue as to whether MWO should include an appeal and review mechanism for the productivity assessment of persons with disabilities. It was also not the policy intent of MWO to provide wage subsidy and the Administration had no plan to do so.</p>	
<p>003735-005132</p>	<p>Hon Cyd HO Admin</p>	<p>Requested the Administration to provide the administrative guidelines for approved assessors and a sample of the certificate of assessment on the degree of productivity of persons with disabilities</p> <p>Considered that approved assessors should be required to advise on the provision of aiding equipment by employers of persons with disabilities and they should take into account the quality of work of persons with disabilities in the assessment</p> <p>Concerned whether and when an appeal mechanism would be put in place</p> <p>Response of the Administration -</p> <p>(a) the Administration would review the special arrangement for persons with disabilities under MWO, including whether there was a need for an appeal mechanism in the light of operational experience, within two years after the implementation of statutory minimum wage ("SMW");</p> <p>(b) while the purpose of the Minimum Wage (Assessment Methods) Notice was to specify the methods of assessment rather than what aiding equipment the employer would have to provide to persons with disabilities, the Administration would encourage the approved assessors to provide relevant suggestions in the assessments as appropriate; and</p> <p>(c) based on detailed information on the work collected, the approved assessor should exercise his professional expertise and decide on the appropriate factor(s), including,</p>	<p>Admin to provide the guidelines and a sample of the certificate (paragraph 4(a) of the minutes refers)</p>

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		<p>among others, quality of work and/or ability to meet other requirements for performing the work, to be considered in the assessment. The Administration would highlight this point in the administrative guidelines for approved assessors</p>	
005133 - 010201	Hon Audrey EU Admin	<p>Concerned whether there would be adequate number of approved assessors to conduct the assessments, and issues over the eligibility of approved assessors, the training for assessors, the assessment fee and the avenues for lodging complaints against approved assessors</p> <p>Requested the Administration to provide its response in writing to the issues raised</p> <p>Response of the Administration -</p> <p>(a) the question of whether the pool of approved assessors for carrying out the assessments was sufficient would depend on the number of persons with disabilities undergoing a productivity assessment, the number of serving employees with disabilities making an option before 1 May 2011 for an assessment, as well as the timing of the actual assessments being conducted;</p> <p>(b) complaints against the assessment mechanism might be lodged with Labour Department ("LD"). Where appropriate, complaints might also be lodged with the professional bodies concerned; and</p> <p>(c) the cost of assessment would be borne by the Government. The Administration's plan was to pay the assessment fee at a standard rate out of the general revenue to the approved assessor</p>	<p>Admin to provide a written response (paragraph 4(b) of the minutes refers)</p>
010202 - 010500	Hon LI Fung-ying Admin	<p>Reiterated her concern over the employment protection available to persons with disabilities, and enquired about the mechanism for the appointment of approved assessors, whether an approved assessor would be appointed for a fixed period of time and the circumstances under which an approval</p>	

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		<p>granted to an approved assessor would be withdrawn</p> <p>Requested the Administration to provide its response to the concern about the employment protection for persons with disabilities</p> <p>Response of the Administration -</p> <p>(a) a validity period for the approval granted to assessors would be set and those who intended to continue to become approved assessors were required to complete further training; and</p> <p>(b) LD might withdraw the approval so granted to an assessor who was considered unable or unfit to carry out his duties owing to poor performance or any justifiable cause</p>	<p>Admin to provide a written response (paragraph 4(c) of the minutes refers)</p>
010501 - 011313	Hon Cyd HO Admin	<p>Suggested that arrangements be made for all eligible occupational therapists, physiotherapists and social workers of the Department of Health, Hospital Authority and the Social Welfare Department to undergo relevant training to become approved assessors.</p> <p>The Administration explained that all assessors would apply for and be granted approval on a personal basis</p>	
011314 - 012855	Hon CHEUNG Kwok-che Admin	<p>Considered that relevant trade unions should be allowed to make recommendations for eligible vocational rehabilitation practitioners to become approved assessors, and there should be requirement for provision of aiding equipment</p> <p>Suggested that retired social workers should be allowed to become approved assessors</p> <p>Response of the Administration -</p> <p>(a) the productivity assessment of persons with disabilities under the SMW regime had been devised after discussions involving persons with disabilities, parent groups, rehabilitation organizations, employers</p>	

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		<p>of persons with disabilities, relevant professional associations of approved assessors and the Equal Opportunities Commission;</p> <p>(b) in the course of consultation with stakeholders, there were views that the quality of approved assessors was key to the smooth and effective implementation of the assessment mechanism. The requirement for obtaining a recommendation regarding the vocational rehabilitation practitioner category, like other criteria such as holding a valid registration under the relevant Ordinances for the other categories of approved assessors, was to ensure the quality of productivity assessments to be conducted under the special arrangement;</p> <p>(c) any organizations, including trade unions, which provided vocational rehabilitation or other services in relation to the employment of persons with disabilities could be recognized by the Commissioner for Labour ("the Commissioner") for making recommendations for vocational rehabilitation practitioners to become approved assessors; and</p> <p>(d) where approved assessors considered appropriate, they could make recommendations for aiding equipment in the assessment</p>	
012856 - 014424	Hon IP Wai-ming Admin	<p>Urged the Administration to consult the stakeholders and provide the administrative guidelines for approved assessors</p> <p>Considered that the Administration should allow a vocational rehabilitation practitioner to submit application for approved assessor without obtaining the recommendation of the recognized organization(s) that had engaged him in the provision of relevant service</p> <p>The Administration explained the eligibility of the four categories of approved assessors and reiterated that the requirement for obtaining a</p>	

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		<p>recommendation, like other criteria for approved assessors, was to ensure the quality of productivity assessments to be conducted under the special arrangement</p>	
<p>014425 - 015649</p>	<p>Hon Alan LEONG Admin ALA3</p>	<p>Discussed section 2(2) of the Minimum Wage (Criteria for Approved Assessors) Notice which conferred a power on the Commissioner to recognize any person/organisation as a recognized person for the purposes of section 2(1)(d)</p> <p>ALA3 explained that section 2(2) of the Notice empowered the Commissioner to recognize an organization as a "recognized person" for the purposes of section 2(1)(d)</p> <p>Shared members' concerns over the requirement for an eligible vocational rehabilitation practitioner to obtain a recommendation from recognized organizations and the provision of aiding equipment</p>	
<p>015650 - 020602</p>	<p>Hon LEE Cheuk-yan Admin</p>	<p>Queried why vocational rehabilitation practitioners were required to obtain a recommendation from recognized organizations and enquired whether the relevant trade union had been consulted</p> <p>The Administration reiterated that the Administration's proposal was worked out after elaborate discussions with persons with disabilities, parent groups, rehabilitation organizations, employers of persons with disabilities, relevant professional associations of approved assessors including the relevant trade union and the Equal Opportunities Commission</p>	
<p>020603 - 020639</p>	<p>Hon CHEUNG Kwok-che Admin</p>	<p>Enquired about the timing when the administrative guidelines for approved assessors would be available</p> <p>The Administration responded that it would make every endeavour to complete the draft administrative guidelines in March 2011 for consultation with stakeholders and relevant professional bodies</p>	
<p>020640 - 020657</p>	<p>Chairman</p>	<p>Date of next meeting</p>	

Council Business Division 2
Legislative Council Secretariat
4 August 2011