



立法會秘書處

LEGISLATIVE COUNCIL SECRETARIAT

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圖文傳真 FACSIMILE : 2877 5029

7 January 2011

Mr Charles HUI,
Chief Labour Officer(Statutory Minimum Wage)
Labour Administration Branch
Statutory Minimum Wage Division
Labour Department
1/F., Harbour Building
38 Pier Road, Central
Hong Kong

BY FAX
Fax No. : 3101 0414

Dear Mr HUI,

Minimum Wage (Criteria for Approved Assessors) Notice (L.N. 1)
Minimum Wage (Assessment Methods) Notice (L.N. 2)

I am scrutinizing the legal and drafting aspects of the above Notices and should be grateful if you would clarify the following matters:

Minimum Wage (Criteria for Approved Assessors) Notice (L.N. 1)

- (a) Please clarify what types of work or service are envisaged by section 2(1)(d)(i) which the person seeking to become an approved assessor must have done or provided for not less than 5 years in the aggregate during the 10 years immediately before the relevant date, and how part-time work experience will be reckoned in calculating the 5-year aggregate experience required by section 2(1)(d)(i) and section 4(b);
- (b) In relation to section 2(2) which confers a power on the Commissioner for Labour (the Commissioner) to recognize any person as a recognized person for the purposes of section 2(1)(d), please clarify:
 - (i) the factors which the Commissioner will consider in deciding whether to recognize a person as a recognized person;
 - (ii) whether certificates of recognition will be issued to recognized persons;

- (iii) whether the Commissioner will maintain a register of such "recognized persons", and if so how and where such a register will be published; and
 - (iv) whether the Administration will consider providing for the above matters in L.N. 1, and if not, why.
- (c) In relation to section 2(3):
 - (i) What types of "arranged training" are being contemplated by the Commissioner? Who will provide such training to persons seeking to become approved assessors? Will the Commissioner or the person seeking to become an approved assessor bear the cost of such training?
 - (ii) "Relevant date" is defined as the date on which a person seeks the Commissioner's approval as an approved assessor. Section 6(4) of Schedule 2 to the Minimum Wage Ordinance (Cap. 608) (the Ordinance) merely provides for the Commissioner to approve, in writing, an assessor who satisfies the requirements of an "approved assessor", but does not stipulate how a person may seek approval to become an "approved assessor". What are the procedures for seeking the Commissioner's approval to become an approved assessor and how will an applicant be able to know about these procedures?
- (d) Paragraph 4 of the LegCo Brief (File Ref.: LD SMW 1-10/8(C)) states that the approval granted to an approved assessor may be withdrawn if the approved assessor is considered unable or unfit to carry out his or her duties owing to poor performance or any sufficient cause. Section 6(4) of Schedule 2 to the Ordinance merely provides for the Commissioner to approve an assessor who satisfies the requirements set out in section 1(1)(a) and (b) of that Schedule, but does not empower the Commissioner to withdraw such approval once it is granted. What is the legal basis for the Commissioner to do so? In this connection, section 17(1) of the Ordinance empowers the Commissioner to amend Schedule 1 or 2 by notice published in the Gazette. Is it necessary for the Commissioner to amend Schedule 2 to the Ordinance to empower him specifically to withdraw approvals granted under section 6(4)?
- (e) If it is proposed that the approval granted under section 6(4) of Schedule 2 is to be withdrawn, what procedural safeguards will be put in place, for instance, to give the approved assessor an opportunity to show cause as to why approval should not be withdrawn? Will Schedule 2 to the Ordinance be amended to cover these matters?

- (f) Paragraph 4 of the LegCo Brief also refers to "a register of approved assessors". Will Schedule 2 to the Ordinance be amended to empower the Commissioner specifically to maintain such a register, or will such a register be maintained administratively? How and where will such a register be published?
- (g) For the purpose of describing the type of experience which must be possessed by a person seeking to become an approved assessor, sections 2(1)(d)(i), 3(1) and 4 of L.N. 1 refer to "vocational rehabilitation or other services in relation to the employment of *persons with a disability*" (emphasis supplied) as opposed to "PWD" which is defined in the Ordinance as "a person who holds a valid Registration Card for People with Disabilities issued by the Central Registry for Rehabilitation established by the Government". It is further noted that the scheme of productivity assessment under Schedule 2 is intended to apply to PWDs. What is the reason for using the expression "persons with a disability" rather than "PWD" in the above provisions? If it is considered more appropriate to refer to "persons with a disability" in those provisions, is it necessary to define "disability" in L.N. 1?

Minimum Wage (Assessment Methods) Notice (L.N. 2)

- (h) Section 5(4) provides that the approved assessor may make an upward adjustment to the PWD's degree of productivity on being satisfied that the PWD failed to demonstrate his or her full potential in the assessment "due to particular circumstances". What are those "particular circumstances" which the approved assessor must or may take into account? Is it necessary to spell them out in section 5(4)?
- (i) Section 5(5) requires the approved assessor to state in the certificate of assessment the PWD's assessed degree of productivity and "the other details required by the certificate". What are those other details?
- (j) Section 7(3) and (4) of Schedule 2 to the Ordinance provides that the productivity assessment of the PWD is completed for the purposes of the Ordinance when the certificate of assessment is signed by the approved assessor, and that the certificate has effect for the purposes of section 9(1)(b) of the Ordinance on and from the first day after the PWD and the employer have countersigned it. Section 6(6) of Schedule 2 to the Ordinance also provides that a PWD in respect of whom a productivity assessment has been completed cannot have any

further assessment made for the same work with the same employer. Is the certificate of assessment intended to be final and non-appealable? What recourse (if any) do the PWD and the employer have if they are not satisfied with the assessment made by the approved assessor?

Other matters

- (k) Paragraph 9 of the LegCo Brief states that the Government has decided to take on the responsibility to pay the assessment cost. Where is this reflected in the Ordinance, L.N. 1 or L.N. 2? How are the approved assessors to be remunerated for making productivity assessments? Will they be paid fixed fees by the Government out of the general revenue? Is it necessary to amend Schedule 2 and/or make further subsidiary legislation to provide specifically for these matters?
- (l) By L.N. 147 of 2010, the Secretary has appointed 1 May 2011 as the date on which the Ordinance will come into full operation. Apart from L.N. 1 and L.N. 2, are there any other items of subsidiary legislation which are required to be made for the purpose of implementing the provisions of the Ordinance?

I look forward to receiving your reply in both languages **by midday on Tuesday, 11 January 2011**. Please also send an electronic copy of your reply to yfchoi@legco.gov.hk.

Yours sincerely,



(Bonny LOO)
Assistant Legal Adviser

c.c.: DoJ (Attn: Ms Amy CHAN, SGC)
DoJ (Attn: Miss Grace LEUNG, SGC)
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