
2C. Minimum Wage Ordinance

The Minimum Wage Ordinance establishes a statutory minimum wage (SMW) regime aimed at striking an appropriate balance between forestalling excessively low wages and minimising the loss of low-paid jobs while sustaining Hong Kong's economic growth and competitiveness. SMW provides a wage floor to protect grassroots employees.

2C.1 Coverage

The Minimum Wage Ordinance applies to every employee whether they are monthly-rated, weekly-rated, daily-rated, hourly-rated, piece-rated, permanent, casual, full-time, part-time or other employees, and regardless of whether or not they are employed under a continuous contract as defined in the Employment Ordinance, with the following exceptions:

- ✦ persons to whom the Employment Ordinance does not apply; e.g. seamen, apprentices, civil servants
- ✦ live-in domestic workers, including domestic helpers, care takers, chauffeurs, gardeners, boat-boys or other personal helpers, who dwell free of charge in their employing household, irrespective of their sex or race
- ✦ student interns as well as work experience students during a period of exempt student employment

SMW applies to employees with disabilities and able-bodied employees alike. In order to strike a balance between providing wage protection to persons with disabilities and safeguarding their employment opportunities, special arrangement is also provided under the Minimum Wage Ordinance so that employees with disabilities whose productivity may be impaired by their disabilities have the right to choose to undergo a productivity assessment to determine whether they should be remunerated at not lower than the SMW level or at a rate commensurate with their productivity. The right to invoke assessment is entirely vested in the employees with disabilities, not the employers. The Labour Department has published the *"Concise Guide to Productivity Assessment for Persons with Disabilities under the Statutory Minimum Wage Regime"* to explain the details of this special arrangement.

2C.2 Basic principles in computing minimum wage

SMW is expressed as an hourly rate. In essence, wages payable to an employee in respect of any wage period, when averaged over the total number of hours worked in the wage period, should be no less than the SMW rate.

The prescribed minimum hourly wage rate is HK\$30/hour, effective 1 May 2013.

For the purposes of computing minimum wage, hours worked include any time when the employee is:

- ✦ in attendance at a place of employment, irrespective of whether they are provided with work or training at that time; or
- ✦ travelling in connection with their employment, excluding travelling between their place of residence and their place of employment.

Whether meal breaks and rest days are with pay or otherwise are employment terms to be agreed between employers and employees. Whether meal breaks are hours worked and/or with pay, whether rest days are with pay, wage period, wage calculation, reckoning and payment arrangement of commission, etc. are relevant in the computation of minimum wage. Where necessary, employers and employees should seek consensus on the employment terms on lawful, sensible and reasonable grounds through labour-management communication and consultation.

An employee is entitled to be paid wages in respect of any wage period of not less than the minimum wage. The minimum wage for a wage period is the amount derived by multiplying the total number of hours (including any part of an hour) worked by the employee in the wage period by the SMW rate. Even if the hour worked is less than one whole hour, the minimum wage should be computed based on the actual period of time worked. Hence, in computing minimum wage, the following formula will be used.

$$\text{Minimum wage} = \text{Total number of hours worked by the employee in the wage period*} \times \text{SMW** rate (i.e. \$30 with effect from 1 May 2013)}$$

* "wage period" is normally defined as one month unless the contrary is proved

** SMW means Standard Minimum Wage

If the wages payable to the employee in respect of the wage period are less than the minimum wage, he is entitled to be paid the difference (i.e. "additional remuneration").

Illustration

Assumption

- an employee with monthly salary of \$7,800 has worked 24 days in a wage period of 30 days with the total number of hours worked being 204 hours
- in this wage period, payments made to the employee for time that is not hours worked include rest day pay for 4 days (\$260 per day), statutory holiday pay for 1 day (\$260) and annual leave pay for 1 day (\$260)

SMW rate: \$30

Calculation

(1) Minimum wage according to the total number of hours worked for this month:

\$6,120 (204 hours x \$30)

(2) Wages payable to the employee in respect of this month:

\$6,240 (\$7,800 - (4 x \$260) - \$260 - \$260)

Since (2) is not less than (1), the monthly salary of \$7,800 of the employee has met the minimum wage requirement.

For a more comprehensive understanding on how minimum wage will be computed under different scenarios, please visit the Labour Department website <http://www.labour.gov.hk> > Publications > Labour Relations > Statutory Minimum Wage for the various guidelines on statutory minimum wage http://www.labour.gov.hk/eng/public/smw/SMW_Reference_Guidelines_2013.pdf

2C.3 Keeping record of total number of hours worked

The wage and employment records kept by an employer under the Employment Ordinance should include the total number of hours (including any part of an hour) worked by the employee in a wage period if

- ✦ SMW applies to the employee (Please refer to 2C.1. Coverage above); and
- ✦ wages payable in respect of that wage are less than \$12,300 per month*.

Therefore, when wages payable in respect of a wage period are at \$12,300* or above per month, the wage and employment records kept by an employer according to the Employment Ordinance are not required to include the total number of hours worked by the employee in that wage period.

Employers and employees should keep proper records in relation to attendance, hours worked, wages, etc. to safeguard their respective rights and benefits and help avoid unnecessary disputes.

An employer who fails to keep the wage and employment records is liable to prosecution and, upon conviction, to a fine of \$10,000.

*as at 1 May 2013

2C.4 Wage items and wages payable

The term “wages” means all remuneration, earnings, allowances including travelling allowances, attendance allowances, commission, overtime pay, tips and service charges, payable to an employee in respect of work done or to be done.

No matter how the wage of an employee is calculated (e.g. monthly-rated, weekly-rated, daily-rated, hourly-rated, piece-rated, etc.), the minimum wage is still derived by multiplying the total number of hours worked in a wage period by the SMW rate.

2C.5 Exemptions

SMW does not apply to student interns as well as work experience students during a period of exempt student employment.

A student intern is:

- ✦ a student undergoing a period of work arranged or endorsed by a local education institution specified in Schedule 1 to the Minimum Wage Ordinance, and the work is a compulsory or elective component of the requirements of a full-time accredited program being provided by the institution to the student; or
- ✦ a student resident in Hong Kong and undergoing a period of work arranged or endorsed by an institution, and the work is a compulsory or elective component of the requirements of a full-time education program for a non-local academic qualification at degree or higher level being provided by the institution to the student.

A work experience student is:

- ✦ a student who is enrolled in a full-time accredited program provided by a local education institution specified in Schedule 1 to the Minimum Wage Ordinance; or
- ✦ a student who is resident in Hong Kong and enrolled in a full-time education program for a non-local academic qualification at degree or higher level and is under the age of 26 years at the beginning of employment. The work experience student may agree with the employer to have a continuous period of up to 59 days as exempt student employment if:
 - (a) the student has not commenced another exempt student employment period within the same calendar year (whether under the employment of the same employer or not); and
 - (b) the student has made a statutory declaration verifying the fact in (a) above and provided the declaration (or copy) to the employer.