



Concise Guide to Productivity Assessment for Employees with Disabilities under the Statutory Minimum Wage Regime



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Labour Department

This booklet aims to explain in simple terms the major aspects of the productivity assessment mechanism provided for employees with disabilities under the Statutory Minimum Wage (SMW) regime. The interpretation of the Minimum Wage Ordinance (Cap. 608) should be based on its original text. The full text of the Minimum Wage Ordinance has been uploaded to the Hong Kong e-Legislation of the Department of Justice website at www.elegislation.gov.hk.

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Rights of employees with disabilities relating to Statutory Minimum Wage

- SMW applies to employees with disabilities and able-bodied employees alike. Therefore, employees with disabilities are also entitled to wages at not lower than the SMW rate. Taking account of the possible employment difficulties encountered by some employees with disabilities, a special arrangement is provided under the SMW legislation so that employees with disabilities whose productivity may be impaired by their disabilities are entitled to choose to have their productivity assessed and be remunerated at a rate commensurate with their productivity.
- The right to invoke productivity assessment is entirely vested in the employees with disabilities. For employees with disabilities who do not opt to undergo productivity assessment, their employers must pay them at not lower than the SMW rate.

Flow chart of the productivity assessment for employees with disabilities

The employee with disabilities must hold a valid "Registration Card for People with Disabilities" when invoking the assessment.

Note 1



The employee with disabilities may, before commencing employment, agree with the employer to undergo a trial period of employment of not more than 4 weeks to adapt and settle into the work before undergoing assessment. The wage level during the trial period of employment as agreed between the employee with disabilities and the employer should not be lower than 50% of the SMW rate.



The employee with disabilities contacts the approved assessor to be selected from the "Register of Approved Assessors" of the Labour Department to conduct the assessment.

Note 2



The approved assessor conducts the assessment in the actual workplace of the employee with disabilities, collects detailed information on the work and selects appropriate factors to be considered and suitable methods of assessment.

Note 3



The approved assessor explains the assessment result and issues the "Certificate of Assessment on the Degree of Productivity" (specimen at Appendix) to the employee with disabilities and the employer. The fee of the approved assessor is borne by the Labour Department.

Note 4

Note 1: "Registration Card for People with Disabilities" is issued by the Central Registry for Rehabilitation of the Labour and Welfare Bureau. Details are at page 11.

Note 2: Approved assessors include registered occupational therapists, registered physiotherapists, registered social workers and vocational rehabilitation practitioners with the requisite experience. The "Register of Approved Assessors" can be browsed through the homepage (www.labour.gov.hk) and at relevant offices of the Labour Department. Details are at page 11.

Note 3: Appropriate factors to be considered in the assessment include quality of work, quantity of work, working speed or other requirements for performing the work. Suitable methods of assessment refer to on-site observation, analysing performance data of the above factors, etc.

Note 4: After the completion of the assessment, the employee with disabilities shall not have any further assessment made for the same work with the same employer.

Wage level of employees with disabilities after productivity assessment

- With the completion of productivity assessment and from the first day after the "Certificate of Assessment on the Degree of Productivity" is countersigned by the employee with disabilities and the employer, the employer should pay the employee with disabilities at no less than a wage rate commensurate with the degree of productivity stated in the certificate, viz.:

Minimum wage level that employer should pay to employee with disabilities after assessment	=	Assessed degree of productivity stated in the certificate	x	SMW rate [#]
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- If either the employee with disabilities or the employer fails to countersign the "Certificate of Assessment on the Degree of Productivity", the employer must pay the employee with disabilities at not lower than the SMW rate from the first day after the completion of productivity assessment.
- After the productivity assessment, the employee with disabilities is still required to hold a valid "Registration Card for People with Disabilities" to enable the assessed degree of productivity stated in the certificate to remain valid. Otherwise, the employer has to pay the employee with disabilities at not lower than the SMW rate when the "Registration Card for People with Disabilities" becomes invalid.

[#] To be calculated in future according to the latest SMW rate in force.

Transitional arrangement for employees with disabilities engaged prior to the implementation of the Minimum Wage Ordinance

- Serving employees with disabilities who have elected the transitional arrangement under the Minimum Wage Ordinance by completing and signing jointly with their employers before 1 May 2011 the "Option Form" specified by the Labour Department may at any time invoke the productivity assessment (viz. to contact the approved assessor to be selected from the "Register of Approved Assessors" of the Labour Department to conduct the assessment as stated in the flow chart of the assessment at page 2), having regard to their individual circumstances and needs. The option of transitional arrangement made by a serving employee with disabilities will be void if his/her "Registration Card for People with Disabilities" becomes invalid or he/she is no longer engaged for the work concerned before invoking the productivity assessment.
- Before the completion of productivity assessment, these serving employees with disabilities may retain their original wage rate. Adjustment of the SMW rate in the interim will also be applicable to them, i.e. to calculate by multiplying the percentage of the original wage rate over the initial SMW rate by the revised SMW rate:

Minimum wage level that employer should pay to serving employee with disabilities before completion of assessment	=	Wage rate in percentage stated in the Option Form	x	Latest SMW rate in force [#]
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[#] To be calculated in future according to the latest SMW rate in force.

- After the assessment, their wage level will be determined in accordance with the degree of productivity stated in the "Certificate of Assessment on the Degree of Productivity".

Question-and-answer on the productivity assessment mechanism

Q1:	Do all employees with disabilities have to undergo productivity assessment?
A1:	<p><u>For newly employed employees with disabilities:</u> They may choose whether to invoke the assessment or not having regard to their individual circumstances and needs. The right to invoke the assessment is entirely vested in the employees with disabilities, not the employers. For employees with disabilities who do not elect to undergo the assessment, their employers must pay them at not lower than the SMW rate.</p> <p><u>For employees with disabilities who were already in employment and opted for transitional arrangement before 1 May 2011:</u> They may invoke the assessment at any time. Before completion of the assessment, they may retain their original wage rate. Adjustment of the SMW rate in the interim will also be applicable to them.</p>

Q2:	<p>Can an employee with disabilities who does not hold a valid "Registration Card for People with Disabilities" invoke the productivity assessment before he/she applies for the Registration Card?</p>
A2:	<p>An employee with disabilities must hold a valid "Registration Card for People with Disabilities" in order to exercise the right to invoke the assessment. After the assessment, he/she is still required to hold a valid "Registration Card for People with Disabilities" to enable the assessed degree of productivity to remain valid.</p>
Q3:	<p>Is it mandatory for employees with disabilities to be remunerated at 50% of the SMW rate during the trial period of employment?</p>
A3:	<p>Employees with disabilities and employers are free to agree on the wage level during the trial period of employment which should not be lower than 50% of the SMW rate.</p>
Q4:	<p>How should the employer pay the employee with disabilities if the productivity assessment is completed after the expiry of the trial period of employment?</p>
A4:	<p>Under the circumstances, the SMW rate commensurate with the assessed degree of productivity as stated in the "Certificate of Assessment on the Degree of Productivity" should take retrospective effect on and from the first day after the expiry of the trial period of employment upon the countersigning of the certificate by the employee with disabilities and the employer.</p>

Q5:	<p>The length of the trial period of employment is not more than 4 weeks. Can employees with disabilities and their employers extend the trial period of employment on their own?</p>
A5:	<p>Employees with disabilities and their employers cannot extend the trial period of employment on their own. With special reasons, they may jointly make an application to the Labour Department for extending the trial period of employment before the end of the trial period. The Commissioner for Labour may, in exceptional circumstances, extend the trial period of employment by up to 4 weeks (i.e. not more than 8 weeks in total).</p>
Q6:	<p>Is the arrangement of the trial period of employment and the probation period mutually exclusive?</p>
A6:	<p>The purpose of the trial period of employment under the Minimum Wage Ordinance is to allow employees with disabilities to get themselves used to the actual working environment and settle into their work before undergoing the assessment.</p> <p>The trial period of employment is not equivalent to the probation period under the Employment Ordinance. Therefore, even if the employee with disabilities invokes the productivity assessment and undergoes a trial period of employment, he/she can separately agree with the employer on whether a probation period is required and the respective length (if any) under his/her contract of employment.</p>

Q7:	Subsequent to the completion of productivity assessment, is the outcome of the assessment also applicable to all kinds of work of the employee with disabilities in future?
A7:	The assessment result as stated in the “Certificate of Assessment on the Degree of Productivity” is only applicable to the work required under the contract of employment to be performed by the employee with disabilities for the employer as specified in the certificate. The employee with disabilities shall not have any further assessment made for the same work with the same employer. However, the employee with disabilities has the right to invoke another assessment if he/she works for another employer or there is a variation in the kind of work required under the contract of employment.
Q8:	How is impartiality of approved assessors ensured?
A8:	All approved assessors already have the requisite experience and professional knowledge on vocational rehabilitation or other services in relation to the employment of persons with disabilities. Approved assessors are approved by the Commissioner for Labour in their personal capacity, and have to be objective and impartial in making the assessment in accordance with the requirements of the Minimum Wage Ordinance. It is incumbent on the approved assessors to ensure that no conflict will arise between their duties involved in conducting the assessment and their other interests. The Labour Department has provided training and guidelines to the approved assessors and would closely keep track of the assessment cases.

24-hour Enquiry Hotline : 2717 1771 (handled by "1823")

Email : enquiry@labour.gov.hk

Fax : 3101 4705

Enquiry in person to Offices of the Labour Relations Division of Labour Department:

Hong Kong

Hong Kong East Office

12/F, CityPlaza Three,
14 Taikoo Wan Road, Taikoo Shing,
Hong Kong.

Kowloon

Kowloon East Office

UGF,
Trade and Industry Tower,
3 Concorde Road, Kowloon.

Kowloon South Office

2/F, Mongkok Government Offices,
30 Luen Wan Street,
Mongkok, Kowloon.

New Territories

Tsuen Wan Office

5/F, Tsuen Wan Government Offices,
38 Sai Lau Kok Road,
Tsuen Wan, New Territories.

Tuen Mun Office

Unit 2, East Wing, 22/F,
Tuen Mun Central Square,
22 Hoi Wing Road, Tuen Mun,
New Territories.

Hong Kong West Office

3/F, Western Magistracy Building,
2A Pokfulam Road, Hong Kong.

Kowloon West Office

Room 1009, 10/F,
Cheung Sha Wan Government Offices,
303 Cheung Sha Wan Road, Kowloon.

Kwun Tong Office

6/F, Kowloon East Government Offices,
12 Lei Yue Mun Road,
Kwun Tong, Kowloon.

Kwai Chung Office

6/F, Kwai Hing Government Offices,
166-174 Hing Fong Road,
Kwai Chung, New Territories.

Shatin & Tai Po Office

Rooms 304-313, 3/F,
Sha Tin Government Offices,
1 Sheung Wo Che Road,
Sha Tin, New Territories.

Addresses of offices for browsing the “Register of Approved Assessors”:

Statutory Minimum Wage Division of Labour Department

1/F, Harbour Building, 38 Pier Road, Central, Hong Kong.

Selective Placement Division of Labour Department

Hong Kong Office

G/F, East Wing, Harbour Building, 38 Pier Road, Central, Hong Kong.

Kowloon Office

G/F, Ngau Tau Kok Government Offices, 21 On Wah Street,
Ngau Tau Kok, Kowloon.

New Territories Office

2/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road,
Tsuen Wan, New Territories.

How to apply for the “Registration Card for People with Disabilities”?

- Application form for the “Registration Card for People with Disabilities” can be obtained from the Central Registry for Rehabilitation of the Labour and Welfare Bureau, relevant non-governmental rehabilitation organisations or District Offices of the Home Affairs Department. It can also be downloaded from the Labour and Welfare Bureau’s homepage at www.lwb.gov.hk.
- No fee is charged for new issue and renewal of the “Registration Card for People with Disabilities”. For enquiries on matters relating to the application of the “Registration Card for People with Disabilities”, please call the Labour and Welfare Bureau at 2810 3859, 2810 3861 or 2810 3841.

Specimen "Certificate of Assessment on the Degree of Productivity of Persons with Disabilities"

Appendix

Minimum Wage Ordinance (Cap. 608) Section 7 of Schedule 2 Certificate of Assessment on the Degree of Productivity of Persons with Disabilities

Important Notes:

1. This Certificate of Assessment (this Certificate) is only applicable to the employee concerned for performing the work and duties for the employer as specified in Part 1 of this Certificate.
2. This Certificate should be completed in triplicate. The employee with disabilities and the employer should each keep an original copy and the remaining one be submitted to the Labour Department by the approved assessor (the assessor). The employer should keep this Certificate in the workplace for inspection by authorised officers of the Labour Department.
3. The assessment of the degree of productivity (the assessment) of the employee is completed when this Certificate is signed by the assessor.
4. **(i) If the assessment is completed during the trial period of employment as stipulated in Section 2 of Schedule 2 to the Minimum Wage Ordinance (MWO), or the employee is not required to undergo the trial period of employment, the statutory minimum wage (SMW) rate applicable to the employee should be commensurate with the assessed degree of productivity as stated in this Certificate on and from the first day after the countersigning of this Certificate by both the employee and employer; (ii) if the assessment is completed after the expiry of the trial period of employment, the SMW rate applicable to the employee which is commensurate with the assessed degree of productivity as stated in this Certificate will take retrospective effect on and from the first day after the expiry of the trial period of employment upon the countersigning of this Certificate by both the employee and employer; (iii) if either the employee or the employer fails to sign on this Certificate, the assessed degree of productivity as stated in this Certificate will not take effect under the MWO, thus the employee should be remunerated at no less than the prescribed minimum hourly wage rate as stipulated in Schedule 3 to the MWO on and from the first day after the completion of the assessment.**
5. The employer should handle the performance appraisals and salary reviews of the employee with disabilities according to the pay system which applies to employees with and without a disability alike.
6. The employee with disabilities or the employer may contact the Statutory Minimum Wage Division of the Labour Department (Tel: 2852 3846, Fax: 3101 4705 or Email: smw@labour.gov.hk) if they have any views, queries or complaints on the assessment (including the performance of the assessor, the assessment result, the assessment mechanism, etc).

Statement on collection and use of personal data:

1. In addition to providing for use by the assessor in conducting the assessment, the personal data collected by the assessor during the course of assessment will be forwarded to the Labour Department for the handling of matters in relation to the assessment, enforcement of relevant labour legislation or for statistical and research purposes.
2. All parties concerned (including employer, employee, the assessor, etc.) should comply with the requirements of the Personal Data (Privacy) Ordinance (Cap. 486) in handling the personal data collected through the assessment.

Please use a dark pen and write properly in BLOCK LETTERS.

Part 1 (To be completed by the assessor and all blanks must be filled out)

I hereby confirm that I have conducted this assessment in accordance with Schedule 2 to the MWO and Minimum Wage (Assessment Methods) Notice. The details are as follows:

(I) Particulars of employee

Name in Chinese: _____ HK Identity Card No.: ()
Name in English (*full name in BLOCK LETTERS*): _____ Sex: male/female*
Serial No. of Registration Card for People with Disabilities: _____ Valid to: Permanent/ (dd) (mm) (yy)*

Type(s) of disability (*Please put a ✓ in the appropriate box(es) below according to the information shown on the Registration Card for People with Disabilities, more than one box can be selected*):

- Hearing impairment Visual impairment Physical disability Speech impairment
 Intellectual disability Mental illness Autism Visceral disability/Chronic illness
 Attention Deficit/Hyperactivity Disorder Specific Learning Difficulties

(II) Particulars of employer

Name of employer (Chinese): _____
(English): _____

Company/Employer's Business Registration Certificate No./
Other registration no. (please specify the relevant ordinance)*: _____

Address of company/employer*: _____

(III) Details of the assessment of the degree of productivity

Trial period of employment (*only applicable to the trial period of employment undergone in accordance with Section 2 of Schedule 2 to the MWO*)

- Yes (from _____ (dd) _____ (mm) _____ (yy) to the day on which the assessor signed on this Certificate/
_____ (dd) _____ (mm) _____ (yy)*)
 No trial period of employment

Date of assessment: _____ (dd) _____ (mm) _____ (yy)

(Please specify the commencement and completion dates respectively if lasted for more than one day)

Post title of employee: _____

Duties of work of employee: _____

Assessed degree of productivity is: _____ %

Signature of the assessor: _____ Assessor No.: _____

Name of the assessor: _____ Date: _____

Part 2 (To be countersigned by the employee and employer)

1. We have read carefully the "Important Notes" and all parts of this Certificate.
2. We genuinely believe that the assessor has conducted the assessment as stated in Part 1 of this Certificate in accordance with the MWO.
3. We fully understand that our countersigning below does not mean we must continue our employment relationship.

Signature of employee: _____ Date: _____

Contact tel./fax* no.: _____

Signature of company's
representative/employer*: _____ Date: _____

Name of company's
representative/employer*: _____ Post title: _____

Company/Employer* chop: _____ Contact tel. no.: _____

*Please delete as appropriate

The productivity assessment mechanism provided for employees with disabilities under the SMW regime is the fruit of the Government's elaborate consultations with stakeholders. Comments on the implementation of the assessment mechanism from stakeholders concerned are appended below:

- We note that many organisations are employing persons with disabilities with wages at not lower than SMW. Notwithstanding this, persons with disabilities whose productivity may be impaired by their disabilities are given an option to undergo assessment and be remunerated at a rate commensurate with their productivity so that the possible impact on their job opportunities upon implementation of SMW could be minimised. (Mr Cheung Kin-fai, Chairperson of the Hong Kong Joint Council for People with Disabilities)
- Working abilities of many persons with disabilities are on par with their able-bodied counterparts. A lot of enterprises are enthusiastic in employing persons with disabilities at not less than the SMW rate upon the implementation of SMW. In general, employees with disabilities who have undergone the assessment and their employers respond positively to the assessment mechanism and consider its procedures not complicated at all. (Ms Deborah Wan, Vice-Chairperson of the Hong Kong Joint Council for People with Disabilities)
- To many persons with disabilities and their parents, job opportunities are important whilst salary level is sometimes regarded as a secondary consideration. The productivity assessment mechanism aims not only to allow employees with disabilities to be remunerated at wages commensurate with their productivity but also to encourage employers to employ more persons with disabilities so as to enhance their employment opportunities. (Mrs Julie Lee, Executive Committee Member of the Parents' Association of Pre-school Handicapped Children)
- The approved assessors conducting productivity assessment for employees with disabilities are all experienced in vocational rehabilitation or other services in relation to the employment of persons with disabilities and their overall quality is good. Some approved assessors who have performed assessment remark that they have good grasp of the procedures and skills of conducting assessment and the process has been very smooth. (Ms Candy Shum, Chief Officer (Service) of the Mental Health Association of Hong Kong)

Labour Department's Homepage

www.labour.gov.hk