

Logistics Industry



Statutory Minimum Wage: Industry-specific Reference Guidelines



Labour Department



法定最低工資
Statutory Minimum Wage

**Logistics Industry
Industry-specific Reference Guidelines on
Minimum Wage Ordinance**

- The statutory minimum wage (SMW) comes into force on 1 May 2011 and the initial SMW rate is \$28 per hour. 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.
- To address the characteristics and particular mode of operation of the logistics industry, the Labour Department has drawn up this set of *Statutory Minimum Wage: Industry-specific Reference Guidelines* in consultation with employer and employee groups in the industry. Some common examples under different situations and employment terms in the industry are included in the guidelines. Employers and employees in the industry may refer to and apply the guidelines flexibly according to their actual circumstances and needs.
- For more details on the provisions of the Minimum Wage Ordinance, please refer to the *Statutory Minimum Wage: Reference Guidelines for Employers and Employees* published by the Labour Department. The *Reference Guidelines* explain the general application of the Ordinance under different scenarios for the reference of employers and employees in different industries. It should be noted that the interpretation of the Minimum Wage Ordinance (Cap. 608) would be based on its original text.

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Q 1 : How is minimum wage computed?

A 1 : Wages payable to an employee in respect of any wage period shall not be less than the amount of minimum wage calculated as follows:

$$\text{Minimum wage} = \frac{\text{Total number of hours worked by the employee in the wage period}}{\times} \text{SMW rate (i.e. \$28)}$$

Q 2 : Do employers need to pay wages for each and every hour worked by employees? Must wages for each hour meet the SMW rate?

A 2 : According to the Minimum Wage Ordinance, minimum wage for an employee 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. The employee should be paid wages not less than this amount in respect of the wage period.

Hence, the basic principle is that wages payable to an employee in respect of any wage period should be no less than the SMW rate **on average** for the total number of hours worked in the wage period. The Ordinance does not prescribe that payment must be accorded for each and every hour worked or wages for each hour must meet the SMW rate.

Q 3 : In view of the implementation of SMW, do employers and employees need to change their wage payment mode from monthly-rated to daily / hourly-rated?

A 3 : SMW does not change the existing wage payment mode (e.g. employed at monthly-rated, daily-rated, weekly-rated, piece-rated, commission-based, etc) formulated between employers and employees in accordance with their employment contracts and the Employment Ordinance (Cap. 57).

The Minimum Wage Ordinance provides a wage floor for employees. In essence, wages payable to an employee in respect of any wage period should be no less than the SMW

rate **on average** for the total number of hours worked in the wage period. As long as the amount of wages payable is not less than minimum wage, it does not matter which wage payment mode is adopted. Therefore, it is not necessary for employers and employees to change their wage payment mode upon the implementation of SMW.

Q 4 : Does it mean that employers only need to pay minimum wage to employees to comply with the law upon the implementation of SMW?

A 4 : SMW only provides a wage floor for employees. This does not mean that employers only need to pay employees minimum wage upon the implementation of SMW. Employers still have to comply with the Employment Ordinance and existing terms in employment contracts (e.g. salary, arrangement of meal break and rest day) in dealing with employees' statutory and contractual entitlements.

Q 5 : Can an employer and an employee agree between themselves that the employee is to be paid less than the minimum wage?

A 5 : Any provision of a contract of employment that purports to extinguish or reduce any right, benefit or protection conferred on the employee by the Minimum Wage Ordinance shall be void. In other words, the employee's entitlement to SMW cannot be reduced by the employment contract made with the employer.

Q 6 : What should be counted as hours worked for computing minimum wage?

A 6 : According to the Minimum Wage Ordinance, for the purpose of computing minimum wage, hours worked (including any part of an hour) include any time when the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer:

- in attendance at a place of employment, irrespective of whether he is provided with work or training at that time; or
- travelling in connection with his employment, excluding travelling (in either direction) between his place of

residence and his place of employment, other than a place of employment that is outside Hong Kong and is not his usual place of employment.

A place of employment means any place at which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance for the purpose of doing work or receiving training.

Apart from the provisions of the Minimum Wage Ordinance, if the time in question is regarded as hours worked by the employee under the employment contract or agreement with the employer, such time should be included in computing minimum wage.

Q 7 : Is it required that any part of an hour be rounded up to one whole hour in counting hours worked for computing minimum wage?

A 7 : The Minimum Wage Ordinance does not require that any part of an hour be rounded up to one whole hour in counting hours worked for computing minimum wage. The Ordinance only provides that any part of an hour should be included in the hours worked for SMW computation. Therefore, the calculation of minimum wage should be based on the **actual** number of hours worked including any part of an hour.

Example:

The total number of hours worked by an employee in a wage period, including overtime work of eight hours and 15 minutes, is 208 hours and 15 minutes (i.e. 208.25 hours). The SMW rate is \$28. His minimum wage for that wage period shall be:

208.25 hours (total number of hours worked) × \$28 (SMW rate) = \$5,831 (minimum wage)

Q 8 : A delivery worker is on duty from 9:00 a.m. to 6:00 p.m.. During this period, he is provided with a 1-hour meal break. Is the meal break counted as the hours worked for computing minimum wage?

A 8 : When this employee during his meal break also falls under the circumstances of hours worked as specified in the Minimum Wage Ordinance, such meal break **is** hours worked for computing minimum wage. For example, if he is, during his meal break, in accordance with the employment contract or with the agreement or at the direction of the employer, in attendance at his post for the purpose of doing work (irrespective of whether he is provided with work or not), such meal break is included in the hours worked for computing minimum wage.

On the contrary, meal break falling outside the provisions on hours worked in the Minimum Wage Ordinance is **not** hours worked for computing minimum wage. For example, if he, during his meal break, need not remain in attendance at his post and is free to go out for lunch or to have rest, such time is not hours worked for computing minimum wage as he is not, in accordance with the employment contract or with the agreement or at the direction of the employer, in attendance at his post for the purpose of doing work.

If meal break belongs to hours worked by the employee according to his employment contract or agreement with the employer, such time **must** be taken into account in computing minimum wage. For example, if an employer and his employee regard meal break as hours worked by the employee in accordance with their employment contract or agreement, such time should be included in the total number of hours worked in each wage period for SMW calculation.

Q 9 : A truck driver, upon receipt of job order, needs to wait for several hours to collect the goods for delivery. Is the driver's waiting time counted as hours worked in computing minimum wage?

A 9 : If the waiting time also falls under the circumstances of hours worked as specified in the Minimum Wage Ordinance, i.e. if the employee is, in accordance with the employment contract or with the agreement or at the direction of the employer, in attendance at a certain place for the purpose of doing work, irrespective of whether he is provided with work or not, such time should be counted as hours worked for computing minimum wage. For example, if the driver under the work arrangement must stay in close proximity to

his truck during the waiting period so that he can transport the goods to the destination once they are available, such waiting time is counted as hours worked in computing minimum wage.

On the contrary, waiting time falling outside the provisions on hours worked in the Minimum Wage Ordinance is not hours worked for computing minimum wage. For example, if he, during the waiting time, need not remain in attendance at his post and is free to have recreation or other activities, such time is not hours worked for computing minimum wage. However, if waiting time is regarded as hours worked by the employee according to his employment contract or agreement with the employer, such time must be included in computing minimum wage.

Should the employer and the employee have different understanding on whether or not such waiting time is counted as hours worked, they should clarify between themselves as soon as practicable in order to avoid dispute.

Q 10 : A truck driver has to stay outside Hong Kong overnight as his goods are seized for customs inspection. His employer provides him free accommodation and / or meals. Is his sleeping time during the stay outside Hong Kong counted as hours worked in computing minimum wage?

A 10 : If the employee during a certain period of time in his stay need not remain in attendance at a place of employment for the purpose of doing work - such as his sleeping time or personal recreation time - such time is not hours worked for computing minimum wage.

Q 11 : An employee works in an office in Hong Kong. He also needs to work in the company's warehouse in the Mainland on Wednesdays and Thursdays. Is the travelling time between his place of residence and the Hong Kong office / the Mainland warehouse counted as hours worked for computing minimum wage?

A 11 : The employee's travelling time between his place of residence and the Hong Kong office is not hours worked for computing minimum wage. As regards the Mainland warehouse of the company, it is also the employee's usual

place of employment in this example. Thus, the travelling time between his place of residence and the Mainland warehouse is generally not counted as hours worked for computing minimum wage.

However, if a period of travelling time is regarded as hours worked by the employee according to his employment contract or agreement with the employer, such travelling time must also be taken into account in computing minimum wage.

Q 12 : An employee works in a factory in Hong Kong. One day, his employer directs him to work at a client's office in Beijing which is not his usual place of employment. Is the travelling time between his place of residence and the client's office in Beijing counted as hours worked for computing minimum wage?

A 12 : In this example, the office in Beijing is outside Hong Kong and is not the employee's usual place of employment. As the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, travelling between his place of residence and the client's office outside Hong Kong, such travelling time is hours worked for computing minimum wage.

Q 13 : A warehouse worker is off duty at 7:00 p.m.. The warehouse alarm sets off one night and he needs to return to the company to handle the matter. Is such time of working in the company counted as hours worked in computing minimum wage?

A 13 : If the employee is, in accordance with the employment contract or with the agreement or at the direction of the employer, and for the purpose of doing work, goes back to the company to handle the matter, the time when he is in attendance at the place of employment is hours worked for computing minimum wage.

Q 14 : A warehouse assistant is directed to work on 1 May (Labour Day) which is a statutory holiday. His employer arranges an alternative holiday for him in June. Should this employee's working hours on 1 May be included in

computing minimum wage for the wage period of May?

A 14 : This employee's working hours on 1 May are hours worked under the Minimum Wage Ordinance. In computing his minimum wage for May, such hours should be included. Minimum wage is derived by multiplying an employee's total number of hours worked in a wage period by the SMW rate.

Q 15 : A warehouse worker's wage period is a calendar month. He performs 20 hours' overtime work in May at the direction of his employer. Such overtime work is compensated by time-off-in-lieu in subsequent months. Should his overtime work be included in the hours worked for computing minimum wage for May?

A 15 : In this example, since the period of overtime work is hours worked under the Minimum Wage Ordinance, such hours should be included in computing minimum wage of this employee for May. If wages payable to the employee in respect of May fall below minimum wage because of the additional number of hours worked, the employer has to pay him the difference (i.e. additional remuneration).

As explained in Q 2, in computing minimum wage, wages payable to an employee in respect of any wage period should be no less than the SMW rate on average for the total number of hours worked in the wage period. The Ordinance does not prescribe that payment should be accorded for each and every hour worked or wages for each hour must meet the SMW rate.

Q 16 : It is an adopted practice of a company that overtime work of less than one hour will not be granted overtime pay. Should such overtime work for less than one hour be included in the hours worked in computing minimum wage?

A 16 : Different companies may have different recompense arrangements for overtime work. However, if the overtime work of less than one hour in this example falls under the circumstances of hours worked as specified in the Minimum Wage Ordinance (e.g. overtime work as directed by the employer), such time should be included in the total number

of hours worked by the employee in the wage period and wages payable to him should be **on average** no less than the SMW rate.

Q 17 : In determining whether wages meet the minimum wage requirement, which items are included? What are wages payable to an employee?

A 17 : The definition of wages under the Minimum Wage Ordinance is aligned closely with that of the Employment Ordinance. Unless otherwise specified, the term “wages” in the Employment Ordinance means all remuneration, earnings, allowances including travelling allowances, attendance allowances, commission, overtime pay, tips and service charges, however designated or calculated, capable of being expressed in terms of money, payable to an employee in respect of work done or to be done, subject to certain exclusions¹. For example, contractual bonus (not of a gratuitous nature or payable at the discretion of the employer) payable to an employee when certain conditions are met (e.g. sales amount) is part of wages. For detailed definition of wages under the Employment Ordinance, please refer to the *Concise Guide to the Employment Ordinance* published by the Labour Department.

According to the Minimum Wage Ordinance, since the calculation of minimum wage excludes the time that is not hours worked, payment made to the employee for any time that is not hours worked (e.g. rest day pay, holiday pay, annual leave pay, maternity leave pay, sickness allowance,

¹ According to the Employment Ordinance, the following items are not wages:

- i. the value of any accommodation, education, food, fuel, water, light or medical care provided by the employer;
- ii. employer’s contribution to any retirement scheme;
- iii. commission, attendance allowance or attendance bonus which is of a gratuitous nature or is payable only at the discretion of the employer;
- iv. non-recurrent travelling allowance or the value of any travelling concession or travelling allowance for actual expenses incurred by the employment;
- v. any sum payable to the employee to defray special expenses incurred by him by the nature of his employment;
- vi. end of year payment, or annual bonus which is of a gratuitous nature or is payable only at the discretion of the employer;
- vii. gratuity payable on completion or termination of a contract of employment.

etc) must not be counted as part of the wages payable to the employee when computing minimum wage. The Minimum Wage Ordinance also sets out whether some other sums should be counted as wages payable in respect of a wage period in order to determine whether the wages meet the minimum wage requirement.

If wages payable to the employee in respect of the wage period are less than minimum wage, he is entitled to be paid the difference (i.e. additional remuneration). The contract of employment of the employee must be taken to provide that the employee is entitled to additional remuneration in respect of that wage period. The additional remuneration also applies in calculating entitlements under other relevant legislation.

Q 18 : In determining whether wages meet the minimum wage requirement, is end of year payment regarded as wages?

A 18 : The definition of wages for SMW is aligned closely with that under the Employment Ordinance. The definition of wages under the Employment Ordinance does **not include** end of year payment and annual bonus which is of a gratuitous nature or is payable only at the discretion of the employer. Hence, in determining whether wages meet the minimum wage requirement, end of year payment, or annual bonus which is of a gratuitous nature or is payable only at the discretion of the employer, is similarly **not included**.

Note: End of year payment means any annual payment (including double pay, 13th month payment, end of year bonus, etc) of a contractual nature. A contract of employment can be made orally or in writing and it includes express and implied terms.

Q 19 : Are employees' rest days paid? Is it required that rest days be remunerated at the SMW rate of \$28 per hour?

A 19 : Neither the Minimum Wage Ordinance nor the Employment Ordinance prescribes that rest days should be paid. Whether rest days are with pay or otherwise and how rest day pay is calculated (including whether rest day pay is remunerated at the SMW rate) are matters to be agreed

between employers and employees.

If existing employment terms in these respects need to be clarified or renewed because they are unclear and / or employers have genuine problems in shouldering the financial burden, there should be thorough staff consultation with a view to reaching consensus on lawful, sensible and reasonable grounds through labour-management communication and negotiation.

According to the Employment Ordinance, employers should not unilaterally vary the employment terms and conditions of employees. The Labour Department stands ready to assist employers and employees to resolve their problems and reach consensus. If employees suspect that their employment rights have been undermined, they could seek help from the Labour Department. The Labour Department will actively follow up such cases.

Note: Employees are entitled to paid statutory holidays and paid annual leave if they meet the relevant requirements of the Employment Ordinance. For details, please refer to the *Concise Guide to the Employment Ordinance*.

Q 20 : A delivery worker's monthly wage is \$7,000 and wage period is a calendar month. He works 8 hours per day (including irregular meal break which is regarded as hours worked by the employee in accordance with his agreement with the employer) and 6 days per week with **paid** rest day. In a 31-day wage period, he works 27 days without overtime work, and takes 4 rest days². How much is his minimum wage for this month? Does his monthly wage meet the minimum wage requirement?

A 20 : (a) Minimum wage according to the total number of hours worked for this month:

² Whether rest days are with or without pay and the calculation method of rest day pay (including whether rest day pay is remunerated at the SMW rate) are matters to be agreed between employers and employees. In this example, pay for 4 rest days (figure rounded to the nearest integer) is calculated as follows: $\$7,000 \div 31 \text{ days} \times 4 \text{ days} = \903 . The amount of rest day pay may vary if the number of calendar days and the number of rest days in the relevant month or its calculation method as agreed between employers and employees is different from this example.

(27×8) hours (total number of hours worked) \times \$28 (SMW rate) = \$6,048

(b) Wages payable to the employee in respect of this month:
\$6,097 [$\$7,000 - \903 (pay for 4 rest days)]³

If (b) is not less than (a), the minimum wage requirement is met.

If (b) is less than (a), the employer has to pay additional remuneration to meet the minimum wage requirement.

In this example, since (b) is not less than (a), his monthly wage of \$7,000 has met the minimum wage requirement.

Q 21 : A truck driver's wage period is a calendar month. In a 30-day wage period, he takes 4 **no-pay** rest days and his total number of hours worked is 286 hours. He is paid for this month basic salary of \$6,000 plus payment of \$4,000 according to the number of containers transported and meal allowance of \$2,000. How much is his minimum wage for this month? Do his total wages for the month meet the minimum wage requirement?

A 21 : (a) Minimum wage according to the total number of hours worked for this month:
 286 hours (total number of hours worked) \times \$28 (SMW rate) = \$8,008

(b) Wages payable to the employee in respect of this month:
\$12,000 [$(\$6,000 + \$4,000 + \$2,000) - \0 (no payment to the employee for time that is not hours worked)]³

In this example, since (b) is not less than (a), his monthly wage of \$12,000 has met the minimum wage requirement.

³ Since the calculation of minimum wage excludes the time that is not hours worked, payment made to the employee for any time that is not hours worked (e.g. rest day pay, holiday pay, annual leave pay, maternity leave pay, sickness allowance, etc) must not be counted as part of the wages payable to the employee for computing minimum wage. For rest day pay, holiday pay, annual leave pay, maternity leave pay, sickness allowance, etc, hypothetical figures are used in this set of Industry-specific Reference Guidelines for illustration only, and the actual amount should be calculated according to the Employment Ordinance and the contract of employment.

Q 22 : A logistics assistant's monthly wage is \$8,000 and wage period is a calendar month. He works 9 hours per day and 6 days per week with **paid** rest day. In a 31-day wage period, he works 26 days without overtime work, and takes 4 rest days and 1 paid statutory holiday. How much is his minimum wage for this month? Does his monthly wage meet the minimum wage requirement?

A 22 : (a) Minimum wage according to the total number of hours worked for this month:
 $(26 \times 9) \text{ hours (total number of hours worked)} \times \$28 \text{ (SMW rate)} = \$6,552$

(b) Wages payable to the employee in respect of this month:
 $\$6,710 [\$8,000 - \$1,032 \text{ (pay for 4 rest days)} - \$258 \text{ (pay for 1 statutory holiday)}]^3$

In this example, since (b) is not less than (a), his monthly wage of \$8,000 has met the minimum wage requirement.

Q 23 : A warehouse assistant's monthly wage is \$7,000 and wage period is a calendar month. He works 10 hours per day and 6 days per week with **no-pay** rest day. In a 30-day wage period, he works 26 days without overtime work, and takes 4 rest days. How much is his minimum wage for this month? Does his monthly wage meet the minimum wage requirement?

A 23 : (a) Minimum wage according to the total number of hours worked for this month:
 $(26 \times 10) \text{ hours (total number of hours worked)} \times \$28 \text{ (SMW rate)} = \$7,280$

(b) Wages payable to the employee in respect of this month:
 $\$7,000 - \$0 \text{ (no payment to the employee for time that is not hours worked)}^3$

In this example, since (b) is less than (a), apart from paying monthly wage of \$7,000, the employer has to pay additional remuneration of \$280 ($\$7,280 - \$7,000$), i.e. \$7,280 in total.

Q 24 : A part-time packer's monthly wage is \$4,000 and wage period is a calendar month. He works 4 hours per day and 6 days per week with **paid** rest day. In a 31-day wage period,

he works 26 days without overtime work, and takes 5 rest days. How much is his minimum wage for this month? Does his monthly wage meet the minimum wage requirement?

A 24 : (a) Minimum wage according to the total number of hours worked for this month:
 $(26 \times 4) \text{ hours (total number of hours worked)} \times \$28 \text{ (SMW rate)} = \$2,912$

(b) Wages payable to the employee in respect of this month:
 $\$3,355 [\$4,000 - \$645 \text{ (pay for 5 rest days)}]^3$

In this example, since (b) is not less than (a), his monthly wage of \$4,000 has met the minimum wage requirement.

Q 25 : Must employees sign attendance record every day in order to record hours worked?

A 25 : Neither the Employment Ordinance nor the Minimum Wage Ordinance specifies the ways of employers recording hours worked by employees. Employers and employees can draw up reasonable and practicable ways to record hours worked with regard to their trade characteristics, administrative measures and monitoring needs in individual establishments, nature of work of the employees, etc.

By keeping proper records on attendance, hours worked, wages, etc, employers and employees can safeguard their respective rights and benefits and help avoid unnecessary disputes.

Q 26 : Is there any specified format for the record of the total number of hours worked? Does the Labour Department provide any sample form of the record to employers?

A 26 : Neither the Employment Ordinance nor the Minimum Wage Ordinance specifies the format for recording the total number of hours worked. Officers of the Labour Department may inspect the wage and employment records and require the total number of hours worked and the following particulars in the wage and employment records (which are set out in the Employment Ordinance) to be produced in a single document:

- name and identity card number of the employee
- wage period
- wages paid in respect of each wage period
- periods of annual leave, sick leave, maternity leave and holidays entitled and taken, together with details of payments made in respect of such periods

The Labour Department has published the booklet *Proper Keeping of Wage and Employment Records* for public reference. For details, please visit the Labour Department's homepage (<http://www.labour.gov.hk>).

Q 27 : Can one assume that the minimum wage requirement would certainly be met if employees are paid at wage level equivalent to the monthly monetary cap (i.e. \$11,500) on keeping record of the total number of hours worked?

A 27 : Wages payable to an employee in respect of any wage period shall not be less than the amount of minimum wage calculated as follows:

Total number of hours worked in the wage period × SMW rate (i.e. \$28)

The monthly monetary cap (i.e. \$11,500) is only the amount of wages payable for exempting employers from the requirement to keep record of the total number of hours worked by employees, irrespective of whether an employee's wages have met the minimum wage requirement. Minimum wage of an employee is determined by his total number of hours worked in a wage period. An employer must pay his employee wages not less than minimum wage, regardless of whether or not he is required to record the employee's total number of hours worked.

Q 28 : Can employers unilaterally reduce benefits to which employees are currently entitled under employment contracts?

A 28 : According to the Employment Ordinance, employers should not unilaterally vary the employment terms and conditions of employees. For details, please refer to the *Concise Guide to the Employment Ordinance*. The Labour Department will actively follow up cases of employees suspecting their

employment rights have been undermined.

In contemplating any change to the employment terms, employers should carefully assess the impact both on themselves and on the employees.

Q 29 : Can employers unilaterally change the status of employees to self-employed persons?

A 29 : An employer should not unilaterally change the status of his employee to a self-employed person. Otherwise, the employee may claim against the employer for remedies under the Employment Ordinance and common law.

If an employee intends to change his status to a self-employed person, he must carefully assess the pros and cons involved, including the employment rights and benefits that he may lose in such a change.

If in essence there exists an employer-employee relationship between the parties, even though the employee is called or described as a self-employed person in the contract, the employer is still required to fulfil his responsibilities under the relevant legislation by paying back statutory benefits retroactively to the employee who is falsely labelled as a self-employed person. The employer may also be liable to criminal sanctions for contravention of the relevant legislation.

For information about the differences between an “employee” and a “self-employed person”, please refer to the leaflet on *Know your Identity and Rights – Employee? Contractor / Self-employed person?* published by the Labour Department.

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**Set a wage floor and
protect grassroots employees**

Labour Department's Homepage : <http://www.labour.gov.hk>