

# **Property Management, Security Services and Cleaning Services Industries**



## **Statutory Minimum Wage: Industry-specific Reference Guidelines**



Labour Department



法定最低工資  
Statutory Minimum Wage

## **Corresponding amendments arising from the implementation of Statutory Paternity Leave**

From 27 February 2015, male employees with child born on or after this date are entitled to 3 days' paternity leave if they fulfil other requirements as stipulated in the Employment Ordinance (EO). In connection with this amendment, for the parts relating to relevant benefits of EO and requirement to keep wage and employment records in this booklet, please refer to the original text of EO itself. You may also visit <http://www.labour.gov.hk> for details.

**Property Management, Security Services and  
Cleaning Services Industries  
Statutory Minimum Wage : Industry-specific Reference Guidelines**

- The revised Statutory Minimum Wage (SMW) rate of **\$30 per hour** is in effect from **1 May 2013**.
- 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 property management, security services and cleaning services industries, the Labour Department has drawn up this *Statutory Minimum Wage : Industry-specific Reference Guidelines* in consultation with employer and employee groups in the industries. With regard to the varying needs and employment patterns in different buildings, some common examples under different situations and employment terms in the industries are included in the *Guidelines*. Employers, employees and relevant building management organisations in the industries 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 *Guidelines* explain the general application of the Ordinance under different scenarios for the reference of employers and employees in different industries. The interpretation of the Minimum Wage Ordinance (Cap. 608) should be based on its original text.

Revised 2014

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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<sup>1</sup>:

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

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, when **averaged** over the total number of hours worked in the wage period, should be no less than the SMW rate. 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 : SMW rate is expressed as an hourly rate, do employers and employees need to change their employment and wage payment mode from monthly/daily-rated to hourly-rated?

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

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<sup>1</sup> If 1 May 2013 falls within a wage period, the SMW rate of \$30 applies to any hour worked on or after 1 May 2013 in calculating minimum wage for that wage period.

57).

The Minimum Wage Ordinance provides a wage floor for employees. 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. As long as the amount of wages payable is not less than minimum wage, it does not matter which employment and wage payment mode is adopted. Therefore, it is not necessary for employers and employees to change their employment and wage payment mode.

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

A 4 : SMW only provides a wage floor for employees. This does not mean that employers only need to pay employees minimum wage. Employers still have to comply with the Employment Ordinance and 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 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 \$30. The minimum wage of the employee according to the total number of hours worked for that wage period shall be:

$$208.25 \text{ hours (total number of hours worked)} \times \$30 \text{ (SMW rate)} = \$6,247.5 \text{ (minimum wage)}$$

**Q 8** : A building attendant / security guard / cleaner is mainly responsible for property management / security / cleaning duties for Building A. One day, his employer, according to

the contract of employment, arranges him to work at Building B in another district in Hong Kong for half a day. The employee returns to Building A to work in the afternoon. Is the travelling time counted as hours worked for computing minimum wage?

A 8 : The travelling time between the employee's place of residence and place of employment (be it Building A or Building B) is not hours worked for computing minimum wage.

However, for the travelling time from Building B to Building A when he is, in accordance with the contract of employment or with the agreement or at the direction of the employer, travelling in connection with his employment, the time is hours worked for computing minimum wage.

Generally speaking, for computing minimum wage under the Minimum Wage Ordinance, the travelling time between an employee's place of residence and his place of employment within Hong Kong is not hours worked, irrespective of whether it is his usual place of employment.

Q 9 : A security guard is required to attend work briefings (e.g. 15 minutes per briefing) before and after his shift and such time is without pay. Is the time concerned included in the hours worked in computing minimum wage?

A 9 : According to the Minimum Wage Ordinance, for the purpose of computing minimum wage, hours worked 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. 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.

In this example, if the security guard attends work briefings in accordance with the employment contract or with the agreement or at the direction of the employer, irrespective of whether such time is with pay or otherwise, it is included in



the hours worked for computing minimum wage.

Different companies have different requirements on security guards' attendance at work briefings. Whether such time is counted as hours worked for computing minimum wage is a question of fact and must be determined by reference to the facts and circumstances of individual cases. To avoid unnecessary misunderstanding and dispute, employers and employees should clarify between themselves as soon as practicable and adopt sensible and reasonable methods in counting hours worked for computing minimum wage.

**Q 10** : A building attendant / security guard / cleaner is on duty from 7:00 a.m. to 7:00 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 10** : 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 11 : A security guard attends a 3-hour training course at the direction of the employer to enhance job knowledge and skills. Is such training time hours worked in computing minimum wage?

A 11 : Since the employee is, at the direction of the employer, in attendance for the purpose of receiving training, these 3 hours are hours worked under the Minimum Wage Ordinance for computing minimum wage.

Q 12 : Is all work-related training time (e.g. occupational safety course, first aid course, etc.) included in the hours worked under the Minimum Wage Ordinance in computing minimum wage?

A 12 : When an employee during his training time also falls under the circumstances of hours worked as specified in the Minimum Wage Ordinance, i.e. if an 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 to receive training, such training time should be included in the hours worked for computing minimum wage.

On the contrary, training time falling outside the provisions on hours worked in the Minimum Wage Ordinance (e.g. training not conducted in accordance with the employment contract or with the agreement or at the direction of the employer) is **not** hours worked for computing minimum wage. However, if training time is regarded as hours worked by the employee according to his employment contract or agreement with the employer, such time **must** also be taken into account in computing minimum wage.

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

Q 13 : A building attendant / security guard / cleaner is directed to

work on a statutory holiday in May. His employer arranges an alternative holiday for him in June. Should this employee's working hours on that statutory holiday be included in computing minimum wage for the wage period of May?

A 13 : This employee's working hours on that statutory holiday 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 14 : In determining whether wages meet the minimum wage requirement, which items are included? What are wages payable to an employee?

A 14 : The definition of wages for SMW is aligned closely with that under 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 exclusions<sup>2</sup>. 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 *A Concise Guide to the*

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<sup>2</sup> According to the Employment Ordinance, the following items are not wages:

- (a) the value of any accommodation, education, food, fuel, water, light or medical care provided by the employer;
- (b) employer's contribution to any retirement scheme;
- (c) commission, attendance allowance or attendance bonus which is of a gratuitous nature or is payable only at the discretion of the employer;
- (d) non-recurrent travelling allowance or the value of any travelling concession or travelling allowance for actual expenses incurred by the employment;
- (e) any sum payable to the employee to defray special expenses incurred by him by the nature of his employment;
- (f) end of year payment, or annual bonus which is of a gratuitous nature or is payable only at the discretion of the employer;
- (g) gratuity payable on completion or termination of a contract of employment.

*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, etc.) must **not** be counted as part of the wages payable to the employee in the calculation of minimum wage. The Minimum Wage Ordinance also sets out whether certain sums should be counted as wages payable to an employee in respect of a wage period in specific situations 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 15 : In determining whether wages meet the minimum wage requirement, is end of year payment regarded as wages?

A 15 : 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 16 : Are rest days of employees (building attendants / security guards / cleaners) paid? Is it required that rest days be

remunerated at the SMW rate of \$30 per hour?

- A 16 : 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 the calculation method of rest day pay (including whether rest day pay is remunerated at the SMW rate) are employment terms in accordance with the employment contract or agreement between employers and employees. Where necessary, employers and employees should seek consensus on the employment terms on lawful, sensible and reasonable grounds through labour-management communication and consultation.

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 *A Concise Guide to the Employment Ordinance*.

- Q 17 : Should statutory entitlements such as holiday pay or annual leave pay under the Employment Ordinance be calculated at not less than the SMW rate of \$30 per hour?

- A 17 : The major provisions of the Minimum Wage Ordinance are aligned as closely as possible with those of the Employment Ordinance to ensure consistency and effective enforcement, avoid confusion to employers and employees and minimise the compliance cost for employers. Hence, the Minimum Wage Ordinance does not change the calculation method of statutory entitlements currently under the Employment Ordinance. For details of the calculation of these statutory entitlements, please refer to *A Concise Guide to the Employment Ordinance*.

According to the Minimum Wage Ordinance, 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.

Since additional remuneration is part of wages payable to employees under the Employment Ordinance, and statutory entitlements under the Employment Ordinance (e.g. holiday pay, annual leave pay, sickness allowance, maternity leave pay, severance payment, long service payment, wages in lieu of notice, etc.) are calculated according to the definition of wages, the amount of these statutory entitlements should also take into account the additional remuneration (where applicable).

Q 18 : The wage period of a night-shift building attendant / security guard / cleaner is a calendar month. He works 12 hours per day (including irregular meal break which is regarded as hours worked by the employee in accordance with his agreement with the employer) with **no-pay** rest day. In a 31-day wage period, he works 25 days without overtime work. How much is his minimum wage for this month?

A 18 : Minimum wage according to the total number of hours worked for this month:

$$(25 \times 12) \text{ hours (total number of hours worked)} \times \$30 \text{ (SMW rate)} = \$9,000$$

Q 19 : The wage period of a building attendant / security guard / cleaner is a calendar month and his monthly wage is \$8,000. He works 8 hours per day 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 days<sup>3</sup>. How much is his

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<sup>3</sup> Whether rest days are with pay or otherwise and the calculation method of rest day pay (including whether rest day pay is remunerated at the SMW rate) are employment terms in accordance with the employment contract or agreement between employers and employees. In this example, pay for 4 rest days (figure rounded to the nearest integer) is calculated as follows:  $\$8,000 \div 31 \text{ days} \times 4 \text{ days} = \$1,032$ . The amount of rest day pay may vary if the number of calendar days or the number of rest days in the relevant month or its calculation method as agreed between employers and employees is different from this example.

minimum wage for this month? Does his monthly wage meet the minimum wage requirement?

A 19 : (a) Minimum wage according to the total number of hours worked for this month:  
 $(27 \times 8)$  hours (total number of hours worked)  $\times$  \$30 (SMW rate) = \$6,480

(b) Wages payable to the employee in respect of this month:  
\$6,968 [\$8,000 – \$1,032 (pay for 4 rest days)]<sup>4</sup>

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 \$8,000 has met the minimum wage requirement.

Q 20 : The wage period of a building attendant / security guard / cleaner is a calendar month and his monthly wage is \$9,300. 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 20 : (a) Minimum wage according to the total number of hours worked for this month:  
 $(26 \times 9)$  hours (total number of hours worked)  $\times$  \$30 (SMW rate) = \$7,020

(b) Wages payable to the employee in respect of this month:  
\$7,800 [\$9,300 – \$1,200 (pay for 4 rest days) – \$300 (pay for 1 statutory holiday)]<sup>4</sup>

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<sup>4</sup> 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 in respect of a wage period 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.

In this example, since (b) is not less than (a), his monthly wage of \$9,300 has met the minimum wage requirement.

Q 21 : The wage period of a building attendant / security guard / cleaner is a calendar month and his monthly wage is \$9,300. He works 10 hours per day and 6 days per week with **paid** rest day. In a 30-day wage period, he works 22 days without overtime work, and takes 4 rest days and 4 days of full-paid sick leave. How much is his minimum wage for this month? Does his monthly wage meet the minimum wage requirement?

A 21 : (a) Minimum wage according to the total number of hours worked for this month:  
 $(22 \times 10) \text{ hours (total number of hours worked)} \times \$30 \text{ (SMW rate)} = \$6,600$

(b) Wages payable to the employee in respect of this month:  
 $\$6,820 [\$9,300 - \$1,240 \text{ (pay for 4 rest days)} - \$1,240 \text{ (sickness allowance for 4 days of full-paid sick leave)}]^4$

In this example, since (b) is not less than (a), his monthly wage of \$9,300 has met the minimum wage requirement.

Q 22 : The wage period of a building attendant / security guard / cleaner is a calendar month and his monthly wage is \$9,300. He works 11 hours per day and 6 days per week with **paid** rest day. In a 30-day wage period, he works 23 days without overtime work, and takes 4 rest days and 3 days of paid annual leave. 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:  
 $(23 \times 11) \text{ hours (total number of hours worked)} \times \$30 \text{ (SMW rate)} = \$7,590$

(b) Wages payable to the employee in respect of this month:  
 $\$7,130 [\$9,300 - \$1,240 \text{ (pay for 4 rest days)} - \$930 \text{ (pay for 3 days of annual leave)}]^4$

In this example, since (b) is less than (a), apart from paying monthly wage of \$9,300, the employer has to pay additional



remuneration of \$460 (\$7,590 – \$7,130), i.e. \$9,760 in total.

Q 23 : The wage period of a building attendant / security guard / cleaner is a calendar month and his monthly wage is \$10,500. He works 12 hours per day and 6 days per week with **paid** 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:  
 $(26 \times 12)$  hours (total number of hours worked)  $\times$  \$30 (SMW rate) = \$9,360

(b) Wages payable to the employee in respect of this month:  
\$9,100 [\$10,500 – \$1,400 (pay for 4 rest days)]<sup>4</sup>

In this example, since (b) is less than (a), apart from paying monthly wage of \$10,500, the employer has to pay additional remuneration of \$260 (\$9,360 – \$9,100), i.e. \$10,760 in total.

Q 24 : The wage period of a building attendant / security guard / cleaner is a calendar month and his monthly wage is \$9,000. He works 12 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 24 : (a) Minimum wage according to the total number of hours worked for this month:  
 $(26 \times 12)$  hours (total number of hours worked)  $\times$  \$30 (SMW rate) = \$9,360

(b) Wages payable to the employee in respect of this month:  
\$9,000 – \$0 (no payment to the employee for time that is not hours worked)<sup>4</sup>

In this example, since (b) is less than (a), apart from paying monthly wage of \$9,000, the employer has to pay additional remuneration of \$360 (\$9,360 – \$9,000), i.e. \$9,360 in total.

Q 25 : The wage period of a part-time building attendant / security

guard / cleaner is a calendar month and his monthly wage is \$4,000. 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 25 : (a) Minimum wage according to the total number of hours worked for this month:  
 $(26 \times 4)$  hours (total number of hours worked)  $\times$  \$30 (SMW rate) = \$3,120

(b) Wages payable to the employee in respect of this month:  
 $\$3,355$  [ $\$4,000 - \$645$  (pay for 5 rest days)]<sup>4</sup>

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

Q 26 : The wage period of a building attendant / security guard / cleaner is a calendar month and his monthly wage is \$8,300. He works 12 hours per day. He works 5 days and has 2 **no-pay** days off (including 1 rest day) per week. In a 31-day wage period, he works 23 days without overtime work, and takes 8 **no-pay** days off. How much is his minimum wage for this month? Does his monthly wage meet the minimum wage requirement?

A 26 : (a) Minimum wage according to the total number of hours worked for this month:  
 $(23 \times 12)$  hours (total number of hours worked)  $\times$  \$30 (SMW rate) = \$8,280

(b) Wages payable to the employee in respect of this month:  
 $\$8,300 - \$0$  (no payment to the employee for time that is not hours worked)<sup>4</sup>

In this example, since (b) is not less than (a), his monthly wage of \$8,300 has met the minimum wage requirement.

Q 27 : The wage period of a building attendant / security guard / cleaner 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 27 : 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, when **averaged** over the total number of hours worked in the wage period, should be no less than the SMW rate. 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 28 : **Must employees sign attendance record every day in order to record hours worked?**

- A 28 : 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.

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.

- Q 29 : **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 29 : 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 ([www.labour.gov.hk](http://www.labour.gov.hk)).

Q 30 : 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. \$12,300<sup>5</sup>) on keeping record of the total number of hours worked?

A 30 : 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. \$30)

The monthly monetary cap (i.e. \$12,300) 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 31 : Can employers unilaterally reduce benefits to which employees are currently entitled under employment contracts?

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<sup>5</sup> With effect from 1 May 2013, the monetary cap on the requirement of employers keeping records of the total number of hours worked by employees is revised from \$11,500 to \$12,300 per month.

A 31 : According to the Employment Ordinance, employers should not unilaterally vary the employment terms and conditions of employees. For details, please refer to *A 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.

## **Enquiries**

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

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

### **Hong Kong**

#### **Hong Kong East**

34/F, Revenue Tower,  
5 Gloucester Road,  
Hong Kong.

#### **Hong Kong West**

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

### **Kowloon**

#### **Kowloon East**

Room 1206, 12/F, Stelux House,  
698 Prince Edward Road East,  
San Po Kong, Kowloon.

#### **Kowloon West**

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

#### **Kowloon South**

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

#### **Kwun Tong**

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

### **New Territories**

#### **Tsuen Wan**

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

#### **Kwai Chung**

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

#### **Tuen Mun**

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

#### **Sha Tin & Tai Po**

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

Labour Department's Homepage: [www.labour.gov.hk](http://www.labour.gov.hk)



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Statutory Minimum Wage

**Set a wage floor and  
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