

Retail Industry



Statutory Minimum Wage: Industry-specific Reference Guidelines



Labour Department



法定最低工資
Statutory Minimum Wage

Retail 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 retail 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 : Can employees' basic salary be less than minimum wage (if total wages including other wage items do not fall below minimum wage)?

A 4 : 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 exclusions¹.

Hence, regardless of the composition of the wage items (e.g. respective amounts of basic salary and other wage items), it will be acceptable if the minimum wage level is met in accordance with the Minimum Wage Ordinance.

Q 5 : Does it mean that employers only need to pay minimum wage to employees to comply with the law upon the implementation of SMW?

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.

A 5 : 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 6 : Can an employer and an employee agree between themselves that the employee is to be paid less than the minimum wage?

A 6 : 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 7 : Can employers unilaterally change the mode of wage payment for existing employees from monthly-rated to hourly-rated or reduce benefits to which employees are currently entitled under employment contracts?

A 7 : 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* published by the Labour Department. 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 8 : What should be counted as hours worked for computing minimum wage?

A 8 : 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 9 : 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 9 : 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:

$$208.25 \text{ hours (total number of hours worked)} \times \$28 \text{ (SMW rate)} = \$5,831 \text{ (minimum wage)}$$

Q 10 : A shop assistant resides in Kwun Tong and works in Tseung Kwan O. One day, his employer directs him to work in Central for that particular day. Is the travelling time between his place of residence and Central counted as hours worked in computing minimum wage?

A 10 : 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, 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.

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.

In this example, the employee's travelling time between his place of residence and Central is not hours worked under the Minimum Wage Ordinance for computing minimum wage.

Q 11 : A shop assistant resides in Kwun Tong and works in Tseung Kwan O. The employer arranges him to work in Causeway Bay for long-term re-deployment according to the terms of the contract of employment. Is the travelling time between his place of residence and Causeway Bay counted as hours worked in computing minimum wage?

A 11 : Applying the principle illustrated in Q 10 to this example, the employee's travelling time between his place of residence and Causeway Bay is not hours worked under the Minimum Wage Ordinance for computing minimum wage.

Q 12 : A salesperson needs to work outside Hong Kong occasionally. One day, his employer asks him to deliver goods to a client in Macau. Is the travelling time between his place of residence and the client's office in Macau counted as hours worked in computing minimum wage?

A 12 : In this example, since the client's office in Macau is outside Hong Kong and is not the employee's usual place of employment, the employee's travelling time between his place of residence and the client's office in Macau is hours worked under the Minimum Wage Ordinance for computing minimum wage.

Q 13 : An employee's working hours start at 9:00 a.m.. One day, he returns to office at 8:30 a.m. and punches time-card. Is the time after he punches time-card counted as hours worked in computing minimum wage?

A 13 : In this example, whether the time at issue is counted as hours worked in computing minimum wage is a question of fact and must be determined by reference to the facts and circumstances of individual cases.

If the employee returns to the office early and punches time-card at 8:30 a.m. owing to personal reasons (e.g. to avoid busy traffic), he is not, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance in the office for the purpose of doing work. Therefore, the office from 8:30 a.m. to 9:00 a.m. is not his place of employment as defined under the Minimum Wage Ordinance. Such time from 8:30 a.m. to 9:00 a.m. is not counted as hours worked for computing minimum wage.

However, if the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance in the office from 8:30 a.m. for the purpose of doing work, irrespective of whether he is provided with work or not, such time should be included as hours worked in computing minimum wage.

Q 14 : A cashier 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 14 : 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 15 : A customer service officer attends a 3-hour training course at the direction of the employer to enhance sales and client service skills. Is such training time hours worked in computing minimum wage?

A 15 : 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 16 : A company subsidises its staff to attend training courses in the evening. Is the time spent on such training included in the hours worked in computing minimum wage?

A 16 : Whether the training is subsidised by the company or not is not the single conclusive factor in determining whether the employees' training time is hours worked for SMW calculation. Rather, one should consider whether the

employee during his training time also falls under the circumstances of hours worked as specified in the Minimum Wage Ordinance. 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 17 : A shop 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 17 : 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 18 : The wage period of a salesperson 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 18 : 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 19 : 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 19 : 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 20 : In determining whether wages meet the minimum wage requirement, which items should be included? What are wages payable to an employee?

A 20 : 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, 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 21 : In determining whether wages meet the minimum wage requirement, is end of year payment regarded as wages?

A 21 : 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 22 : Are rest days of employees (e.g. sales staff) paid? Is it required that rest days be remunerated at the SMW rate of \$28 per hour?

A 22 : 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 23 : A shop assistant's wage period is a calendar month. In a 31-day wage period, he works 27 days, takes 4 **paid** rest days² and his total number of hours worked is 264 (including

² Whether rest days are with or without pay and the calculation method of rest day pay

30 hours of no-pay overtime work). For this month, he is paid \$8,500, including basic salary of \$7,000, travelling allowance of \$500 and attendance bonus of \$1,000. 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:
 $264 \text{ hours (total number of hours worked)} \times \28 (SMW rate)
 $= \$7,392$

(b) Wages payable to the employee in respect of this month:
 $\$7,403 [(\$7,000 + \$500 + \$1,000) - \$1,097 \text{ (pay for 4 rest days)}]^3$

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 \$8,500 has met the minimum wage requirement.

Q 24 : A sales representative'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?

(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: $\$8,500 \div 31 \text{ days} \times 4 \text{ days} = \$1,097$. 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.

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.

A 24 : (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 25 : A shop assistant's wage period is a calendar month. He performs 10 hours' overtime work in June at the direction of his employer. His employer makes overtime pay of \$800 to him on 7 July. For which wage period should the overtime hours and overtime pay be counted in computing minimum wage?

A 25 : In this example, since the 10 hours of overtime work are performed in June, such hours should be included in the wage period of June in computing minimum wage of this employee.

Similarly, since overtime pay (i.e. \$800) is wages payable in respect of the wage period of June, in computing minimum wage, such payment should be counted as part of the wages of the wage period of June.

Q 26 : An employer pays his employee work performance bonus for the 1st and 2nd quarters in April and July respectively in accordance with the contract of employment. For which wage period should such quarterly bonus be counted in computing minimum wage?

A 26 : In computing minimum wage, such bonus is counted as wages in respect of the wage period that it becomes payable. In this example, since the work performance bonus for the 1st quarter and the 2nd quarter is wages payable in respect of April and July respectively in accordance with the contract of employment, such bonus should be counted as wages in respect of the wage periods of April and July for SMW calculation.

Q 27 : Must employees sign attendance record every day in order to record hours worked?

A 27 : 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 28 : 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 28 : 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 29 : 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 29 : 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.

Enquiries

Enquiry Hotline: 2717 1771 (the hotline is handled by the 1823 Call Centre)

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

Hong Kong

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

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

Kowloon

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

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

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

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

New Territories

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

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

Tuen Mun Office
Room 2720, 27/F,
Tuen Mun Parklane Square,
2 Tuen Hi Road, Tuen Mun,
New Territories.

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



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

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