



法定最低工資
Statutory Minimum Wage

Statutory Minimum Wage: Notes for Student Employees and Employers

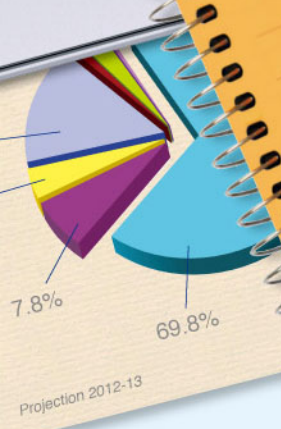


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Foreword

This booklet explains in simple terms the details of the exemption for student interns and work experience students during a period of exempt student employment under the Minimum Wage Ordinance. It should be noted that the interpretation of the Minimum Wage Ordinance (Cap. 608) would be based on its original text. The full text of the Ordinance has been uploaded to the Bilingual Laws Information System of the Department of Justice website at <http://www.legislation.gov.hk/eng/index.htm>.

For details of Statutory Minimum Wage, please refer to the *Statutory Minimum Wage: Reference Guidelines for Employers and Employees* published by the Labour Department.

Labour Department
April 2011

Highlights

Statutory minimum wage does not apply to the following student employees:

- student interns; and
- work experience students during a period of exempt student employment.

Points to note:

- Unless otherwise specified, the Minimum Wage Ordinance applies to every employee, his or her employer and the contract of employment under which he or she is engaged. However, the Minimum Wage Ordinance does not apply to interns/students with no employment relationship with the host organisation or company.
- Statutory minimum wage applies if a work experience student has not agreed with his or her employer to treat a certain period as a period of exempt student employment.

Exemption criteria for statutory minimum wage

	Student Interns	Work Experience Students
Kinds of programme enrolled	<ul style="list-style-type: none"> • student employees enrolled in full-time accredited programmes being provided by local education institutions specified in Schedule 1 to the Minimum Wage Ordinance (please refer to <u>Local Education Institutions specified in Schedule 1 to the Minimum Wage Ordinance</u> below); or • student employees who are resident in Hong Kong and enrolled in full-time education programmes for non-local academic qualification at degree or higher level 	
Nature of internship	<ul style="list-style-type: none"> • arranged or endorsed by the education institutions providing the programmes; and • form a compulsory or elective component of the programmes 	<ul style="list-style-type: none"> • not necessarily be arranged or endorsed by the education institutions providing the programmes; and • not necessarily be curriculum-related
Age	<ul style="list-style-type: none"> • no restriction 	<ul style="list-style-type: none"> • under the age of 26 years at the beginning of employment

	Student Interns	Work Experience Students
Duration of internship	<ul style="list-style-type: none"> no restriction 	<ul style="list-style-type: none"> the student employee and his/her employer may agree to treat a continuous period of up to 59 days as exempt student employment¹; and at most one period of exempt student employment¹ may commence in the same calendar year (whether under the employment of the same employer or not), and the student employee has to make a statutory declaration verifying this fact and provide the declaration (or copy) to the employer (please refer to <u>Statutory declaration made by a work experience student for a period of exempt student employment</u> below) (please refer to <u>Example 1</u> and <u>Example 2</u> below)

¹ This does not include any employment period before the commencement of statutory minimum wage on 1 May 2011.

Example 1

A work experience student is employed from 1 July 2012 and agrees with the employer on a period of exempt student employment up to 28 August 2012 (i.e. not exceeding a continuous period of 59 days).

- There can only be one period of exempt student employment which commences in the same calendar year². In this example, even if the work experience student is having a period of exempt student employment of less than 59 days under one contract of employment, the remaining days are not allowed to be carried forward to another contract of employment for the purpose of exemption. As such, the work experience student in this example **cannot** have another exempt student employment period in 2012, regardless of whether the employment is with the same employer or not. In addition, the counting of a continuous period of 59 days is based on calendar days and not working days.

Example 2

Statutory minimum wage does not apply to work experience students during a period of exempt student employment. If the work experience student is employed for a continuous period of more than 59 days, the employer has to pay the

2 A calendar year runs from 1 January to 31 December.

work experience student not less than the minimum wage for the period of employment beyond the continuous period of 59 days.

Assume:

- the work experience student is employed from 1 December 2011 to 31 March 2012; and
- the period of exempt student employment is from 1 December 2011 to 28 January 2012,

then

- the work experience student is entitled to be paid not less than the minimum wage in any wage periods starting from 29 January 2012 and up till the end of the period of employment on 31 March 2012.

Statutory declaration made by a work experience student for a period of exempt student employment

- Before the commencement of the employment contract, a work experience student shall make the statutory declaration for a period of exempt student employment and provide it (or copy) to the employer in order to meet the concerned exemption criteria for statutory minimum wage. A specimen content of statutory declaration made by a work experience student is at [Appendix 1](#).
- A work experience student may make a statutory declaration through existing available channels. Any person who makes a false statutory declaration commits a criminal offence and is liable to prosecution.

Employers to keep records of student interns and work experience students during a period of exempt student employment

- Statutory minimum wage does not apply to student interns and work experience students during a period of exempt student employment. Employers taking on these student employees shall keep the following records as required under the Employment Ordinance (Cap. 57):
 - (a) a document (or copy of a document) issued by an education institution showing that –
 - (i) for a student intern, the period of work is arranged or endorsed by the education institution in connection with a programme being provided by the education institution to the student intern that is of a kind covered by the definition of “student intern” in section 2 of the Minimum Wage Ordinance; or
 - (ii) for a work experience student, the work experience student is at the commencement of the employment enrolled in a programme being provided by the education institution that is of a kind covered by the definition of “work experience student” in section 2 of the Minimum Wage Ordinance; and
 - (b) for a work experience student, the statutory

declaration (or copy of the statutory declaration) provided by the work experience student verifying the fact that he or she has not commenced another exempt student employment period in the same calendar year.

- According to the Employment Ordinance, the above records must be kept at the employer’s place of business or at the place where the student employee is employed, and they should also be kept for a period of another six months after the student employee ceases to be employed. For the requirements of wage and employment records under the Employment Ordinance, please refer to the *Concise Guide to the Employment Ordinance* published by the Labour Department.
- Neither the Employment Ordinance nor the Minimum Wage Ordinance specifies the form of the document to be issued by the education institution. An education institution may issue the required document according to individual circumstances and needs. The Labour Department has prepared a specimen confirmation of “student intern” status at [Appendix 2](#) and a specimen confirmation of student status for “work experience student” at [Appendix 3](#) for education institutions’ reference.
- If employers and student employees can keep proper records in relation to wages and the above documents, this can safeguard their respective rights and benefits and help avoid unnecessary disputes.

Local Education Institutions specified in Schedule 1 to the Minimum Wage Ordinance

- (1) The Hong Kong Institute of Education
- (2) University of Hong Kong
- (3) The Hong Kong Polytechnic University
- (4) The Chinese University of Hong Kong
- (5) Hong Kong Baptist University
- (6) City University of Hong Kong
- (7) The Hong Kong Academy for Performing Arts
- (8) The Hong Kong University of Science and Technology
- (9) The Open University of Hong Kong
- (10) Lingnan University
- (11) Approved post secondary colleges registered under the Post Secondary Colleges Ordinance (Cap. 320), including³:
 - Hong Kong Shue Yan University
 - Caritas Institute of Higher Education (formerly known as Caritas Francis Hsu College)
 - Chu Hai College of Higher Education
 - Hang Seng Management College
 - Tung Wah College
- (12) Bodies established under the Vocational Training Council Ordinance (Cap. 1130)
- (13) Schools registered or provisionally registered under the Education Ordinance (Cap. 279)⁴

³ Information as at end-June 2011.

⁴ For information on whether a school is registered or provisionally registered under the Education Ordinance, please make use of the School Search Function available at the homepage of the Education Bureau (<http://www.edb.gov.hk>). For exemption from statutory minimum wage, the programme, if provided by a school registered or provisionally registered under the Education Ordinance, should be at post secondary level. The Information Portal for Accredited Self-financing Post-secondary Programmes of the Education Bureau provides information on full-time locally-accredited self-financing post-secondary programmes (homepage: <http://www.ipass.gov.hk>).

Specimen content of statutory declaration made by a work experience student for a period of exempt student employment

I fully understand the meanings of “work experience student” and “exempt student employment” provided in section 2 and section 3 of the Minimum Wage Ordinance (Cap. 608) of the laws of Hong Kong respectively.

I have entered into a contract of employment with [*Name of employer, Example: ABC Trading Co. Ltd*] as the employer and I as a work experience student which contract is to commence on [*date, Example: 1 June 2011*],

and I, [*name of the work experience student, Example: CHAN Tai Man*], of [*Address, Example: Room xx, xx Building, Kowloon*], solemnly and sincerely declare that:

I have not entered into any contract of employment commencing in [*same year as the date mentioned above, Example: the year of 2011*] in which any period has been treated as a period of exempt student employment; and

between the date of this declaration and the commencement date of this employment contract (both dates inclusive), I will not enter into any other contract of employment commencing from [*same year as the date mentioned above, Example: the year of 2011*] in which any period is to be treated as a period of exempt student employment.

Note:

- A work experience student may make a statutory declaration through existing available channels. The Oaths and Declarations Ordinance (Cap. 11) makes provisions for statutory declaration. According to section 12 of the Oaths and Declarations Ordinance, a justice, notary, commissioner or other person authorized by law to administer an oath may take and receive the declaration of any person (including a work experience student) made before him in the manner provided by section 14. The full text of the Ordinance has been uploaded to the Bilingual Laws Information System of the Department of Justice website at <http://www.legislation.gov.hk/eng/index.htm>.
- If a work experience student does not agree with the employer to have a period of exempt student employment, statutory minimum wage applies and it is not necessary for him or her to make the above statutory declaration.

Specimen confirmation of “student intern” status
issued by education institutions

**Confirmation of “student intern” status under
the Minimum Wage Ordinance (Cap. 608)**

Points to note

1. The confirmation of “student intern” status (“Confirmation”) applies to a student intern as defined in the Minimum Wage Ordinance (Cap. 608). “student intern” means -
 - (a) a student undergoing a period of work arranged or endorsed by an education institution in connection with an accredited programme¹ being provided by the institution to the student; or
 - (b) a student resident in Hong Kong and undergoing a period of work arranged or endorsed by an institution in connection with a non-local education programme² being provided by the institution to the student,
for which the work is a compulsory or elective component of the requirements for the award of the academic qualification to which the programme leads.
2. When an education institution has arranged or endorsed a student intern to undergo a period of work, the employer providing the work will need the education institution to issue a Confirmation with a view to confirming the identity of the student intern and providing particulars of the work as arranged or endorsed by the education institution.
3. The Labour Department (LD) of the Government of the Hong Kong Special Administrative Region will conduct inspection visits to places of employment to ensure employers’ compliance of the ordinances administered by the LD. Employers taking on student interns are required, under the Employment Ordinance (Cap. 57),

¹ See footnote 1 in the Confirmation.

² See footnote 2 in the Confirmation.

to provide employees' information and records, including the Confirmation, for inspection by public officers of the LD when necessary. Should there be any suspected contravention of any relevant ordinances in connection with the work provided by the employer to the student intern, the information provided in the Confirmation may be used by the LD for law enforcement purpose. The LD may also transfer the information to relevant government departments and authorities for further investigation. Government departments and authorities may contact the education institution concerned to enquire about the information on the student intern as provided in the Confirmation.

**Confirmation of “student intern” status under
the Minimum Wage Ordinance (Cap. 608)**

This is to confirm that the specified period of work for the following student at

(name of organization or company employing the student intern) is arranged or endorsed by this education institution in connection with a programme that is of a kind specified in the Minimum Wage Ordinance and being provided by this education institution to the student, for which the work is a compulsory or elective component of the requirements for the award of the academic qualification to which the programme leads.

Personal particulars of the student intern, the name and the kind of programme enrolled as well as the period of work being arranged or endorsed

Name (in block letters)	
HK Identity Card / Passport * No.	
Programme enrolled	Name of the programme:
	Kind of the programme: Please put a tick against the appropriate box <input type="checkbox"/> (local programme) a full-time accredited programme ¹ <input type="checkbox"/> (non-local education programme) a full-time programme of education at the level of degree or higher ²
Internship position	
Period of Work	

* Please delete as appropriate.

¹ The Minimum Wage Ordinance provides that “accredited programme” means a **full-time** programme that–

- (a) is provided by an education institution specified in Schedule 1 (see the list on page 17);
- (b) is a learning programme of a kind described in section 1, 2 or 3 of Schedule 3 to the Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 592); and
- (c) if provided by a school registered or provisionally registered under the Education Ordinance (Cap. 279), is at the level of post secondary education (within the meaning of that Ordinance).

² The Minimum Wage Ordinance provides that “non-local education programme” means a **full-time** programme of education which leads to the award of a non-local academic qualification which is at the level of degree or higher.

Name of Responsible Officer : _____

Position: _____

Signature: _____ signed for and on behalf of

(name of education institution)

Date of issue: _____

Chop of education institution _____

For enquiries, please contact the following person:

Name: _____ Position: _____

Address of education institution: _____

Telephone number: _____ Fax number: _____

Email address: _____ Website: _____

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Remarks: This confirmation can be downloaded from the Labour Department's webpage at <http://www.labour.gov.hk>

Education institutions specified in Schedule 1 to the Minimum Wage Ordinance

1. The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap. 444).
2. University of Hong Kong established by the University of Hong Kong Ordinance (Cap. 1053).
3. The Hong Kong Polytechnic University established by The Hong Kong Polytechnic University Ordinance (Cap. 1075).
4. The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap. 1109).
5. Hong Kong Baptist University established by the Hong Kong Baptist University Ordinance (Cap. 1126).
6. City University of Hong Kong established by the City University of Hong Kong Ordinance (Cap. 1132).
7. The Hong Kong Academy for Performing Arts established by The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135).
8. The Hong Kong University of Science and Technology established by The Hong Kong University of Science and Technology Ordinance (Cap. 1141).
9. The Open University of Hong Kong established by The Open University of Hong Kong Ordinance (Cap. 1145).
10. Lingnan University established by the Lingnan University Ordinance (Cap. 1165).
11. Approved post secondary colleges registered under the Post Secondary Colleges Ordinance (Cap. 320).
12. Bodies established under section 6(2)(h) of the Vocational Training Council Ordinance (Cap. 1130).
13. Schools registered or provisionally registered under the Education Ordinance (Cap. 279).

Specimen confirmation of student status for
“work experience student” issued by education institutions

**Confirmation of student status for “work experience student”
under the Minimum Wage Ordinance (Cap. 608)**

Points to note

1. The confirmation of student status for “work experience student” (“Confirmation”) applies to a work experience student who agrees with his or her employer to treat a continuous period of up to 59 days during the contract of employment as a period of exempt student employment¹. Under the Minimum Wage Ordinance (Cap. 608), “work experience student” means a student who—
 - (i) is enrolled in an accredited programme² ; or
 - (ii) is resident in Hong Kong and enrolled in a non-local education programme³,and who is engaged under a contract of employment at the beginning of which he or she is under the age of 26 years.

2. If a student employee wishes to agree with his or her employer a period of exempt student employment, the employer shall require the student employee to approach the relevant education institution to apply for a Confirmation to confirm that he or she is enrolled in a programme being provided by the education institution that is of a kind covered by the definition of “work experience student” in the Minimum Wage Ordinance and submit the same to the employer. If the employer has doubt as to whether the student employee is enrolled in a programme that complies with the exemption conditions, the employer shall approach the education institution for enquiries. At the same time, the student employee shall inform the employer when he or she is no longer enrolled in the programme during the concerned period of exempt student employment as soon as possible.

¹ The Minimum Wage Ordinance does not apply to a work experience student during a period of exempt student employment.

² See footnote 1 in the Confirmation.

³ See footnote 2 in the Confirmation.

3. The Labour Department (LD) of the Government of the Hong Kong Special Administrative Region will conduct inspection visits to places of employment to ensure employers' compliance of the ordinances administered by LD. Employers taking on work experience students are required, under the Employment Ordinance (Cap. 57), to provide employees' information and records, including the Confirmation, for inspection by LD officers when necessary. Should there be any suspected contravention of any relevant ordinances in connection with the contract of employment or the exempt student employment, the information provided in the Confirmation may be used by the LD for law enforcement purpose. The LD may also transfer the information to relevant government departments and authorities for further investigation. Government departments and authorities may contact the education institution concerned to enquire about the information on the work experience student as provided in the Confirmation.

Confirmation of student status for “work experience student” under the
Minimum Wage Ordinance (Cap. 608)

This is to confirm that the following student is enrolled in a programme provided by this education institution and is of a kind specified in the Minimum Wage Ordinance during the academic year _____
(From _____ (month) _____ (Year) to _____ (month) _____ (Year)).

Personal particulars of the work experience student and the name as well as the kind of programme enrolled

Name (in block letters)	
HK Identity Card / Passport * No.	
Programme enrolled	Name of the programme:
	Kind of the programme: Please put a tick against the appropriate box <input type="checkbox"/> (local programme) a full-time accredited programme ¹ <input type="checkbox"/> (non-local education programme) a full-time programme of education at the level of degree or higher ²

* Please delete as appropriate.

¹ The Minimum Wage Ordinance provides that “accredited programme” means a **full-time** programme that–

- (a) is provided by an education institution specified in Schedule 1 (see the list on page 22);
- (b) is a learning programme of a kind described in section 1, 2 or 3 of Schedule 3 to the Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 592); and
- (c) if provided by a school registered or provisionally registered under the Education Ordinance (Cap. 279), is at the level of post secondary education (within the meaning of that Ordinance).

² The Minimum Wage Ordinance provides that “non-local education programme” means a **full-time** programme of education which leads to the award of a non-local academic qualification which is at the level of degree or higher.

Name of Responsible Officer : _____

Position: _____

Signature: _____ signed for and on behalf of

(*name of education institution*)

Date of issue: _____

Chop of education institution _____

For enquiries, please contact the following person:

Name: _____ Position: _____

Address of education institution: _____

Telephone number: _____ Fax number: _____

Email address: _____ Website: _____

SMW-2 (Apr/ 2011)

Remarks: This confirmation can be downloaded from the Labour Department's webpage at <http://www.labour.gov.hk>

Education institutions specified in Schedule 1 to the Minimum Wage Ordinance

1. The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap. 444).
2. University of Hong Kong established by the University of Hong Kong Ordinance (Cap. 1053).
3. The Hong Kong Polytechnic University established by The Hong Kong Polytechnic University Ordinance (Cap. 1075).
4. The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap. 1109).
5. Hong Kong Baptist University established by the Hong Kong Baptist University Ordinance (Cap. 1126).
6. City University of Hong Kong established by the City University of Hong Kong Ordinance (Cap. 1132).
7. The Hong Kong Academy for Performing Arts established by The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135).
8. The Hong Kong University of Science and Technology established by The Hong Kong University of Science and Technology Ordinance (Cap. 1141).
9. The Open University of Hong Kong established by The Open University of Hong Kong Ordinance (Cap. 1145).
10. Lingnan University established by the Lingnan University Ordinance (Cap. 1165).
11. Approved post secondary colleges registered under the Post Secondary Colleges Ordinance (Cap. 320).
12. Bodies established under section 6(2)(h) of the Vocational Training Council Ordinance (Cap. 1130).
13. Schools registered or provisionally registered under the Education Ordinance (Cap. 279).

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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