

Productivity Assessment for Employees with Disabilities

under the Statutory Minimum Wage Regime

Support Kit for Employers



勞工處
Labour Department



法定最低工資
Statutory Minimum Wage

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

Support Kit: **Invoking Assessment** (Guide for Employers)

In accordance with the Minimum Wage Ordinance, Statutory Minimum Wage (SMW) applies to employees with disabilities and able-bodied employees alike. A special arrangement is also provided under the Minimum Wage Ordinance so that employees with disabilities whose productivity may be impaired by their disabilities are given the right to undergo a productivity assessment and be remunerated at a rate commensurate with their productivity.

This support kit provides employers with useful information such that when their employees with disabilities decided to invoke the assessment, they can grasp the details and arrangement and get prepared for the assessment, thereby ensuring the smooth completion of assessment.

When?

What?

Where?

Who?

How?

Why?





Through **what** channels could detailed information on productivity assessment for employees with disabilities be obtained?

Relevant information of the assessment can be obtained through the following channels:

- browse the Labour Department (LD)'s homepage (www.labour.gov.hk)
- refer to the “Concise Guide to Productivity Assessment for Employees with Disabilities under the Statutory Minimum Wage Regime” published by LD
- call the 24-hour enquiry hotline at 2717 1771 (handled by “1823”)
- contact LD by fax (3101 4705) or email (enquiry@labour.gov.hk)
- make enquiry in person to offices of the Labour Relations Division of LD

How to confirm the validity of the “Registration Card for People with Disabilities” in possession by an employee with disabilities?

An employee with disabilities must hold a valid “Registration Card for People with Disabilities” when invoking the assessment (including when he/she chooses to agree with the employer to undergo a trial period of employment before commencing employment). According to the information from the Labour and Welfare Bureau, a valid registration card has the following characteristics:

- with the photograph of the cardholder
- with validity period specified (permanent/temporary nature)
- with a serial number (starting with “RC”); and
- printed on security paper

All “Registration Cards for People with Disabilities” issued prior to July 2005 had become invalid since 1 April 2008 and persons with disabilities should submit new application where necessary. For matters relating to the “Registration Card for People with Disabilities”, please call the Labour and Welfare Bureau at 2810 3859, 2810 3861, 3655 4777 or 2810 3841.



Sample of “Registration Card for People with Disabilities”



Do all employees with disabilities have to undergo assessment?

For newly employed/serving employees with disabilities:

- Employees with disabilities may choose whether to invoke the assessment or not having regard to their individual circumstances and needs
- The right to invoke the assessment is entirely vested in the employees with disabilities, not the employers
- For employees with disabilities who do not elect to undergo the assessment, their employers must pay them at not lower than the SMW rate

For employees with disabilities who were already in employment and had opted for transitional arrangement before implementation of SMW (i.e. 1 May 2011):

- Employees with disabilities may invoke the assessment at any time
- Before completion of the assessment, they may retain their original wage rate which will follow the same percentage of adjustment of the SMW rate in the interim

For details of transitional arrangement, please refer to “Concise Guide to Productivity Assessment for Employees with Disabilities under the Statutory Minimum Wage Regime”

Under **what** circumstances should employers agree with employees with disabilities on the arrangement of a trial period of employment?

The purpose of the trial period of employment is to allow employees with disabilities to get themselves used to the actual working environment and settle into their work before undergoing productivity assessment.

For newly employed employees with disabilities:

- They may, before commencing employment, agree with their employers to undergo a trial period of employment

For serving employees with disabilities:

- They can invoke the assessment directly without going through the trial period of employment
- Should their work be varied, employees with disabilities may choose to invoke the assessment before the variation is due to take effect, and agree with their employers on a trial period of employment for the new work arrangement

What is the **length** of the trial period of employment?

The length of the trial period of employment is 4 weeks or up to the day on which the assessment is completed, whichever period is the shorter.

- “4 weeks” means a total of 28 days counted from the first day to the last day of the trial period of employment, with both days inclusive:

Example 1:

1 to 28 March

Example 2:

28 March to 24 April

- “whichever period is the shorter” means:

Example :

If the 4-week trial period of employment started on 1 March, it should end on 28 March. However, if the assessment is completed on 22 March, the trial period of employment will then end on 22 March.

Employees with disabilities and their employers are not allowed to extend the trial period of employment on their own. With special reasons, employees with disabilities and their employers may jointly make an application to LD before the end of trial period of employment for extending the trial period. The Commissioner for Labour may, in exceptional circumstances, extend the trial period of employment by up to 4 weeks (i.e. not more than 8 weeks in total). To obtain the application form for extension of the trial period of employment, please call the 24-hour enquiry hotline 2717 1771 (handled by “1823”).

When should the assessment be conducted?

The assessment should in principle be conducted during the trial period of employment. However, an assessment made after the expiry of the trial period of employment shall also be valid.

Example :

Trial period of employment: 1 to 28 April

Completion date of assessment:

26 April (i.e. within the trial period) or

30 April (i.e. after the expiry of the trial period)

} Both are valid

Can employers request employees with disabilities to invoke assessment and/or select approved assessors for them?

The rights to invoke assessment and select approved assessors are entirely vested in the employees with disabilities, not the employers. After an employee with disabilities decided to invoke the assessment, he/she should, having regard to his/her individual circumstances and needs, select a suitable approved assessor, including a person whom the employee with disabilities knew before and appointed as approved assessor by LD, such as former instructor, social worker or staff, as well as an occupational therapist/physiotherapist who has provided vocational rehabilitation service, etc. However, it is incumbent on the approved assessor concerned to ensure that no conflict will arise between his/her duties involved in conducting the assessment for the employee with disabilities and his/her other interests.

Can a person with disabilities invoke assessment prior to employment, so as to facilitate the employer in determining the wage level in accordance with the assessment result?

Unless otherwise specified, the Minimum Wage Ordinance applies to all employees, regardless of their mode of employment. The purpose of assessment is to determine whether or not and the degree to which the productivity of employees with disabilities in performing the work required under the contract of employment are affected by their disabilities, and thus determine whether they should be remunerated at not lower than the SMW rate or at a rate commensurate with their productivity. Before invoking the assessment, persons with disabilities have to establish employment relationship with the hiring organisations. However, employees with disabilities can agree with their employers to undergo a trial period of employment to get themselves used to the actual working environment and settle into their work before undergoing the assessment if necessary.

For the coverage of SMW, please refer to “Concise Guide to Statutory Minimum Wage”, “Statutory Minimum Wage: Reference Guidelines for Employers and Employees” or browse LD’s homepage (www.labour.gov.hk) to obtain more relevant information.

What should employers prepare before the assessment?

In addition to scheduling the date and time of assessment, approved assessors will also explain to employees with disabilities and the employers their respective rights and obligations under the relevant provisions of the Minimum Wage Ordinance; as well as the purpose and procedures of the assessment. Employers may make ready documents relating to the following information beforehand:

Basic information:

Name, industry, contact means, etc. of the employers

Job details:

Employment commencement date, job duties, wage rate, location of workplace and working hours, etc. of the employees with disabilities

Where necessary, LD may follow up with the employers before and after the assessment. On the day of assessment, please make ready appropriately information relating to the concerned employee with disabilities, e.g. contract of employment, work flow sheet or duty checklist, etc. To enable approved assessors in understanding job duties and requirements for the work of the employees with disabilities precisely, employers should arrange, as far as possible, relevant staff who have direct connection with the work of the employees with disabilities (e.g. direct supervisors of the employees with disabilities or related personnel in the human resources section) to handle matters in relation to the assessment.

For details of assessment procedures, please refer to “Support Kit: Introduction to Assessment Procedures”.



When will the assessment result be known? **When** will the assessment result become effective and **how** the wage rate will be calculated?

After the completion of all assessment procedures, approved assessors will explain the assessment result to the employees with disabilities and the employers and issue the “Certificate of Assessment on the Degree of Productivity” in triplicate. Upon countersigning of the certificate by the employees with disabilities and the employers, the assessed degree of productivity as stated in the certificate will take effect. The employees with disabilities are still required to hold a valid “Registration Card for People with Disabilities” to enable the assessed degree of productivity as stated in the certificate to remain valid.

- If the assessment is completed within the trial period of employment or the employees with disabilities do not need to undergo the trial period of employment, on and from the first day after the certificate is countersigned by the parties to employment, the employees with disabilities should be paid at no less than a wage rate commensurate with the assessed degree of productivity multiplied by the SMW rate.

Example:

- Without trial period of employment or
- With trial period of employment commencing on 1 April

Assessment completed on 26 April
(i.e. within the trial period of employment)

Assessment result takes effect on 27 April

- If the assessment is completed after the expiry of the trial period of employment, upon countersigning the certificate by the parties to employment, the wage rate commensurate with the degree of productivity as stated in the certificate will take retrospective effect on and from the first day after the expiry of the trial period of employment.

Example:

- Trial period of employment from 1 to 28 April

Assessment completed on 2 May
(i.e. after the expiry of the trial period of employment)

Assessment result takes retrospective effect on 29 April



Why is it that only the assessed degree of productivity but not the actual calculated wage rate is stated on the certificate of assessment?

Employees with disabilities who have chosen the special arrangement under the Minimum Wage Ordinance are entitled to wages of not less than the amount to be calculated according to the latest SMW rate in force. The actual wage rate will be adjusted in tandem with that of the SMW rate. The calculation is as follows:

Minimum wage level that employer should pay after assessment	=	Assessed degree of productivity as stated in the certificate	×	SMW rate [#]
--	---	--	---	-----------------------

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

In addition, whether meal breaks are hours worked and/ or with pay, whether rest days are with pay, wage period, wage calculation, etc. are relevant in the computation of SMW. Other than ensuring that average wages payable to employees in respect of every wage period should be no less than the SMW rate, employers should also pay employees their statutory entitlements such as holiday pay, annual leave pay, sickness allowance, rest day pay (where applicable), etc. and other payments in accordance with the Employment Ordinance and the relevant terms and requirements under the contract of employment.

For details of SMW and other relevant information, please refer to “Concise Guide to Statutory Minimum Wage”, “Statutory Minimum Wage: Reference Guidelines for Employers and Employees” or browse LD’s homepage.

How should the certificate of assessment be kept? **Can** an employer further adjust the wage rate of the employee with disabilities on top of the adjustment of the SMW rate?

The certificate of assessment stipulates the degree of productivity of the employee with disabilities in performing the work concerned. The employer should keep the certificate of assessment in the workplace for inspection by authorised officers of LD. After the completion of assessment, the employer should pay the employee with disabilities wage at a level no less than the wage rate commensurate with the assessed degree of productivity as stated in the certificate multiplied by the latest SMW rate in force. The wage rate which is commensurate with the assessment result is just the statutory lower limit, the employer should handle performance appraisals and salary reviews of the employee with disabilities according to the pay system which applies to employees with and without a disability alike.

**Productivity Assessment for
Employees with Disabilities under
the Statutory Minimum Wage Regime**

**Support Kit: Introduction to
Assessment Procedures**

Note:

According to the Minimum Wage Ordinance, the right to invoke productivity assessment is entirely vested in the employees with disabilities but not the employers. Employees with disabilities must hold a valid “Registration Card for People with Disabilities” when invoking the assessment.

This introductory notes aims to assist employees with disabilities who choose to invoke the productivity assessment and their employers to have better knowledge of the procedures of the assessment, so as to get prepared and facilitate approved assessors in conducting the assessment.



I. Before conducting productivity assessment

- Upon receipt of the request from an employee with disabilities for assessment, the approved assessor will explain to the employee and his/her family members/other relevant persons (if necessary) the rights of employees with disabilities under the Minimum Wage Ordinance, and ascertain the intention of the employee with disabilities to invoke assessment and select approved assessor. The approved assessor will also explain to the employee with disabilities and his/her employer the purpose and procedures of the assessment, as well as obtain/confirm the following basic information of the employee with disabilities with a view to preparing the assessment:

- Personal particulars of the employee with disabilities, including name in Chinese and English, Hong Kong Identity Card number, whether he/she holds a valid “Registration Card for People with Disabilities”, contact means, type(s) and degree of disability, etc.
- Name, industry and contact means of the employer
- Commencement date of employment, job duties, wage rate, location of the workplace and working hours of the employee with disabilities
- Whether the employee with disabilities has been assessed for the work concerned before and relevant details
- Whether the employee with disabilities and the employer have agreed on the arrangements for a trial period of employment and relevant details

- The approved assessor will agree on an assessment date with the employee with disabilities and the employer. On the day of assessment, the employee with disabilities and the employer are required to produce the following information/documents to the approved assessor for verification and issuance of the Certificate of Assessment on the Degree of Productivity:

Employee with disabilities	Employer
<ul style="list-style-type: none">➤ Original copy of Hong Kong Identity Card➤ Original copy of “Registration Card for People with Disabilities”	<ul style="list-style-type: none">➤ Relevant information of the employee with disabilities, such as the contract of employment➤ Business Registration Certificate/other registration documents and chop

- If situation warrants, the approved assessor will, prior to the day of assessment, contact the employee with disabilities and the employer to obtain further details of the work concerned and prepare for the assessment. For more precise understanding of the job duties and requirements of the employee with disabilities, the employer should arrange, as far as possible, relevant staff who have direct connection with the work of the employee with disabilities (e.g. direct supervisor of the employee with disabilities or related personnel in the human resources section) to handle matters in relation to the assessment.



II. Undergoing productivity assessment

1. Confirming and collecting information related to the assessment with the employee with disabilities, the employer and other relevant person(s)

- Before conducting the assessment, the approved assessor will re-confirm the intention and eligibility of the employee with disabilities to opt for the assessment, and explain to the employee with disabilities and the employer their respective rights and obligations under the relevant provisions of the Minimum Wage Ordinance and the procedures of the assessment.
- At the beginning of the assessment, the approved assessor will collect detailed information on the work through the employee with disabilities, the employer and any other relevant person(s) who can assist in better understanding the work:

- Post title
- Job nature and details of job duties
- Basic job requirements (e.g. quality of work, quantity of work, working speed and other requirements for performing the duties)
- Work procedures
- Business nature of the employer and overall work flow
- Position and role of the employee with disabilities in the company/relevant division and how the employee with disabilities co-operates with other employees in the work flow
- Performance of other employee(s) of the employer performing the same or similar work

Reminder:

The employee with disabilities or the employer can provide to the approved assessor for reference information relating to the work of employee with disabilities, e.g. contract of employment, daily work flow sheet, work instructions, duty checklist, etc.

2. Selecting appropriate factor(s) to be considered in the assessment and adopting suitable means for assessment

- Based on the detailed information on the work of the employee with disabilities collected, the approved assessor will exercise his/her professional knowledge and experience to select the appropriate factor(s), including quality of work, quantity of work, working speed and other requirements for performing the duties, and decide on the respective weight.
- The approved assessor will adopt suitable means, including on-site observation, analysis of performance data of the factors for consideration etc., and based on all the information collected to assess the degree of productivity of the employee with disabilities in performing the duties.

3. Elucidating to the employee with disabilities and the employer the major considerations in conducting the assessment and collecting supplementary information

- The approved assessor will confirm with the employee with disabilities and the employer that the duties under assessment are the daily duties of the employee with disabilities required under the contract of employment. The approved assessor will also explain the major considerations in conducting the assessment.
- Where necessary, the approved assessor will seek clarifications from or raise supplementary questions with the employee with disabilities and the employer. The employee with disabilities and the employer may also provide supplementary information to the approved assessor.

III. Completion of productivity assessment

- The approved assessor will explain the assessment result and issue in triplicate the Certificate of Assessment on the Degree of Productivity to the employee with disabilities and the employer. The assessment is completed when the certificate is signed and issued by the approved assessor.
- Upon receipt of the certificate issued by the approved assessor, the employee with disabilities and the employer should countersign the certificate. On and from the first day after the countersigning of the certificate by both parties, the degree of productivity of the employee with disabilities for the job stated in the certificate will take effect. The employer shall pay the employee with disabilities at no less than a wage rate commensurate with the degree of productivity in accordance with the Minimum Wage Ordinance. Before signing the certificate, both parties to employment should read the “Important Notes” set out in the certificate.

Reminder:

Before countersigning the certificate, the employee with disabilities and the employer should verify whether the important information on the certificate (e.g. name of employee with disabilities, Hong Kong Identity Card number and serial number of “Registration Card for People with Disabilities”, name of employer, Business Registration Certificate/other registration number; and details of the trial period of employment, etc.) is correct or not.

Labour Department's Homepage
www.labour.gov.hk

Support Kit
for Employers



勞工處
Labour Department