

Real Estate Agency Industry



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.

Real Estate Agency Industry
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 real estate agency industry, the Labour Department has drawn up this *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 *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 follows¹ :

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

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.

¹ 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 : Can employees' basic salary be less than minimum wage (if total wages including commission 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 exclusions².

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

² 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.

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

A 5 : 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 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 : What should be counted as hours worked for computing minimum wage?

A 7 : 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 8 : 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 8 : 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 9 : An estate agent is on duty from 9:00 a.m. to 10:00 p.m.. During this period, he is provided with 2 hours of meal breaks. Are the meal breaks counted as the hours worked for computing minimum wage?

A 9 : 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 10 : Is the time spent by an estate agent on accompanying customers in making property visits counted as hours worked in computing minimum wage?

A 10 : When the estate agent is, in accordance with the contract of employment, or with the agreement or at the direction of the employer, accompanying customers in making property visits or in attendance at a property sales office or another place for the purpose of doing work, such place is a place of employment as defined in the Minimum Wage Ordinance and such time is hours worked for the purpose of computing minimum wage. Besides, such travelling time in connection with employment (e.g. time spent on travelling to different property units) is also hours worked in computing minimum wage.

Q 11 : Is the time spent by an estate agent on accompanying customers to sign purchase agreements counted as hours worked in computing minimum wage?

A 11 : When the estate agent is, in accordance with the contract of employment, or with the agreement or at the direction of the

employer, and for the purpose of doing work, accompanying customers to sign purchase agreements, such time is hours worked in computing minimum wage.

Q 12 : On a customer's request, an estate agent, after duty hours, returns to the office to wait for the former to sign a purchase agreement. If the customer eventually fails to turn up, is the waiting time spent counted as hours worked in computing minimum wage?

A 12 : When the estate agent, in accordance with the contract of employment, or with the agreement or at the direction of the employer, and for the purpose of doing work, returns to the office to wait for the customer to sign a purchase agreement (irrespective of whether the customer turns up or not and whether the estate agent is provided with work or not), such time is hours worked for the purpose of computing minimum wage. However, the travelling time between the estate agent's place of residence and place of employment is not hours worked under the Minimum Wage Ordinance in computing minimum wage.

Q 13 : If a monthly-rated employee takes extra or fewer rest days in a wage period because of substituted rest days or duty roster arrangement, how should the employer count the total number of hours worked in computing minimum wage?

A 13 : Minimum wage 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.

Therefore, the total number of hours worked by an employee in a wage period is based on the **actual** hours worked. If the number of rest days is less than normal in a wage period, his total number of hours worked, and correspondingly his minimum wage, in the wage period will increase. If wages payable in respect of the wage period are less than minimum wage owing to the increase in the number of hours worked, the employer has to pay the difference (i.e. "additional remuneration") to the employee in respect of that wage period.

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 exclusions². 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 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 employees' rest days 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 : Can employers deduct the amount of additional remuneration paid from employees' wages of subsequent wage periods?

A 17 : 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. Therefore, employers cannot deduct the amount of additional remuneration paid from employees' wages of subsequent wage periods.

Q 18 : Can wages be averaged over a year or a quarter, instead of a wage period, to determine whether an employee's wages are no less than the SMW rate?

A 18 : According to the Minimum Wage Ordinance, an employee is entitled to be paid wages in respect of **any wage period** of not less than minimum wage. Therefore, in determining whether his wages are not less than the SMW rate, it must be calculated on the basis of a wage period, and is not averaged over a year or a quarter. The definition of "wage period" in the Minimum Wage Ordinance is aligned with that under the Employment Ordinance. Specifically, a wage period is one month unless the contrary is proved.

Q 19 : How is commission counted under the SMW regime?

A 19 : According to the Employment Ordinance, the definition of wages includes commission (except commission which is of a gratuitous nature or which is payable only at the discretion of the employer). Hence, other than commission which is gratuitous or payable only at the discretion of the employer, commission is wages and must be paid in accordance with the provisions of the Employment Ordinance. Subject to the provisions of other legislation, employers and employees may agree on how commission is calculated and payable in their employment contracts.

Commission payable according to the contract of employment

In determining whether the wages of an employee meet the minimum wage requirement, commission payable under the contract of employment is counted as wages payable in respect of the wage period as specified in the employment contract. If commission is payable in respect of a number of wage periods according to the contract of employment, in determining whether the wages of an employee meet the minimum wage requirement, commission is counted as wages payable in respect of the corresponding wage period as provided in the contract of employment.

Commission paid according to the Minimum Wage Ordinance

In addition, given the unique nature of commission, the Minimum Wage Ordinance sets out the following provision for employers and employees to apply in the counting of commission as wages payable:

For the purpose of computing minimum wage, any commission paid

- with the prior agreement of the employee
- at any time after the first 7 days of a wage period but before the end of the 7th day immediately after that wage period

must be counted as part of the wages payable in respect of that wage period irrespective of when the work is done or the commission is otherwise payable under the contract of employment.

Hence, in determining whether the wages of an employee meet the minimum wage requirement, if there is prior agreement of the employee, commission can be counted as part of the wages payable in respect of a wage period according to the timing when the commission is paid. Without the prior agreement of the employee, the above provision is not applicable. In applying the provision, employers have to comply with the provisions on wage payment and deductions under the Employment Ordinance. Please refer to *A Concise Guide to the Employment*

Ordinance for details.

Q 20 : Can commission be paid in advance? Any example to illustrate how commission is counted under the SMW regime as wages payable in respect of a wage period according to the timing when it is paid?

A 20 : As explained in Q 19, according to the Minimum Wage Ordinance, in determining whether the wages of an employee meet the minimum wage requirement, an employer can, with the prior agreement of the employee, pay the employee commission in advance so that it will be counted as wages payable in respect of the wage period when it is paid.

Example:

An employee's wage period is a calendar month. With the prior agreement of the employee, the employer pays him commission of \$1,500 and \$2,000 on 30 April and 6 June respectively. The commission is originally payable in respect of the wage period of July.

In this example, in accordance with the Minimum Wage Ordinance, with the prior agreement of the employee, commission paid in the period of 8 April to 7 May is counted as wages payable in respect of April (in this example, commission is paid on 30 April); and commission paid in the period of 8 May to 7 June is counted as wages payable in respect of May (in this example, commission is paid on 6 June).

Thus, in determining whether the wages of this employee meet the minimum wage requirement, the commission of \$1,500 is counted as wages payable in respect of April and the commission of \$2,000 is counted as wages payable in respect of May, both not being regarded as wages payable in respect of July.

Q 21 : An estate agent's commission is calculated according to the deals he closes. If his total wages fall below minimum wage in a wage period during which he closes no deal and earns no commission, does the employer need to pay him additional remuneration?

A 21 : An employee is entitled to be paid wages in respect of any wage period of not less than minimum wage. The minimum wage 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. 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”).

Therefore, if wages payable to an employee in respect of a wage period are less than minimum wage because he does not earn any commission, his employer has to pay him additional remuneration in accordance with the Minimum Wage Ordinance to meet the minimum wage requirement.

Q 22 : An estate agent’s basic salary is \$8,000 and wage period is a calendar month. He works 10 hours per day and 6 days per week with **paid** rest day. In a 31-day wage period, he works 27 days, performs 10 hours’ overtime work and takes 4 rest days³. Besides, with his prior agreement, he is paid commission of \$2,000 in advance in this wage period. How much is his minimum wage for this month? Does the basic salary plus advanced commission (i.e. \$8,000 + \$2,000 = \$10,000) paid to him meet the minimum wage requirement?

A 22 : (a) Minimum wage according to the total number of hours worked for this month:
 $(27 \times 10 + 10)$ hours (total number of hours worked) \times \$30 (SMW rate) = \$8,400

(b) Wages payable to the employee in respect of this month:
 $\$8,968 [(\$8,000 + \$2,000) - \$1,032 (\text{pay for 4 rest days})]$ ⁴

³ 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.

⁴ 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

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), the basic salary plus advanced commission (i.e. \$10,000 in total) paid to him in this month has met the minimum wage requirement.

Q 23 : A newly recruited estate agent's monthly basic salary is \$6,000 and wage period is a calendar month. He works 8 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 basic salary meet the minimum wage requirement?

A 23 : (a) Minimum wage according to the total number of hours worked for this month:
 $(26 \times 8) \text{ hours (total number of hours worked)} \times \$30 \text{ (SMW rate)} = \$6,240$

(b) Wages payable to the employee in respect of this month:
\$6,000 – \$0 (no payment to the employee for time that is not hours worked)⁴

In this example, since (b) is less than (a), apart from paying basic salary of \$6,000, the employer has to pay additional remuneration of \$240 (\$6,240 – \$6,000), i.e. \$6,240 in total.

Q 24 : An estate agency clerk's monthly wage is \$9,300 and wage period is a calendar month. 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?

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.

A 24 : (a) Minimum wage according to the total number of hours worked for this month:
 (22×10) hours (total number of hours worked) \times \$30 (SMW rate) = \$6,600

(b) Wages payable to the employee in respect of this month:
\$6,820 [$\$9,300 - \$1,240$ (pay for 4 rest days) $- \$1,240$ (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 25 : Owing to the characteristics of the industry, employers may not be able to know the exact time spent by employees on work every day. Can employers request employees to submit reports to account for the hours worked? Must time cards be used to record hours worked?

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

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

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

- name and identity card number of the employee

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

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

Q 27 : Can one assume that the minimum wage requirement would certainly be met if employees are paid at wage level equivalent to the monthly monetary cap (i.e. \$12,300⁵) on keeping record of the total number of hours worked?

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

Total number of hours worked in the wage period × SMW rate (i.e. \$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 28 : Can employers unilaterally reduce benefits to which employees are currently entitled under employment contracts?

A 28 : According to the Employment Ordinance, employers should not unilaterally vary the employment terms and conditions of

⁵ 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.

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.

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

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

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

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

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

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



法定最低工資
Statutory Minimum Wage

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

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