

Statutory Minimum Wage: Notes for Student Employees and Employers



勞工處
Labour Department



法定最低工資
Statutory Minimum Wage

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Foreword

This booklet explains in simple terms the details of exemption for specified student interns and work experience students during a period of exempt student employment under the Minimum Wage Ordinance (Cap. 608). The interpretation of the Minimum Wage Ordinance should be based on its original text. The full text of the Ordinance has been uploaded to the Hong Kong e-Legislation of the Department of Justice website at www.elegislation.gov.hk.

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

Revised May 2015

Highlights

Statutory Minimum Wage does not apply to the following specified student employees under the Minimum Wage Ordinance:

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

Note:

- Unless otherwise specified, the Minimum Wage Ordinance applies to every employee, his employer and the contract of employment under which he is engaged. However, the Minimum Wage Ordinance does not apply to interns/students with no employment relationship with the host organisation or company.
- The exemption from Statutory Minimum Wage does not apply if a work experience student has not agreed with the 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 P.11); 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 employer may agree to treat a continuous period of up to 59 days as exempt student employment; and ■ at most one period of exempt student employment may commence in the same calendar year (regardless of whether the employment is with 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) <p>(please refer to Examples 1 and 2 below)</p>



Example 1

A work experience student is employed from 1 July and agrees with the employer on a period of exempt student employment up to 28 August of the same year (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 year¹. 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** commence another exempt student employment period in that calendar year, regardless of whether the employment is with the same employer or not. In addition, the counting of a continuous period of up to 59 days as exempt student employment 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 work experience student not less than the minimum wage for the period of employment beyond the continuous period of 59 days.

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

Assume

- the work experience student is employed from 1 August to 30 November of the same year; and
- the period of exempt student employment is from 1 August to 28 September (i.e. 59 days),

then

- the work experience student is entitled to be paid not less than the minimum wage in any wage periods starting from 29 September and up till the end of the period of employment on 30 November.

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 specified student interns and work experience students during a period of exempt student employment

- Statutory Minimum Wage does not apply to specified 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 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 *A 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.
- Employers and student employees should keep proper records in relation to wages and the above documents to 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 Education University of Hong Kong
- 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) (Note)
- 12 Bodies established under the Vocational Training Council Ordinance (Cap. 1130)
- 13 Schools registered or provisionally registered under the Education Ordinance (Cap. 279)²

Note: According to information as at May 2015, these approved post secondary colleges include:

- Caritas Institute of Higher Education (formerly known as Caritas Francis Hsu College)
- Centennial College
- Chu Hai College of Higher Education
- Hang Seng Management College
- HKCT Institute of Higher Education
- Hong Kong Nang Yan College of Higher Education
- Hong Kong Shue Yan University
- Tung Wah College

² 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 (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 Post-secondary Programmes of the Education Bureau (www.ipass.gov.hk) provides information on full-time locally-accredited post secondary programmes.

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 2015],

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 2015] 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 2015] 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 Hong Kong e-Legislation of the Department of Justice website at www.elegislation.gov.hk.
- If a work experience student has not agreed with the employer to treat a certain period as a period of exempt student employment, the exemption from Statutory Minimum Wage does not apply and it is not necessary for the work experience student to make the above statutory declaration.

Note: Data users should comply with the requirements of the Personal Data (Privacy) Ordinance (Cap. 486) concerning data protection principles.

Remarks: This Specimen Content of statutory declaration can be downloaded from the Labour Department's homepage at www.labour.gov.hk.

**Confirmation of “student intern” status
under the Minimum Wage Ordinance (Cap. 608)****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 Statutory Minimum Wage does not apply to a student intern. Under the Employment Ordinance (Cap. 57), the employer shall keep a document (or copy of a document) issued by an education institution showing that 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. This Specimen Confirmation is for education institutions’ reference in confirming the identity of the student intern and particulars of the work as arranged or endorsed.

¹ See footnote 1 in the Confirmation.

² See footnote 2 in the Confirmation.

- 3 Public officers of the Labour Department (LD) of the Government of the Hong Kong Special Administrative Region conduct inspection visits to places of employment to ensure employers' compliance with ordinances administered by the LD. Employers taking on student interns are required under the Employment Ordinance to provide employees' information and records, including the Confirmation (if applicable), 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 organisation 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;
- (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)

Chop of
Date of Issue: _____ Education Institution: _____

For enquiries, please contact the following person:

Name: _____ Position: _____

Address of Education Institution: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____ Website: _____

Note: Data users should comply with the requirements of the Personal Data (Privacy) Ordinance (Cap. 486) concerning data protection principles.

SMW-1 (5/2015)

Remarks: This Confirmation can be downloaded from the Labour Department's homepage at www.labour.gov.hk.

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

- 1 The Confirmation of student status for “work experience student” (“Confirmation”) applies to a work experience student who agrees with his employer to treat a continuous period of up to 59 days during the contract of employment as a period of exempt student employment. Under the Minimum Wage Ordinance (Cap. 608), “work experience student” means a student who:
 - (a) is enrolled in an accredited programme¹; or
 - (b) is resident in Hong Kong and enrolled in a non-local education programme²,and who is engaged under a contract of employment at the beginning of which he is under the age of 26 years.
- 2 Statutory Minimum Wage does not apply to a work experience student during a period of exempt student employment. Under the Employment Ordinance (Cap. 57), the employer shall keep a document (or copy of a document) issued by an education institution showing that 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. This Specimen Confirmation is for education institutions’ reference in confirming that the student employee 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. The employer

¹ See footnote 1 in the Confirmation.

² See footnote 2 in the Confirmation.

should approach the education institution concerned for enquiries if there is doubt as to whether the student employee is enrolled in a programme that complies with the exemption conditions. At the same time, the student employee should inform the employer as soon as possible when he is no longer enrolled in the programme during the period of exempt student employment.

- 3 Public officers of the Labour Department (LD) of the Government of the Hong Kong Special Administrative Region conduct inspection visits to places of employment to ensure employers' compliance with ordinances administered by the LD. Employers taking on work experience students are required under the Employment Ordinance to provide employees' information and records, including the Confirmation (if applicable), for inspection by public officers of the LD when necessary. Should there be any suspected contravention of any relevant ordinances in connection with the concerned 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 as well as the name and the kind of programme enrolled

Name (in block letters)	
HK Identity Card / Passport* No.	
Programme Enrolled	<div style="border-bottom: 1px solid black; height: 40px; margin-bottom: 5px;">Name of the programme:</div> <div>Kind of the programme: Please put a tick against the appropriate box <input type="checkbox"/> (local programme) a full-time accredited programme¹ <input type="checkbox"/> (non-local education programme) a full-time programme of education at the level of degree or higher² </div>

* 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;
- (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)

Chop of
Date of Issue: _____ Education Institution: _____

For enquiries, please contact the following person:

Name: _____ Position: _____

Address of Education Institution: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____ Website: _____

Note: Data users should comply with the requirements of the Personal Data (Privacy) Ordinance (Cap. 486) concerning data protection principles.

SMW-2 (5/2015)

Remarks: This Confirmation can be downloaded from the Labour Department's homepage at www.labour.gov.hk.

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, Wan Chai,
Hong Kong.

Hong Kong West

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

Kowloon

Kowloon East

UGF, Trade and Industry Tower,
3 Concorde Road, 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.

Shatin & Tai Po

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



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