

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

Support Kit:

Invoking Assessment (Guide for Employers)



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Invoking Assessment
(Guide for Employers)

In accordance with the Minimum Wage Ordinance (MWO) (Cap. 608 of the Laws of Hong Kong), employees with disabilities are entitled to the same protection of the Statutory Minimum Wage (SMW) as able-bodied employees. Therefore, employees with disabilities are also entitled to wages at not lower than the SMW rate.

A special arrangement is also provided under MWO so that employees with disabilities can opt for a productivity assessment by approved assessors at their choice.

The purpose of the productivity assessment is to assess whether or not the productivity of the employees with disabilities in performing the work required under the contract of employment is affected by their disability, so as to determine whether they should be remunerated at not lower than the SMW rate or at a rate commensurate with their productivity.

This support kit provides employers with reference materials 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.



Employees with disabilities can obtain detailed information on the productivity assessment through the following channels:

- refer to the “Concise Guide to Productivity Assessment for Employees with Disabilities under the Statutory Minimum Wage Regime” published by the Labour Department (LD)
- browse LD’s homepage (www.labour.gov.hk)
- 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

Flow chart of the productivity assessment for employees with disabilities

The employee with disabilities must hold a valid “Registration Card for People with Disabilities” issued by the Central Registry for Rehabilitation of the Labour and Welfare Bureau when invoking the assessment. Details are at pages 1-5 and 1-6.

The employee with disabilities may, **before commencing employment**, agree with the employer to arrange a trial period of employment of not more than 4 weeks to adapt to and settle into the work before undergoing assessment. According to MWO, the wage level during the trial period of employment as agreed between the employee with disabilities and the employer should not be lower than 50% of the SMW rate.

The employee with disabilities contacts the approved assessor to be selected from the “Register of Approved Assessors” of the Labour Department to conduct the assessment.

Note 1

The approved assessor conducts the assessment in the actual workplace and work settings of the employee with disabilities, collects detailed information on the work and selects appropriate factors to be considered and suitable methods of assessment.

Note 2

The approved assessor explains the assessment result and issues the “Certificate of Assessment on the Degree of Productivity of Persons with Disabilities” (specimen at [Appendix](#)) to the employee with disabilities and the employer. The fee of the productivity assessment is borne by the Labour Department.

Note 3

Note 1: Approved assessors include registered occupational therapists, registered physiotherapists, registered social workers and vocational rehabilitation practitioners with the requisite experience. The “Register of Approved Assessors” can be browsed through the homepage (www.labour.gov.hk) and at relevant offices of the Labour Department. Details are at page 1-18.

Note 2: Appropriate factors to be considered in the assessment include quality of work, quantity of work, working speed and other requirements for performing the work. Suitable methods of assessment refer to on-site observation, analysing performance data of the above factors, etc.

Note 3: After the completion of the assessment, the employee with disabilities shall not have any further assessment made for the same work with the same employer.

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” issued by the Central Registry for Rehabilitation of the Labour and Welfare Bureau (LWB) when invoking the assessment (including when he/she chooses to agree with the employer to arrange a trial period of employment before commencing employment). The registration card has the form of a physical card (printed on security paper) and an electronic version, and contains the following information:

- photograph of the cardholder
- validity period (permanent/temporary nature); and
- serial number (starting with “RC”)

For matters relating to the “Registration Card for People with Disabilities”, please call the Central Registry for Rehabilitation of LWB at 2180 9384.

Sample of “Registration Card for People with Disabilities” in the form of a physical card



Sample of “Registration Card for People with Disabilities” in the form of an electronic version



Do all employees with disabilities have to undergo a productivity assessment?

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



What is a trial period of employment? Under **what** circumstances should a trial period of employment be arranged?

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 the productivity assessment.

For newly employed employees with disabilities:

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

For serving employees with disabilities:

- They can undergo the assessment directly without going through the trial period of employment.
- Should their job duties/work nature be varied, the employees with disabilities may choose to invoke the productivity 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.

During the trial period of employment, the persons with disabilities are employees employed by their employers in accordance with their contracts of employment. According to MWO, the wage level during the trial period of employment as agreed between the employee with disabilities and the employer should not be lower than 50% of the SMW rate.

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 employee with disabilities completes the productivity assessment, 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 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, the employee with disabilities and the employer may jointly make an application in writing to LD for extending the trial period of employment before the end of trial period of employment. The Commissioner for Labour may, in exceptional circumstances, grant approval to extend the trial period of employment by up to 4 weeks (i.e. not more than 8 weeks in total). To obtain the relevant application form, please call the 24-hour enquiry hotline 2717 1771 (handled by “1823”).

When and where should the productivity assessment be conducted?

The productivity 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

To accurately assess the productivity of the employees with disabilities in performing the work required under the contract of employment, assessments must be conducted in the actual workplaces and work settings of the employees with disabilities.

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

The rights to invoke the productivity assessment and select approved assessors are solely vested in the employees with disabilities, not the employers.

After employees with disabilities have decided to invoke the assessment, they should, having regard to their individual circumstances and needs, select suitable approved assessors, including persons whom they knew before and have been appointed as approved assessor by LD to conduct assessments for them, such as their former instructors, registered social workers or staff, as well as registered occupational therapists/physiotherapists who have provided them with vocational rehabilitation services, etc.

However, it is incumbent on the approved assessor concerned to ensure that no conflict of interest will arise between his/her duties involved in conducting the assessment for the employee with disabilities and his/her other interests. Besides, the employee with disabilities should not select an approved assessor who has close relationship with him/her to avoid potential or actual conflict of interest.

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, MWO applies to all employees, regardless of their mode of employment. The purpose of assessment is to determine whether or not the productivity of employees with disabilities in performing the work required under the contract of employment is 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 productivity assessment, persons with disabilities have to establish employment relationship with the hiring organisations. However, employees with disabilities can agree with their employers to arrange 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?

Approved assessors will obtain/confirm certain information with employees and employers before the productivity 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

On the day of assessment, please properly prepare information relating to the concerned employee with disabilities, e.g. contract of employment, work flow sheet or duty checklist, etc. To enable approved assessors to understand 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 result of productivity assessment 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 have to explain the result of productivity assessment to the employees with disabilities and the employers and issue the “Certificate of Assessment on the Degree of Productivity of Persons with Disabilities” (certificate of assessment) in triplicate. Upon countersigning of the certificate of assessment by the employees with disabilities and the employers, the assessed degree of productivity of the employees with disabilities as stated in the certificate of assessment will take effect. The employees with disabilities are still required to hold a valid “Registration Card for People with Disabilities” to enable the degree of productivity as stated in the certificate of assessment to remain valid.

- If **the assessment is completed within the trial period of employment or the employees with disabilities do not need to arrange the trial period of employment**, on and from the first day after the certificate of assessment is countersigned by both parties to employment, the employees with disabilities should be paid at no less than a wage commensurate with their productivity stated on the certificate of assessment.

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 of assessment by both parties to employment, the wage rate commensurate with the degree of productivity as stated in the certificate of assessment 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

- If either the employee with disabilities or the employer does not countersign the certificate of assessment, on and from the first day after the productivity assessment is completed or the expiry of the trial period of employment, the employer must pay the employee with disabilities wages not less than SMW.

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 completed the productivity assessment should be remunerated at a rate commensurate with their productivity. The actual wage 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 of assessment	×	SMW rate#
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#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 productivity 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 of assessment.

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.

Addresses of offices for browsing the “Register of Approved Assessors”

Statutory Minimum Wage Division of Labour Department

1/F, Harbour Building, 38 Pier Road, Central, Hong Kong.

Selective Placement Division of Labour Department

Hong Kong Office

G/F, East Wing, Harbour Building,
38 Pier Road, Central, Hong Kong.

Kowloon Office

G/F, Ngau Tau Kok Government Offices,
21 On Wah Street,
Ngau Tau Kok, Kowloon.

New Territories Office

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