



\$32.5 per hour

Effective from 1 May 2015

**Statutory Minimum Wage :
Reference Guidelines for
Employers and Employees**



勞工處
Labour Department



法定最低工資
Statutory Minimum Wage

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Note : For illustration purpose, figures are rounded to one decimal place in examples involving non-integer calculations.

- * Statutory Minimum Wage (SMW) has come into force since 1 May 2011 and the initial SMW rate was \$28 per hour. **The SMW rate is \$32.5 per hour with effect from 1 May 2015.** If 1 May 2015 falls within a wage period, the SMW rate of \$32.5 applies to any hour worked on or after 1 May 2015 in calculating minimum wage for that wage period.
- * In the course of scrutinizing the Minimum Wage Bill, some Members of the Legislative Council and stakeholders proposed that detailed reference guidelines should be formulated to explain to employers and employees in simple terms, supplemented by examples, the relevant provisions and the application of the Minimum Wage Ordinance. We have adopted this suggestion and prepared this set of Reference Guidelines.
- * We have endeavoured to include some relatively common examples to cover different situations in the Reference Guidelines to facilitate employers and employees in understanding the Minimum Wage Ordinance and its application. We believe that these examples already cover most of the situations in the computation of minimum wage. Nonetheless, given the large varieties of mode of employment, there is difficulty listing out all situations exhaustively in the Reference Guidelines. Employers and employees who wish to enquire about their individual situation can call 2717 1771 (handled by “1823”) which operates round-the-clock.
- * The interpretation of the Minimum Wage Ordinance (Cap. 608) 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.

- * The Minimum Wage Ordinance establishes the SMW regime aimed at striking an appropriate balance between forestalling excessively low wages and minimising the loss of low-paid jobs while sustaining Hong Kong's economic growth and competitiveness.
- * SMW is expressed as an hourly rate. 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. The employment and wage payment mode (i.e. employed and remunerated at monthly-rated, weekly-rated, daily-rated, hourly-rated or piece-rated, etc.) formulated between employers and employees in accordance with their employment contracts and the Employment Ordinance need not be changed with the implementation of SMW.
- * The major provisions of the Minimum Wage Ordinance (e.g. the definition of wages) are aligned as closely as possible with those of the Employment Ordinance to ensure consistency and effective enforcement, avoid confusion to employers and employees and minimise the compliance cost for employers.
- * Neither the Minimum Wage Ordinance nor the Employment Ordinance prescribes that meal breaks and rest days should be paid. Whether meal breaks and rest days are with pay or otherwise are employment terms as agreed between employers and employees. Whether meal breaks are hours worked and/or with pay, whether rest days are with pay, wage period, wage calculation, reckoning and payment arrangement of commission, etc. are relevant in the computation of minimum wage. 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. Any provision in the contract of employment seeking to extinguish or reduce the employee's SMW entitlement shall be void under the law.

- * Employees are an enterprise's valuable asset. We appeal to employers to treat their employees well so as to maintain harmonious labour relations. Employers should carefully assess the impact both on themselves and on the employees in contemplating any change to the employment terms. Sufficient communication between employers and employees is necessary. Employees will always have a greater commitment to work as well as a stronger sense of belonging when employers respond positively and sincerely to their reasonable requests. This will in turn be beneficial to the operation and business of the enterprise and ultimately achieve a win-win situation for both employers and employees.

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Appendix 1

Appendix 2

* SMW applies to all employees, whether they are monthly-rated, weekly-rated, daily-rated, hourly-rated, piece-rated, permanent, casual, full-time, part-time or other employees, and regardless of whether or not they are employed under a continuous contract¹ as defined in the Employment Ordinance, with the following exceptions :

- ▶ persons to whom the Employment Ordinance does not apply²
- ▶ live-in domestic workers

This refers to domestic workers (including domestic helpers, carers, chauffeurs, gardeners, boat-boys or other personal helpers) who dwell free of charge in their employing household, irrespective of their sex, race or nationality.

Note :

The following persons are not live-in domestic workers and SMW applies to them :

- * domestic workers not dwelling free of charge in their employing household
 - * live-in employees who are not domestic workers
- ▶ specified student interns as well as work experience students during a period of exempt student employment ([Please refer to Appendix 1 for details](#))

¹ According to the Employment Ordinance, an employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract.

² The Employment Ordinance does not apply to : (a) a family member who lives in the same dwelling as the employer; (b) an employee as defined in the Contracts for Employment Outside Hong Kong Ordinance; (c) a person serving under a crew agreement under the Merchant Shipping (Seafarers) Ordinance, or on board a ship which is not registered in Hong Kong; and (d) an apprentice whose contract of apprenticeship has been registered under the Apprenticeship Ordinance. As for (d), while certain provisions of the Employment Ordinance apply to registered apprentices, SMW is not applicable.

Note :

Employees with disabilities

- * SMW applies to employees with disabilities and able-bodied employees alike. In order to strike an appropriate balance between providing wage protection to employees with disabilities and safeguarding their employment opportunities, 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 productivity assessment to determine whether they should be remunerated at not lower than the SMW rate or at a rate commensurate with their productivity. The right to invoke assessment is solely vested in the employees with disabilities, not their employers. The Labour Department has published the *Concise Guide to Productivity Assessment for Employees with Disabilities under the Statutory Minimum Wage Regime* to explain the details of this special arrangement.

Self-employed persons

- * The Minimum Wage Ordinance is aligned closely with the Employment Ordinance and SMW does not apply to contractors or self-employed persons. For information about the difference between an "employee" and a "contractor or self-employed person", please refer to the leaflet *Employee? Contractor / Self-employed Person?*.
- * Even though a worker is called or described as a contractor or self-employed person in the contract, the employer is still required to fulfil his responsibilities under the relevant legislation if in essence there exists an employer-employee relationship between the parties. The employer may also be liable to criminal sanctions for contravention of the relevant legislation.
- * If an employer unilaterally changes the status of the employee to a contractor or self-employed person, the employee may lodge a claim for remedies against the employer under the Employment Ordinance and common law. If an employee intends to change his status to a contractor or 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.

A. How to count hours worked

- * An employee is entitled to be paid wages in respect of any wage period of not less than the 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.
- * For the purpose of computing minimum wage, hours worked 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.

4 Application of the Ordinance

A. How to count hours worked

Time in attendance at a place of employment

Example 1

An employee works in the office from 9:00 a.m. to 1:00 p.m. and from 2:00 p.m. to 6:00 p.m. in accordance with the contract of employment. He also works overtime from 6:00 p.m. to 7:00 p.m. with the agreement or at the direction of the employer. The time from 9:00 a.m. to 1:00 p.m. and from 2:00 p.m. to 7:00 p.m. is hours worked for computing minimum wage. **(Note :** As for whether meal break is hours worked for computing minimum wage, [please refer to the section on “Meal break” below.](#))

Example 2

With circumstances the same as **Example 1** above, but owing to personal reasons (e.g. to avoid busy traffic), the employee returns to the office at 8:30 a.m. As he is not, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance in the office for the purpose of doing work, the office from 8:30 a.m. to 9:00 a.m. is not his place of employment as defined under the Minimum Wage Ordinance for the purpose of computing minimum wage. Such time from 8:30 a.m. to 9:00 a.m. shall not be counted as hours worked for computing minimum wage.

Example 3

The working hours of an employee finish at 6:00 p.m. according to the contract of employment. However, he stays in the office from 6:00 p.m. to 6:15 p.m. for personal reasons, and is not, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance in the office for the purpose of doing work. Therefore, for the purpose of computing minimum wage, the office from 6:00 p.m. to 6:15 p.m. is not his place of employment as defined under the Minimum Wage Ordinance. As such, the time from 6:00 p.m. to 6:15 p.m. shall not be counted as hours worked for computing minimum wage.

Example 4

At the direction of the employer, an employee works outside Hong Kong (for instance, at the company's factory in the Mainland). The employer provides free accommodation and/or meals for the employee during the period of stay. If the employee in a certain period of time during the stay is not in attendance at a place of employment for the purpose of doing work or receiving training in accordance with the contract of employment or with the agreement or at the direction of the employer - such as his sleeping time, personal recreation time - such time is not hours worked for computing minimum wage.

Example 5

An employee attends a 3-hour training course at the direction of the employer to enhance client service skills. Since the employee is, at the direction of the employer, in attendance for the purpose of receiving training, these 3 hours are hours worked for computing minimum wage.

Note :

- * As illustrated in the above examples, whether a particular place is a place of employment as defined under the Minimum Wage Ordinance for computing minimum wage depends on whether the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance at the place for the purpose of doing work or receiving training. This is a question of fact and must be determined by reference to the facts and circumstances of individual cases.
- * Should the employer and the employee have different understanding on whether or not the employee is in attendance at a place of employment during a certain period of time (e.g. during the time beyond the working hours specified in the employment contract) and whether or not the employee is in attendance with the agreement or at the direction of the employer under various circumstances, they should clarify between themselves as soon as practicable in order to avoid dispute when computing minimum wage.

4 Application of the Ordinance

A. How to count hours worked

Travelling time

Example 6

An employee works in a company in Hong Kong. The travelling time between his place of residence and the place of employment is not hours worked for computing minimum wage.

One day, this employee delivers documents from the company to a client's office, and then returns to the company. With regard to the travelling time between his company and the client's office when he is, in accordance with the contract of employment or with the agreement or at the direction of the employer, travelling in connection with his employment, the time is also hours worked for computing minimum wage.

Example 7

An employee works in the office in Hong Kong on Mondays, and in the company's factory in the Mainland from Tuesdays to Fridays. With regard to the travelling time between his place of residence and the office in Hong Kong, it is not hours worked for computing minimum wage. Since the company's factory in the Mainland is also his usual place of employment, the time he takes to travel between his place of residence and the company's factory in the Mainland is generally not hours worked for computing minimum wage.

Example 8

An employee works in a factory in Hong Kong. One day, the employer assigns him to go to a client's office outside Hong Kong which is not his usual place of employment. The time he takes to travel, in accordance with the contract of employment or with the agreement or at the direction of the employer, between his place of residence and the client's office outside Hong Kong is hours worked for computing minimum wage.

Example 9

An employee is directed by the employer to travel from the office to a training centre to attend a 2-hour training course. He is required to return to the office to continue working after training. The travelling time to and from his office and the training centre is hours worked for computing minimum wage.

- * Generally speaking, for computing minimum wage under the Minimum Wage Ordinance, the travelling time between an employee's place of residence and his place of employment **within** Hong Kong is not hours worked, irrespective of whether it is the usual place of employment.

4 Application of the Ordinance

A. How to count hours worked

Meal break

- * When an employee during his meal break also falls under the circumstances of hours worked³ as specified in the Minimum Wage Ordinance, such meal break is hours worked for computing minimum wage. Hence, if an employee 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 a place of employment, irrespective of whether he is provided with work or not, such time should be included in the hours worked for computing minimum wage (**Example 10**). On the contrary, meal break falling outside the provisions on hours worked in the Minimum Wage Ordinance is not included in the hours worked for computing minimum wage (**Example 11**).
- * Besides, if meal break is regarded as hours worked by the employee according to his employment contract or agreement with the employer, such time must also be taken into account in computing minimum wage (**Example 12**). Although the Employment Ordinance does not provide specific regulation for meal break, after an employer and his employee have included meal break as hours worked by the employee in accordance with their employment contract or agreement, the employer shall not unilaterally vary or remove such contractual terms or agreement concerning hours worked. The Employment Ordinance already accords protection to employees in this respect.

³ That is, 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.

Example 10

An employee has his meal break from 1:00 p.m. to 2:00 p.m. At the same time, he remains in attendance at his post for the purpose of doing work in accordance with the contract of employment or with the agreement or at the direction of the employer. Such meal break is hours worked for computing minimum wage.

Example 11

An employee has his meal break from 1:00 p.m. to 2:00 p.m. Owing to personal reasons, he takes his meal in the workshop. Although he is in the workshop during the period from 1:00 p.m. to 2:00 p.m., he is not, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance in the workshop for the purpose of doing work or receiving training. For the purpose of computing minimum wage, the workshop from 1:00 p.m. to 2:00 p.m. is not his place of employment as defined under the Minimum Wage Ordinance, and the hours worked for computing minimum wage shall not count such meal break.

Example 12

With circumstances the same as **Example 11** above, whereas meal break is regarded as hours worked under the employment contract or agreement between the employer and the employee, the time from 1:00 p.m. to 2:00 p.m. shall be counted in computing minimum wage.

4 Application of the Ordinance

A. How to count hours worked

■ On-call or standby time

- * On-call or standby arrangements depend on the terms in the contract of employment or the agreement between the employer and the employee. Thus, there is a diversity of on-call or standby arrangements for different industries and establishments.
- * According to the Minimum Wage Ordinance, if an employee while being on-call or standby is **in attendance at a place of employment**⁴ in accordance with the contract of employment or with the agreement or at the direction of the employer, such on-call or standby time is hours worked for computing minimum wage. On the other hand, if he is not in attendance at a place of employment during the on-call or standby time, such time is not hours worked for computing minimum wage.
- * The employer and the employee may also agree to reckon on-call or standby time as the hours worked by the employee for computing minimum wage. Should on-call or standby time be regarded as hours worked by the employee under his employment contract or agreement with the employer, such on-call or standby time should also be counted in computing minimum wage. If the employer and the employee have included on-call or standby time as hours worked by the employee in accordance with their employment contract or agreement, the employer shall not unilaterally vary or remove such contractual terms or agreement concerning hours worked.

Example 13

An employee's working hours are from 9:00 a.m. to 6:00 p.m. According to the contract of employment, he and his colleagues are required to take turns for attendance at the workplace from 7:00 p.m. to 10:00 p.m. for on-call duties once a week in order to provide emergency services upon clients' calls. During the on-call time, he is not allowed to leave the workplace without permission. Since the employee in this example is, in accordance with the contract of employment, in attendance at the place of employment while being on-call, the on-call time from 7:00 p.m. to 10:00 p.m. is hours worked for computing minimum wage.

⁴ 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.

■ Other situations

- * In addition to the more common patterns of working hours, different operational and work requirements may exist in various industries or establishments to cater for their sector-specific and operational needs. The job requirements also vary tremendously according to the multifarious terms of employment and agreements between employers and employees in different industries and scenarios.
- * Hence, the Minimum Wage Ordinance does not seek to provide an exhaustive list of the circumstances of hours worked for the purpose of computing minimum wage. 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.

B. Employer to pay the balance to employee whose wages are less than minimum wage

- * An employee is entitled to be paid wages in respect of any wage period of not less than the 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. Even if the hour worked is less than one whole hour, the minimum wage should be computed based on the actual period of time worked.

$$\begin{array}{ccc}
 \text{Minimum wage} & = & \text{Total number of hours worked by the employee in the wage period} \times \text{SMW rate (i.e. \$32.5 per hour with effect from 1 May 2015)}
 \end{array}$$

Example 14

The total number of hours worked by an employee in a wage period, including overtime of eight hours and 45 minutes, is 208 hours and 45 minutes (i.e. 208.75 hours). The SMW rate is \$32.5 per hour. The minimum wage of the employee according to the total number of hours worked for that wage period shall be:

$$\begin{array}{l}
 208.75 \text{ hours (total number of hours worked)} \times \$32.5 \text{ (SMW rate)} \\
 = \$6,784.4 \text{ (minimum wage)}
 \end{array}$$

- * If the wages payable to the employee in respect of the wage period are less than the 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. This additional remuneration also applies, among others, to the calculation of the following :
 - ▶ wages or any other sum payable under the Employment Ordinance
 - ▶ ex gratia payment under the Protection of Wages on Insolvency Ordinance
 - ▶ mandatory contributions under the Mandatory Provident Fund Schemes Ordinance
 - ▶ monthly earnings of the employee under the Employees’ Compensation Ordinance or the Occupational Deafness (Compensation) Ordinance
- * The definition of “wage period” in the Minimum Wage Ordinance is aligned with that under the Employment Ordinance. Unless the contrary is proved, a wage period is one month. No matter how the wage of an employee is calculated (e.g. monthly-rated, weekly-rated, daily-rated, hourly-rated, piece-rated, etc.), the minimum wage is still derived by multiplying the total number of hours worked in a wage period by the SMW rate. Taking a piece-rated employee as an example, with his total number of hours worked in a wage period multiplied by the SMW rate, this amount is his minimum wage for that wage period.
- * Minimum wage is calculated with reference to the whole wage period. The basic principle is that hourly wages payable to an employee in respect of any wage period should be no less than the SMW rate **on average** for the total number of hours worked in the wage period.
- * Failure to pay minimum wage amounts to a breach of the wage provisions under the Employment Ordinance. According to the Employment Ordinance, an employer who wilfully and without reasonable excuse fails to pay wages to an employee when it becomes due is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years.

4 Application of the Ordinance

B. Employer to pay the balance to employee whose wages are less than minimum wage

- * The Labour Tribunal and the Minor Employment Claims Adjudication Board⁵ have jurisdiction to deal with claims for sums of money arising from a breach of SMW.
- * Since statutory entitlements under the Employment Ordinance (e.g. holiday pay, annual leave pay, sickness allowance, maternity leave pay, paternity leave pay, severance payment, long service payment, wages in lieu of notice, etc.) are calculated according to the definition of wages, the amount of these statutory entitlements should also take into account the additional remuneration (where applicable). If these statutory entitlements under the Employment Ordinance are calculated and paid on the basis of wages less than the minimum wage, it would amount to under-payment of such statutory entitlements. For offences and penalties, please refer to *A Concise Guide to the Employment Ordinance*.
- * As SMW is part of wages, principal contractors and superior sub-contractors engaged in construction works must, in accordance with the Employment Ordinance, bear the liability of the first two months' unpaid wages of their sub-contractors' employees if their sub-contractors fail to pay SMW in accordance with the Minimum Wage Ordinance.

⁵ The Minor Employment Claims Adjudication Board (the Board) adjudicates employment claims involving not more than 10 claimants for a sum of money not exceeding \$8,000 per claimant. Employment claims falling outside the jurisdiction of the Board are heard by the Labour Tribunal.

How to determine

* In determining whether wages for the employee meet the minimum wage, the following two factors should be considered :

- ① What is the minimum wage according to the total number of hours worked for the employee for the wage period?
(i.e. total number of hours worked × SMW rate)
- ② What is the wages payable to the employee in respect of the wage period?
(Please refer to the following section [C. Wages payable to employee in respect of wage period](#))

If ② is not less than ① ⇒ the minimum wage requirement is met

If ② is less than ① ⇒ employer has to pay additional remuneration

Additional remuneration

=

Minimum wage – Wages payable

4 Application of the Ordinance

C. Wages payable to employee in respect of wage period

C. Wages payable to employee in respect of wage period

- * The definition of wages for SMW is aligned closely with that under the Employment Ordinance. Unless otherwise specified in the Employment Ordinance, “wages” means all remuneration, earnings, allowances (including travelling allowances, attendance allowances, commission, overtime pay), tips and service charges⁶, 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 exclusions⁷.
- * For the purpose of computing minimum wage, the Minimum Wage Ordinance 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, as explained below.

(1) Payment made to an employee for any time that is not hours worked

- * Minimum wage is derived by multiplying an employee’s total number of hours worked in a wage period by the SMW rate. 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

⁶ According to the Employment Ordinance, tips and service charges, in relation to wages, means sums of money received, directly or indirectly, by an employee in the course of and in connection with his employment which are –

- ▶ paid or derived from payments made by persons other than the employer; and
- ▶ recognised by the employer as part of the employee’s wages.

⁷ According to the Employment Ordinance, the following items are not wages :

- ▶ the value of any accommodation, education, food, fuel, water, light or medical care provided by the employer;
- ▶ employer’s contribution to any retirement scheme;
- ▶ commission, attendance allowance or attendance bonus which is of a gratuitous nature or is payable only at the discretion of the employer;
- ▶ non-recurrent travelling allowance or the value of any travelling concession or travelling allowance for actual expenses incurred by the employment;
- ▶ any sum payable to the employee to defray special expenses incurred by him by the nature of his employment;
- ▶ end of year payment, or annual bonus which is of a gratuitous nature or is payable only at the discretion of the employer; and
- ▶ gratuity payable on completion or termination of a contract of employment.

day pay, holiday pay, annual leave pay, maternity leave pay, paternity leave pay, sickness allowance, etc.) must **not** be counted as part of the wages payable to the employee in the calculation of minimum wage.

Example 15

Assuming

- * an employee with monthly salary of \$8,700 has worked 24 days in a wage period of 30 days with the total number of hours worked being 204 hours
- * in this wage period, payments made to the employee for time that is not hours worked include rest day pay for 4 days, statutory holiday pay for 1 day and annual leave pay for 1 day
- * SMW rate : \$32.5 per hour

Calculation⁸

- ① Minimum wage according to the total number of hours worked for this month :
\$6,630 (204 hours × \$32.5)
 - ② Wages payable to the employee in respect of this month :
\$6,968 (\$8,700 - rest day pay of \$1,160⁹ - statutory holiday pay of \$286¹⁰ - annual leave pay of \$286¹⁰)
- ⇒ Since ② is not less than ①, the monthly salary of \$8,700 of the employee has met the minimum wage requirement.

⁸ The SMW rate is \$32.5 per hour with effect from 1 May 2015.

⁹ Whether rest days are with or without pay and the calculation method of rest day pay are employment terms in accordance with the employment contract or agreement between employers and employees. In the present example, it is assumed that rest day pay is the payment made to the employee for time that is not hours worked and rest day pay for 4 days is \$1,160 (i.e. \$8,700 ÷ 30 days × 4 rest days). 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.

¹⁰ Calculating statutory holiday pay and annual leave pay on the basis of the 12-month average wages assuming that the monthly salary was \$8,700 in the past 12 months without any periods or wages to be disregarded :

$$\frac{8,700 \times 12 - 0 (\$)}{365 - 0 (\text{days})} = \$286$$

For details about calculating statutory entitlements on the basis of the 12-month average wages, please refer to *A Concise Guide to the Employment Ordinance*.

4 Application of the Ordinance

C. Wages payable to employee in respect of wage period

Examples on monthly-rated, daily-rated and piece-rated employees

Example 16 (monthly-rated)

Assuming

- * the following employment terms according to the contract of employment :
 - ▶ remuneration : \$8,500 per month with **paid** rest days on Sundays
 - ▶ working hours :
Monday to Saturday – 9:00 a.m. to 5:00 p.m. including 1-hour **paid** meal break which is regarded as hours worked as agreed between the employer and the employee. The employee is entitled to an overtime pay of \$40 per hour.
- * total number of hours worked in this month : 220 hours (including 4 hours of overtime)¹¹
- * SMW rate : \$32.5 per hour

Calculation⁸

- ① Minimum wage according to the total number of hours worked for this month :
\$7,150 (220 hours × \$32.5)
 - ② Wages payable to the employee in respect of this month :
\$7,563.2 (\$8,500 + overtime pay (4 × \$40) - rest day pay of \$1,096.8¹²)
- ⇒ Since ② is not less than ①, the monthly salary together with overtime pay of the employee, totaling \$8,660, has met the minimum wage requirement.

¹¹ Assumptions : There are 31 days (including 4 Sundays) in this month and the actual total number of hours worked is 220 hours (27 days from Monday to Saturday × 8 hours per day, and 4 hours' overtime). In this example, as meal break is regarded as working hours of the employee in accordance with the contract of employment or agreement with the employer, it is included in computing minimum wage.

¹² Assumptions : Rest day pay is the payment made to the employee for time that is not hours worked. Rest day pay for the 4 Sundays is $\$8,500 \div 31 \text{ days} \times 4 \text{ days} = \$1,096.8$.

Example 17 (monthly-rated)

Assuming

- * the following employment terms according to the contract of employment :
 - ▶ remuneration : \$7,500 per month with **paid** rest days on Sundays
 - ▶ working hours :
 Monday to Friday – 9:00 a.m. to 5:00 p.m. excluding 1-hour meal break which is regarded as **paid** according to the wage calculation method all along adopted by the employer and the employee;
 Saturday – 9:00 a.m. to 1:00 p.m. (same daily wages for Monday to Saturday)
- * total number of hours worked in this month : 170 hours¹³
- * SMW rate : \$32.5 per hour

Calculation⁸

- ① Minimum wage according to the total number of hours worked for this month :
\$5,525 (170 hours × \$32.5)
 - ② Wages payable to the employee in respect of this month :
\$5,812.5 (\$7,500 – rest day pay of \$1,000¹⁴ – meal break pay of \$687.5¹⁵)
- ⇒ Since ② is not less than ①, the monthly salary of \$7,500 of the employee has met the minimum wage requirement.

¹³ Assumptions : There are 30 days (including 4 Saturdays and 4 Sundays) in this month and the actual total number of hours worked is 170 hours (22 days from Monday to Friday × 7 hours per day + 4 Saturdays × 4 hours per day).

¹⁴ Assumptions : Rest day pay is the payment made to the employee for time that is not hours worked. Rest day pay for the 4 Sundays is : \$7,500 ÷ 30 days × 4 days = \$1,000.

¹⁵ Whether meal breaks are with or without pay and the calculation method of meal break pay are employment terms in accordance with the employment contract or agreement between employers and employees. In the present example, it is assumed that there are 30 days in the month. Meal break pay is the payment made to the employee for time that is not hours worked. With the same hourly wages for working hours and meal break in the 22 days from Monday to Friday, meal break pay is \$687.5 (i.e. \$7,500 ÷ 30 days ÷ 8 hours × 1 hour × 22 meal breaks). The amount of meal break pay may vary if the number of calendar days or the number of working days in the relevant month or its calculation method as agreed between employers and employees is different from this example.

4 Application of the Ordinance

C. Wages payable to employee in respect of wage period

Example 18 (daily-rated)

Assuming

- * the following employment terms according to the contract of employment :
 - ▶ remuneration : \$270 per day, wage period is a calendar month, with **no-pay** rest days on Sundays
 - ▶ working hours :
Monday to Saturday – 9:00 a.m. to 5:00 p.m. including 1-hour **paid** meal break
- * total number of hours worked in this month : 216 hours¹⁶
- * SMW rate : \$32.5 per hour

Calculation⁸

- ① Minimum wage according to the total number of hours worked for this month :
\$7,020 (216 hours × \$32.5)
 - ② Wages payable to the employee in respect of this month :
\$7,290 (27 days × \$270 per day)¹⁷
- ⇒ Since ② is not less than ①, the remuneration of \$7,290 of the employee has met the minimum wage requirement.

¹⁶ Assumptions : There are 31 days (including 4 Sundays) in this month and the actual total number of hours worked is 216 hours (27 days from Monday to Saturday × 8 hours per day). In this example, as meal break is regarded as working hours of the employee in accordance with the contract of employment or agreement with the employer, it is included in computing minimum wage.

¹⁷ As the employee in this example is not entitled to payment for time that is not hours worked, no deduction from his remuneration is required in computing his wages payable in respect of that month.

Example 19 (piece-rated)

Assuming

- * the following employment terms according to the contract of employment :
 - ▶ remuneration : piece-rated at \$100 per piece, with **no-pay** meal break; wage period is a calendar month; total remuneration for this month is \$6,500 ($\100×65 pieces)
- * total number of hours worked in this month : 202 hours
- * SMW rate : \$32.5 per hour

Calculation⁸

- ① Minimum wage according to the total number of hours worked for this month :
 $\$6,565$ ($202 \text{ hours} \times \32.5)
 - ② Wages payable to the employee in respect of this month : $\$6,500$ ¹⁷
- ⇒ Since ② is less than ①, apart from paying wages of \$6,500, the employer has to pay additional remuneration of \$65 ($\$6,565 - \$6,500$), i.e. $\$6,565$ ($\$6,500 + \65) **in total**, to meet the minimum wage requirement.

4 Application of the Ordinance

C. Wages payable to employee in respect of wage period

Example 20 (monthly-rated)

Assuming

- * the following employment terms according to the contract of employment :
 - ▶ remuneration : \$12,000 per month with 1 **paid** rest day per week
 - ▶ working hours :
6 days per week with 12 working hours per day including 1-hour **paid** meal break which is regarded as hours worked as agreed between the employer and the employee
- * total number of hours worked in this month : 324 hours¹⁸
- * SMW rate : \$32.5 per hour

Calculation⁸

- ① Minimum wage according to the total number of hours worked for this month :
\$10,530 (324 hours × \$32.5)
 - ② Wages payable to the employee in respect of this month :
\$10,451.6 (\$12,000 – rest day pay of \$1,548.4¹⁹)
- ⇒ Since ② is less than ①, apart from paying monthly salary of \$12,000, the employer has to pay additional remuneration of \$78.4 (\$10,530 – \$10,451.6), i.e. **\$12,078.4** (\$12,000 + \$78.4) **in total**, to meet the minimum wage requirement.

¹⁸ Assumptions : There are 31 days (including 4 rest days) in this month and the actual total number of hours worked is 324 hours (27 days × 12 hours per day). In this example, as meal break is regarded as working hours of the employee in accordance with the contract of employment or agreement with the employer, it is included in computing minimum wage.

¹⁹ Assumptions : Rest day pay is the payment made to the employee for time that is not hours worked. Rest day pay for 4 days is : \$12,000 ÷ 31 days × 4 days = \$1,548.4.

Example 21 (monthly-rated)

Assuming

- * the following employment terms according to the contract of employment :
 - ▶ remuneration : \$6,500 per month with **no-pay** rest days on Sundays
 - ▶ working hours :
 - 6 days per week with 7 working hours per day, excluding a 1-hour **no-pay** meal break daily
- * total number of hours worked in this month : 189 hours²⁰
- * SMW rate : \$32.5 per hour

Calculation⁸

- ① Minimum wage according to the total number of hours worked for this month :
 - \$6,142.5** (189 hours × \$32.5)
 - ② Wages payable to the employee in respect of this month : **\$6,500**¹⁷
- ⇒ Since ② is not less than ①, the monthly salary of \$6,500 of the employee has met the minimum wage requirement.

²⁰ Assumptions : There are 31 days (including 4 Sundays) in this month and the actual total number of hours worked is 189 hours (27 days from Monday to Saturday × 7 hours per day). In **Examples 21 and 22**, as there is no agreement between the employer and the employee that meal break is the employee's working hours and the employee's meal break does not fall under the circumstances of hours worked as specified in the Minimum Wage Ordinance, it is not necessary to include such meal break in computing minimum wage (Please refer to the section on "Meal break" above).

4 Application of the Ordinance

C. Wages payable to employee in respect of wage period

Example 22 (monthly-rated)

Assuming

- * the following employment terms according to the contract of employment :
 - ▶ remuneration : \$9,500 per month with 1 **no-pay** rest day per week
 - ▶ working hours :
6 days per week with 11 working hours per day, excluding a 1-hour **no-pay** meal break daily
- * total number of hours worked in this month : 297 hours²¹
- * SMW rate : \$32.5 per hour

Calculation⁸

- ① Minimum wage according to the total number of hours worked for this month :
\$9,652.5 (297 hours × \$32.5)
 - ② Wages payable to the employee in respect of this month : **\$9,500**¹⁷
- ⇒ Since ② is less than ①, apart from paying monthly salary of \$9,500, the employer has to pay additional remuneration of \$152.5 (\$9,652.5 - \$9,500), i.e. **\$9,652.5** (\$9,500 + \$152.5) **in total**, to meet the minimum wage requirement.

²¹ Assumptions : There are 31 days (including 4 rest days) in this month and the actual total number of hours worked is 297 hours (27 days × 11 hours per day).

(2) Deductions from wages

- * Deductions from the wages of an employee made under the specified provisions of the Employment Ordinance in respect of any wage period **must be counted** as part of the wages payable in respect of that wage period. These specified provisions refer to section 25(3) and section 32(2) (b), (c), (d), (e), (f), (g), (ga), (h) and (i) of the Employment Ordinance. For these provisions, please refer to the text of the Employment Ordinance and *A Concise Guide to the Employment Ordinance*. There are some examples of application below.

Example 23

An employee has damaged the goods of the employer by neglect or default. The employer deducts \$100, equivalent to the value of the damage, from the wages of this employee in respect of January in accordance with the Employment Ordinance.

- ⇒ In determining whether the wages of this employee meet the minimum wage requirement, this deducted amount of \$100 is counted as wages payable in respect of January.

Example 24

An employer has made a loan to an employee. With the employee's written consent, the employer deducts \$200 from the wages of this employee in respect of February for the recovery of the loan in accordance with the Employment Ordinance.

- ⇒ In determining whether the wages of this employee meet the minimum wage requirement, this deducted amount of \$200 is counted as wages payable in respect of February.

4 Application of the Ordinance

C. Wages payable to employee in respect of wage period

Example 25

An employer deducts \$500 from an employee's wages in respect of May to make contributions to the Mandatory Provident Fund on behalf of the employee (i.e. employee's contributions for Mandatory Provident Fund).

⇒ In determining whether the wages of this employee meet the minimum wage requirement, this deducted amount of \$500 is counted as wages payable in respect of May.

Example 26

An employer deducts \$400 from an employee's wages in respect of April for the recovery of an over-payment of wages made to the employee in the wage period of March in accordance with the Employment Ordinance.

⇒ In determining whether the wages of this employee meet the minimum wage requirement, this amount of \$400 is counted as wages payable in respect of April, not as wages payable in respect of March.

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(3) Advance or over-payment of wages

- * An advance or over-payment of wages made to an employee in any wage period must **not** be counted as part of the wages payable in respect of that wage period.

Example 27

In May, an employer has made an advance payment of wages of \$500 to an employee from his wages payable in respect of June. The employer subsequently deducts such amount from the employee's wages payable in respect of June in accordance with the Employment Ordinance.

- ⇒ In determining whether the wages of this employee meet the minimum wage requirement, this amount of \$500 is counted as wages payable in respect of June, not as wages payable in respect of May.

(4) Payment of arrears of wages in respect of an earlier wage period

- * A payment of arrears of wages in respect of an earlier wage period made to an employee in any wage period must **not** be counted as part of the wages payable in respect of the wage period in which it is paid.

Example 28

An employer has defaulted payment of wages of \$600 in respect of July to an employee, and pays such arrears of wages in the wage period of August.²²

- ⇒ In determining whether the wages of this employee meet the minimum wage requirement, this amount of \$600 is counted as wages payable in respect of July, not as wages payable in respect of August.

²² According to the Employment Ordinance, an employer who wilfully and without reasonable excuse fails to pay wages to an employee when it becomes due is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years.

(5) Counting of commission

- * 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 (no matter the employer has paid it or not when it has been due²²) (**Example 29**). 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 (**Example 30**).

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.

4 Application of the Ordinance

C. Wages payable to employee in respect of wage period

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 (**Examples 31 and 32**). 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.

Example 29

An employee is entitled to a basic salary plus commission **according to the contract of employment**. His wage period is each calendar month.

⇒ In determining whether the wages of this employee meet the minimum wage requirement, wages payable in respect of each month include the basic salary and commission, no matter whether the employer has paid it or not.²²

Example 30

An employee is entitled to a basic salary plus commission **according to the contract of employment**. His wage period is each calendar month. According to the contract of employment, commission is payable in respect of a number of wage periods.

⇒ In determining whether the wages of this employee meet the minimum wage requirement, wages payable in respect of each month include the basic salary as well as the commission payable in respect of the corresponding month, no matter whether the employer has paid it or not.²²

Example 31

An employer pays an employee commission of \$1,000 (which is originally payable in respect of the wage period of March) on 31 January with the **prior agreement** of the employee.

- ⇒ In determining whether the wages of this employee meet the minimum wage requirement, this commission of \$1,000 is counted as wages payable in respect of January²³, not as wages payable in respect of March.

Example 32

An employer pays an employee commission of \$2,000 and \$3,000 on 8 April and 7 June respectively with the **prior agreement** of the employee. The commission is originally payable in respect of the wage period of July.

- ⇒ In determining whether the wages of this employee meet the minimum wage requirement, the commission of \$2,000 is counted as wages payable in respect of April²⁴ and the commission of \$3,000 is counted as wages payable in respect of May²⁵, both not being counted as wages payable in respect of July.

²³ Being paid in the period from 8 January to 7 February, the commission is counted as wages payable in respect of January.

²⁴ Being paid in the period from 8 April to 7 May, the commission is counted as wages payable in respect of April.

²⁵ Being paid in the period from 8 May to 7 June, the commission is counted as wages payable in respect of May.

D. Transitional provisions

- * If the commencement date of SMW (i.e. 1 May 2011) falls within the wage period of an employee, any hours worked before the commencement date and wages payable for such hours should not be taken into account in calculating minimum wage. Specifically, only hours worked on or after 1 May 2011 and wages payable for such hours are relevant for the calculation of minimum wage.
- * If 1 May 2015 falls within a wage period, the SMW rate of \$32.5 per hour applies to any hour worked on or after 1 May 2015 in calculating minimum wage for that wage period.

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E. No contracting out

- * 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, any agreement made under the employment contract between an employer and an employee cannot reduce the latter's entitlement to SMW.
- * Same as the Employment Ordinance, a contract of employment is an agreement on the employment conditions made between an employer and an employee. The agreement can be made orally or in writing and it includes both express and implied terms.

5

Employer to keep records of the total number of hours worked by employee (where applicable)

- * The wage and employment records kept by an employer under the Employment Ordinance should include the total number of hours (including any part of an hour)²⁶ worked by the employee in a wage period if :
 - ▶ SMW applies to the employee (Please refer to [3 Coverage of the Ordinance](#) above); and
 - ▶ wages payable in respect of that wage period (Please refer to [4 Application of the Ordinance](#) (the section on [C. Wages payable to employee in respect of wage period](#)) above) are **less than \$13,300 per month**²⁷.

Therefore, when wages payable to an employee in respect of a wage period are at **\$13,300²⁷ or above per month**, the wage and employment records kept by an employer according to the Employment Ordinance are not required to include the total number of hours worked by the employee in that wage period.

Note :

The definition of wages for the monthly monetary cap (\$13,300²⁷) in exempting employers from the requirement to keep records of the total number of hours worked by employees is the same as that in the Minimum Wage Ordinance. Payment made to the employee in a wage period for any time that is not hours worked (e.g. rest day pay, holiday pay, annual leave pay, maternity leave pay, paternity leave pay, sickness allowance, etc.) should not be counted as part of the wages payable in respect of the wage period. Therefore, in determining whether the wages payable to an employee in respect of a wage period are not less than the monthly monetary cap, these payments, where applicable, should not be included. In addition, the Minimum Wage Ordinance also sets out whether some other sums should be counted as wages payable in respect of a wage period in order to determine whether the wages meet the minimum wage requirement. For details, please refer to [4 Application of the Ordinance](#) (the section on [C. Wages payable to employee in respect of wage period](#)) above.

²⁶ This does not include hours worked before the commencement date of SMW (i.e. 1 May 2011).

²⁷ With effect from 1 May 2015, the monetary cap is increased from \$12,300 to \$13,300 per month.

Example 33

Assuming the following employment terms according to the contract of employment :

An employee's wage period is each calendar month and he is entitled to a monthly salary of \$14,000 with **paid** rest days. In the wage period of May, payments made to the employee for time that is not hours worked in the wage period are rest day pay for 4 days and statutory holiday pay for 1 day. Whether the wages payable meet the monthly monetary cap is calculated as follows :

monthly salary of \$14,000 - rest day pay of \$1,806.5²⁸ - statutory holiday pay of \$460.3²⁹ = \$11,733.2

⇒ Since the amount calculated is **less than** the monthly monetary cap of **\$13,300**²⁷, the employer must keep records of the total number of hours worked by the employee in that wage period.

Example 34

Assuming the following employment terms according to the contract of employment :

An employee's wage period is each calendar month and he is entitled to a monthly salary of \$14,000 with **no-pay** rest days. In the wage period of May, payment made to the employee for time that is not hours worked in the wage period is statutory holiday pay for 1 day. Whether the wages payable meet the monthly monetary cap is calculated as follows :

²⁸ Assumptions : Rest day pay is the payment made to the employee for time that is not hours worked. Rest day pay for 4 days is : \$14,000 ÷ 31 days × 4 days = \$1,806.5.

²⁹ Calculating statutory holiday pay on the basis of the 12-month average wages assuming that the monthly salary was \$14,000 in the past 12 months without any periods or wages to be disregarded :

$$\frac{14,000 \times 12 - 0 (\$)}{365 - 0 \text{ (days)}} = \$460.3$$

For details about calculating statutory entitlements on the basis of the 12-month average wages, please refer to *A Concise Guide to the Employment Ordinance*.

5 Employer to keep records of the total number of hours worked by employee (where applicable)

monthly salary of \$14,000 - statutory holiday pay of $\$536.7^{30} = \$13,463.3$

⇒ Since the amount calculated is **not less than** the monthly monetary cap of **\$13,300²⁷**, the wage and employment records are not required to include the total number of hours worked in that wage period.

* If the wage period of an employee is not a calendar month, the monetary cap of **\$13,300²⁷ per month** on keeping records of the total number of hours worked is calculated on a proportional basis (**Examples 35 and 36**).

* Neither the Employment Ordinance nor the Minimum Wage Ordinance specifies the form of 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, paternity leave and holidays entitled and taken, together with details of payments made in respect of such periods

* While the employer is not required to keep the records of the total number of hours worked by the employee when wages payable in respect of a wage period are at **\$13,300²⁷ or above per month**, it is pertinent to note that the employee is still entitled to be paid wages in respect of that wage period of not less than the minimum wage.

³⁰ Calculating statutory holiday pay on the basis of the 12-month average wages assuming that the monthly salary was \$14,000 in the past 12 months without any periods or wages to be disregarded except no-pay rest days :

$$\frac{14,000 \times 12 - 0 (\$)}{365 - 52 (\text{days})} = \$536.7$$

For details about calculating statutory entitlements on the basis of the 12-month average wages, please refer to *A Concise Guide to the Employment Ordinance*.

Example 35

The wage period of an employee is half-monthly, lasting from the 1st day to the 15th day and from the 16th day to the last day of a month. Taking the two wage periods in August as an example, the monetary cap applicable to this employee for the records of the total number of hours worked is calculated proportionally as follows –

(a) Wage period from 1 to 15 August :

\$13,300 × 15 days ÷ 31 days (i.e. the ratio that the period 1 to 15 August bears to August) = \$6,435.5

⇒ If wages payable in respect of the above wage period are at \$6,435.5 or above, the wage and employment records are not required to include the total number of hours worked in that wage period.

(b) Wage period from 16 to 31 August :

\$13,300 × 16 days ÷ 31 days (i.e. the ratio that the period 16 to 31 August bears to August) = \$6,864.5

⇒ If wages payable in respect of the above wage period are at \$6,864.5 or above, the wage and employment records are not required to include the total number of hours worked in that wage period.

5 Employer to keep records of the total number of hours worked by employee (where applicable)

Example 36

The wage period of an employee runs from the 16th day of each month to the 15th day of the following month. Taking the wage period of 16 August to 15 September as an example, the monetary cap applicable to this employee for the records of the total number of hours worked is calculated proportionally as follows –

$\$13,300 \times 16 \text{ days} \div 31 \text{ days}$ (i.e. the ratio that the period 16 to 31 August bears to August) + $\$13,300 \times 15 \text{ days} \div 30 \text{ days}$ (i.e. the ratio that the period 1 to 15 September bears to September) = \$13,514.5

⇒ If wages payable in respect of the above wage period are at \$13,514.5 or above, the wage and employment records are not required to include the total number of hours worked in that wage period.

Note :

- * According to the Employment Ordinance, every employer must at all times keep a record setting out the wage and employment history of each employee covering the period of his employment during the preceding 12 months, including the total number of hours worked (where applicable). The wage and employment records must be kept at the employer's place of business or at the place where the employee is employed, and they should also be kept for a period of another six months after the employee ceases to be employed. An employer who fails to keep the wage and employment records is liable to prosecution and, upon conviction, to a fine of \$10,000. For information on the provisions of the Employment Ordinance, please refer to *A Concise Guide to the Employment Ordinance*.
- * 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.

Appendix 1

Exemption of specified student interns and work experience students

- * SMW does not apply to specified student interns as well as work experience students during a period of exempt student employment.

A. Specified student interns

- * A specified student intern is :
 - ▶ a student undergoing a period of work arranged or endorsed by a **local education institution** specified in Schedule 1 to the Minimum Wage Ordinance, and the work is a compulsory or elective component of the requirements of a full-time accredited programme being provided by the institution to the student; or
 - ▶ a student resident in Hong Kong and undergoing a period of work arranged or endorsed by an institution, and the work is a compulsory or elective component of the requirements of a full-time education programme for a **non-local academic qualification** at degree or higher level being provided by the institution to the student.

B. Work experience students during a period of exempt student employment

- * A work experience student is :
 - ▶ a student who is enrolled in a full-time accredited programme provided by a **local education institution** specified in Schedule 1 to the Minimum Wage Ordinance; or
 - ▶ a student who is resident in Hong Kong and enrolled in a full-time education programme for a **non-local academic qualification** at degree or higher level

and is under the age of 26 years at the beginning of employment. The work experience student may agree with the employer to have a continuous period of up to 59 days³¹ as exempt student employment if :

³¹ This does not include any employment period before the commencement date of SMW (i.e. 1 May 2011).

- (a) the student has not commenced another exempt student employment period within the same calendar year³¹ (whether under the employment of the same employer or not) (**Example 37**); and
- (b) the student has made a statutory declaration verifying the fact in (a) above and provided the declaration (or copy) to the employer.

Example 37

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 year³². 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 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.

³² A calendar year runs from 1 January to 31 December.

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)
- 12 Bodies established under the Vocational Training Council Ordinance (Cap. 1130)
- 13 Schools registered or provisionally registered under the Education Ordinance (Cap. 279)³³

³³ 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 SMW, 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.

Note :

- * The Labour Department has published a booklet on *Statutory Minimum Wage : Notes for Student Employees and Employers* on the details of the exemption.
- * 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.
- * Since internships undertaken by work experience students are not necessarily curriculum-related or arranged/endorsed by the institutions they are studying, the Minimum Wage Ordinance sets out the above restrictions on age, duration of exempt student employment and that the student may commence a period of exempt student employment at most once in a calendar year. These restrictions do not apply to specified student interns whose internships must be arranged/endorsed by the institutions they are studying and form a compulsory/elective component of their programmes.
- * The exemption from SMW 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.

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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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Appendix 1

Appendix 2

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