

**Briefing on  
Provisions and Applications  
Of the  
Minimum Wage Ordinance**

# Disclaimer

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- **Not a substitute for legal advice**
- **Information and materials are for sharing purpose only**
- **The relevant Ordinances themselves remain the sole authority for the provisions of the law explained**

# **Employment (Amendment) Ordinance 2007**

**Passed 13 July 2007**

**Operative Since 1 July 2007**

# Wages

## - modified method of calculating statutory entitlements

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- E(A)O 2007 - operative since 13 July 2007
  - Ensure all components of “**wages**” as defined under the EO including commission of a contractual nature, however designated or calculated, are included in the calculation of **relevant statutory entitlements**
  - **Modified** the method **of calculating** relevant statutory entitlements by reference to 12-month average “wages” earned
  - Any periods and “wages” that fall under the **Disregarding Provisions** shall be excluded
  - Applicable to employee on monthly, daily or piece rated
  - Extended the period of keeping wages and employment records by employers from 6 to 12 months effected on 13 January 2008

# Wages

## - components

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- All **remuneration**, earnings, allowances, tips and service charges, however designated or calculated, payable to an employee in respect of **work done or work to be done**
  - allowances including traveling allowance, attendance allowances, commission and overtime pay are within the definition of wages
  - employee's entitlement to **end of year payment, maternity leave pay, severance payment, long service payment, sickness allowance, holiday pay, annual leave pay and wages in lieu of notice** are calculated according to the above definition of wages
  - overtime pay is included if
    - it is of a **constant character**, or
    - its **monthly average** over the **past 12 months** is **not less than 20%** of the **average monthly wages** of the employee during the **same period**

# Wages

## - components : exclusions

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- Value of 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** traveling allowance or the value of any traveling concession or traveling 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
- **Gratuity** payable on completion

# Wages

## - relevant statutory entitlements

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- Refer to wage payable for :
  - Holiday (**statutory**) pay
  - Annual leave pay
  - Sickness allowance and related provisions
  - Maternity leave pay and related provisions
  - End of year payment
  - Wages in lieu of notice for termination and damages for wrongful termination of contract
  
- Exclude
  - **Non statutory** awards of **leave**, i.e. leave awarded by employer, e.g. compassionate leave, study leave, etc.
  - Calculation of **severance pay** or **long service pay**

NOTE : ELIGIBILITY AND PAYMENT RATE

# Wages

## - modified method of calculating statutory entitlements

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- **Modified** the method **of calculating** relevant statutory entitlements by reference to 12-month average “wages” earned
- **Example**
  - Statutory entitlement “New Year Holiday”, 1 January 2011  
is to be determined on
    - the 12-month **average wages** calculated on the basis of the wages earned in the period 1 January 2010 and 31 December 2010



# Wages

## - disregarding provisions

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- **No account** to be taken of **any period** where an employee is **not paid full wages** by reasons of employee taking:
  - Statutory holidays (12 days annually)
  - Annual leave (7 – 14 days annually)
  - Sickness days (statutory entitlement)
  - Maternity leave (10 weeks)
  - **Rest days** (1 in 7 days)
  - **Leave taken with the agreement of the employer** (e.g. paternity leave)
  - **Any period of lay-off**
  - **Leave resulting from a work-related injury** (statutory entitlement)

# Wages

## - example of calculating statutory entitlement

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- Example
  - Statutory entitlement “New Year Holiday”, 1 January 2011  
is to be determined on
    - the 12-month **average wages** calculated on the basis of the wages earned in the period 1 January 2010 and 31 December 2010

# Wages

## - example of calculating statutory entitlement

- Example:
  - Wages earned in the period 1 January 2010 and 31 December 2010 = \$313,700
  - Statutory holiday pay of the “New Year Day”, i.e. 1 January 2011  
=  $\$313,700 / 365 = \$859$

Month	Calendar Days	Total Earnings (\$)		
Jan 10	31	27,500		
Feb	28	25,000		
Mar	31	28,500		
Apr	30	30,200		
May	31	27,500		
Jun	30	25,000		
Jul	31	25,000		
Aug	31	25,000		
Sep	30	25,000		
Oct	31	25,000		
Nov	30	25,000		
Dec	31	25,000		
<b>Total</b>	<b>365</b>	<b>313,700</b>		

Should staff's monthly basic wage of January 2011 remains at \$25,000, his daily wage =  $\$25,000/31 = \$807$

# Wages

## - example of daily wage calculation – disregarding provisions

- Example:
  - Wages earned in the period 1 January 2010 and 31 December 2010 = \$313,700
  - Statutory holiday pay of the “New Year Day”, i.e. 1 January 2011  
 =  $(\$313,700 - \$8,714.77) / (365 - 10.25) = \mathbf{\$860}$

Month	Calendar Days	Unpaid/Partial Leave Days	Total Earnings (\$)	Unpaid Amount (\$)	No. of Month
Jan 10	31	2.25	27,500	2,062.50	0.925
Feb	28	1	25,000	806.45	0.968
Mar	31	0	28,500	0.00	1.000
Apr	30	0	30,200	0.00	1.000
May	31	1	27,500	887.10	0.968
Jun	30	1	25,000	892.86	0.964
Jul	31	1.5	25,000	1,209.68	0.952
Aug	31	1.25	25,000	1,008.06	0.958
Sep	30	0	25,000	0.00	1.000
Oct	31	0	25,000	0.00	1.000
Nov	30	1.25	25,000	1,041.67	0.960
Dec	31	1	25,000	806.45	0.968
<b>Total</b>	<b>365</b>	<b>10.25</b>	<b>313,700</b>	<b>8,714.77</b>	<b>11.663</b>

# Wages

## - example of calculating statutory entitlement

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- **Example: statutory entitlement of the “New Year Day”**
  - **Daily wage before operative of the E(A)O 2007 = \$807**
  - **Statutory entitlement after operative of the E(A)O 2007 = \$860**
  - **Variance = \$ 53**

# **Minimum Wage Ordinance**

**Passed 17 July 2010**

**Statutory Minimum Wage per Hour**

**Operative 1 May 2011**

# Minimum Wage Ordinance

## - application and exemption

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- Application
  - Every employee
- Exemption
  - Persons to whom the **Employment Ordinance does not apply**;
    - Seamen, apprentices, civil servants
  - **Live-in 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 or race;

# Minimum Wage Ordinance

## - application and exemption

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- Exemption – cont'd
  - **student interns** undergoing a period of work **arranged** or **endorsed** by an specified **education institution** in connection with an accredited **program** being provided by the institute to the student, or a student resident in HK and undergoing a period of work arrange or endorsed by an institution in connection with a non-local education program being provided by the institution to the student;
  - **work experience students** who is enrolled in an accredited **program** or is resident in HK and enrolled in a non-local education program and who is engaged under **a contract of employment** at the beginning of which he or she is under the age of **26** years for a period of up to **59** days
- Special arrangement is provided under the Minimum Wage Ordinance so that **persons with disabilities** may choose to undergo a productivity assessment.



# Minimum Wage Ordinance

## - specified education institutes

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### EDUCATION INSTITUTIONS

1. The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap. 444).
2. University of Hong Kong established by the University of Hong Kong Ordinance (Cap. 1053).
3. The Hong Kong Polytechnic University established by The Hong Kong Polytechnic University Ordinance (Cap. 1075).
4. The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap. 1109).
5. Hong Kong Baptist University established by the Hong Kong Baptist University Ordinance (Cap. 1126).
6. City University of Hong Kong established by the City University of Hong Kong Ordinance (Cap. 1132).
7. The Hong Kong Academy for Performing Arts established by The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135).
8. The Hong Kong University of Science and Technology established by The Hong Kong University of Science and Technology Ordinance (Cap. 1141).
9. The Open University of Hong Kong established by The Open University of Hong Kong Ordinance (Cap. 1145).
10. Lingnan University established by the Lingnan University Ordinance (Cap. 1165).
11. Approved post secondary colleges registered under the Post Secondary Colleges Ordinance (Cap. 320).
12. Bodies established under section 6(2)(h) of the Vocational Training Council Ordinance (Cap. 1130).
13. Schools registered or provisionally registered under the Education Ordinance (Cap. 279).

# Minimum Wage Ordinance

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- Statutory minimum wage is to be paid to the employee based on:
  - “hours worked” by an employee
  - in respect of a wage period
  - at a rate of HK\$28 per hour

# Minimum Wage Ordinance

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- “Hours worked”
  - **hours worked** by an employee
  - **in a wage period** include **any time** during which 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 or she is **provided with work or training at that time**; or

# Minimum Wage Ordinance

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- Hours worked (cont'd)
  - **travelling in connection** with his or her employment
  - **excluding** travelling (in either direction) **between** his or her place of residence and his or her place of employment
  - **other than** a place of employment that is **outside Hong Kong** and
  - **is not** his or her **usual place of employment**

# Minimum Wage Ordinance

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- Payment made for “Non Hours Worked”
  - A **payment made** to an employee
  - **in any wage period** of any time that
  - **is not hours worked by the employee**
  - must **not** be **counted** as part of the wages payable in respect of that period

# Minimum Wage Ordinance

## - principles

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- Remunerate employee the **actual hours worked** at the statutory minimum wage rate
  - 1st step
    - **deduct** amount relevant to “**Non Hours Worked**” from remuneration paid in the wage period
  - 2nd step
    - **determine actual hours worked** by employee
    - calculate remuneration at statutory **minimum wage rate (\$28 per hour)**
  - 3rd step
    - pay top up amount as needed

# Minimum Wage Ordinance

## - statutory entitlement calculation

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- Remunerate employee the **actual hours worked** at the statutory minimum wage rate : example – Employee A
  - **remuneration paid** in the wage period = **\$6,120**
  - remunerated “**Non Hours Worked**”  
= 9 days (4 rest days, 3 statutory holidays, 2 annual leave days)
  - **remuneration paid** for “Non Hours Worked” = **\$1,836**
  - amount to be deduced from remuneration paid  
= **\$6,120 - \$1,836 = \$4,284**
  - actual hours worked in wage period = **183**
  - statutory minimum wage = **183 hours x \$28 = \$5,124**
  - top up amount needed = **\$5,124 - \$4,284 = \$840**

THERE IS NO SAFETY PAY LEVEL, IT ALL DEPENDS ON CASE BY CASE

# Minimum Wage Ordinance

## - statutory entitlement calculation

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- Remunerate employee the **actual hours worked** at the statutory minimum wage rate : example – Employee B
  - **remuneration paid** in the wage period = **\$6,120**
  - remunerated “**Non Hours Worked**”  
= 11 days (5 rest days, 2 statutory holidays, 4 additional day off granted by employer)
  - **remuneration paid** for “Non Hours Worked” = **\$2,288**
  - amount to be deduced from remuneration paid  
= **\$6,120 - \$2,288 = \$3,832**
  - actual hours worked in wage period = **152**
  - statutory minimum wage = **152 hours x \$28 = \$4,256**
  - top up amount needed = **\$4,256 - \$3,832 = \$424**

THERE IS NO SAFETY PAY LEVEL, IT ALL DEPENDS ON CASE BY CASE



# Minimum Wage Ordinance

## - calculation of minimum wage : May 2011 (Employee A)

- 1st : 8 hours : regular rest day
- 2nd : 8 hours : Statutory Holiday ( wage to be calculated in accordance with E(A)O 2007)
- 3rd - 6th : 40 hours : hours worked
- 7th : 8 hours : additional day off granted by employer
- 8th : 8 hours : regular rest day
- ⑩ 9th : 8 hours : annual leave (wage to be calculated in accordance with E(A)O 2007)
- 10th : 8 hours : Statutory Holiday (wage to be calculated in accordance with E(A)O 2007)
- 11th - 13th : 27 hours : hours worked
- 14th : 8 hours : additional day off granted by employer
- 15th : 8 hours : regular rest days
- 16th - 31st : 96 hours : hours worked
- 21st, 28th : 16 hours : additional day off granted by employer
- 22nd, 29th : 16 hours : regular rest days

- Remuneration paid in wage period = \$7,200
- Amount paid for “non hours worked” = \$2,688 (96 hours)
- “Net” remuneration = \$4,512
- Statutory minimum wage for hour worked = \$4,564 (163 hours)
- Top up amount needed = \$4,564 vs \$4,512 = \$52

# Minimum Wage Ordinance

## - calculation of minimum wage : May 2011 (Employee B)

● 1st	: 8 hours	: regular rest day	
● 2nd	: 8 hours	: Statutory Holiday	
⑩ 3rd - 7th, 9th (6 days)	: 48 hours	: approved annual leave	wage to be calculated in accordance with E(A)O 2007
			wage to be calculated in accordance with E(A)O 2007
● 8th	: 8 hours	: regular rest day	
● 10th	: 8 hours	: Statutory Holiday	
			wage to be calculated in accordance with E(A)O 2007
● 11th - 14th (Sat pm off)	: 30 hours	: hours worked	
● 15th	: 8 hours	: regular rest day	
● 16th - 21st	: 44 hours	: sick leave	
			wage to be calculated in accordance with E(A)O 2007
● 22nd	: 8 hours	: regular rest day	
● 23rd - 28th (Sat pm off)	: 50 hours	: hours worked	
● 29th	: 8 hours	: regular rest day	
● 30th - 31st	: 16 hours	: hours worked	
● Remuneration paid in wage period	=		\$7,200
● Amount paid for “non hours worked”	=		\$4,144 (148 hours)
● “Net” remuneration	=		\$3,056
● Statutory minimum wage for hour worked	=		\$2,688 (96 hours)
● Top up amount <u>not needed</u>	=		\$2,688 vs \$3,056 = \$368

# Minimum Wage Ordinance

## - calculation of minimum wage : May 2011 (Employee C)

- 1st : 8 hours : regular rest day
- 2nd : 8 hours : Statutory Holiday (wage to be calculated in accordance with E(A)O 2007)
- ⑩ 3rd – 6th : 35 hours : hours worked
- 7th : 8 hours : additional day off granted by employer
- 8th : 8 hours : regular rest day
- 9th : 8 hours : hours worked
- 10th : 8 hours : Statutory Holiday (wages to be calculated in accordance with E(A)O 2007)
- 11th – 13th : 17 hours : hours worked
- 14th : 8 hours : additional day off granted by employer
- 15th : 8 hours : regular rest day
- 16th – 20th : 46 hours : hours worked
- 21st : 8 hours : additional day off granted by employer
- 22nd : 8 hours : regular rest day
- 23rd – 25th : 24 hours : sick leave (wage to be calculated in accordance with E(A)O 2007)
- 26th – 27th : 16 hours : hours worked
- 28th : 8 hours : additional day off granted by employer
- 29th : 8 hours : regular rest day
- 30 - 31st : 20 hours : hours worked

● Remuneration paid in wage period	=	\$7,200
● Amount paid for “non hours worked”	=	\$2,800 (112 hours)
● “Net” remuneration	=	\$4,400
● Statutory minimum wage for hour worked	=	\$3,976 (142 hours)
● Top up amount <u>not needed</u>	=	\$3,976 vs \$4,400 = \$424

# Minimum Wage Ordinance

## - wage record keeping

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- Provision *Minimum Wage Ordinance* s49(A)
  - Monetary cap on keeping records of hours worked
    - HK\$11,500 per month wages payable
      - **it refers to remuneration after deduction payment for “non hours worked”**

# Minimum Wage Ordinance

## - compliance consideration

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- **Hours worked**
  - **what hours should be included / excluded?**
    - **attendance record?**
    - **clocked in / out time?**
    - **approved time sheet?**
    - **traveling time to place of employment outside HK?**
  - **how “an hour” is calculated?**
    - **minute by minute, total for wage period?**
    - **quarterly basis / 30 minutes basis, total on daily basis?**
    - **rounding practice?**
  - **overtime work**
    - **with pay, and pay in the same or next wage period?**
    - **with replacement leave, and clear in the same or next ...wage period?**
  - **meal breaks / rest days with pay?**

# Minimum Wage Ordinance

## - operation and HR policy focus

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- Review operations concerns and people resource deployment needs
- Revisit employee's terms and conditions of employment
- Revamp relevant HR policy and procedure
- Assess staffing cost implication, e.g. MPF contributions, etc.
- Implement attendance system to capture “hours work” and related remuneration
- Train all concerned – managers managing own teams and outsourced workers / vendors to ensure compliance
- Analyze implementation concerns
- Prepare communication plans
- Evaluate employees association / union and media interest

VARIATION OF CONTRACT REQUIRES EMPLOYEE'S CONSENT

# Minimum Wage Ordinance

## - the way forward

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- **Think broad and beyond the box**
  - practice staggered or flexi work hours
  - engage cross agency resources
  - ....
- **Think IT**
  - self-service, and for work hours approval and record
  - HR related and executive information to make informed decisions
- **Get prepared**
  - for more legislations to come
    - maximum work hours?
    - rest days with pay?
    - etc....

IT'S TIME TO DEPLY GROUP RESOURCES TO ADDRESS OPERATION ISSUES

# **Minimum Wage Ordinance**

**Thank your for your participation!**