

PART I

PRELIMINARY

Section 1 Short title and commencement

(1) This Ordinance may be cited as the Minimum Wage Ordinance.

(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

COMMENTARY

Enactment history

[1.01] This section was enacted by the Minimum Wage Ordinance (Commencement) Ordinance 2010.

Definition of "Ordinance"

[1.02] This term is defined by s.3 of the Interpretation and General Clauses Ordinance (Cap.1) as meaning:

- (a) any Ordinance enacted by the Legislative Council;
- (b) any Ordinance adopted by virtue of art.160 of the Basic Law as a law of the Hong Kong Special Administrative Region;
- (c) any subsidiary legislation made under any such Ordinance except any such subsidiary legislation which has pursuant to art.160 of the Basic Law been declared to be in contravention of the Basic Law; and
- (d) any provision or provisions of any such Ordinance or subsidiary legislation.

Definition of "Gazette"

[1.03] This term is also defined by s.3 of the Interpretation and General Clauses Ordinance (Cap.1) as meaning:

- (a) the Government of the Hong Kong Special Administrative Region Gazette and any supplement thereto;
- (b) the Gazette published by the Administration on or between 12 October 1945 and 1 May 1946;
- (c) the Government of the Hong Kong Special Administrative Region Gazette Extraordinary;
- (d) the Hong Kong Government Gazette and any supplement thereto published before 1 July 1997;
- (e) any Special Gazette or Gazette Extraordinary published before 1 July 1997.

Compatibility of the MWO with the Basic Law

During legislative scrutiny of the Bill, a request was made for the Administration to explain the compatibility of the SMW with the Basic Law.⁴⁰ As a piece of legislation promoting some measure of wealth distribution, it was queried whether the SMW was compatible with article 5 of the Basic Law, which provides that '[t]he socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.'

In interpreting the meaning of article 5, a purposive interpretation should be taken, having regard to the context in which the constitutional provision was adopted.⁴¹ In this respect, relevant legislation in force around the time of the adoption of the Basic Law on 4 April 1990 is relevant in ascertaining the context of article 5. Article 5 in referring to the 'previous capitalist system' makes it relevant to ascertain whether a statutory minimum wage scheme was part of the capitalist system in Hong Kong when the Basic Law was adopted.⁴²

Since 1940, Hong Kong had a discretionary minimum wage scheme under the Trade Boards Ordinance (Cap.63). This Ordinance provided that the Chief Executive in Council may, at any time he thinks fit, fix minimum wages for any trade if he is satisfied that the minimum wages being paid to workers in that trade are unreasonably low.⁴³ It also provides for the establishment of Trade Boards that the Chief Executive may authorize to advise him in connection with the fixing of any minimum wage.⁴⁴ Therefore, when the Basic Law was adopted in 1990, there was already in existence domestic legislation to address unreasonably low wages in the workplace by the imposition of minimum wages. This provided a relevant context for construing article 5 in that the previous capitalist system to be maintained included as one of its parts legal measures for the fixing of minimum wages.⁴⁵

[1.04]

⁴⁰ Bills Committee on Minimum Wage Bill, Administration's response on the Compatibility of the Bill with Article 5 of the Basic Law, LC Paper No. CB(2)2619/08-09(01).

⁴¹ For approaches to constitutional interpretation, see *Ng Ka Ling v Director of Immigration* [1999] 1 HKLRD 315; *Director of Immigration v Chong Fung Yuen* [2001] 2 HKLRD 533. See also M Ramsden & O Jones, *Hong Kong Basic Law: Annotations & Commentary* (Sweet & Maxwell, 2010).

⁴² Bills Committee on Minimum Wage Bill, Administration's response on the Compatibility of the Bill with Article 5 of the Basic Law, LC Paper No. CB(2)2619/08-09(01).

⁴³ See s.2(1).

⁴⁴ See s.2(2). See also, *Chan Noi Heung v Chief Executive in Council* (HCAL126/2006); see *Chan Noi Heung v Chief Executive in Council* [2008] 3 HKC 452).

⁴⁵ Bills Committee on Minimum Wage Bill, Administration's response on the Compatibility of the Bill with Article 5 of the Basic Law, LC Paper No. CB(2)2619/08-09(01).

Compatibility of the MWO with the International Covenant on Economic, Social and Cultural Rights

[1.05] During legislative scrutiny of the Bill, it was queried whether the MWO would be compatible with Hong Kong's obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). The States party to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

Article 2(1) of the ICESCR reads as follows:

- (b) "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

The essential issue that arose was whether the MWO went far enough to realise the rights under the ICESCR. There is however no obligation under the ICESCR to implement its rights by legislation. The Committee on Economic, Social and Cultural Rights, the treaty monitoring body, thus made the following observation in General Comment No. 9:

"The Covenant does not stipulate the specific means by which it is to be implemented in the national legal order. And there is no provision obliging its comprehensive incorporation or requiring it to be accorded any specific type of status in national law. Although the precise method by which Covenant rights are given effect in national law is a matter for each State party to decide, the means used should be appropriate in the sense of producing results which are consistent with the full discharge of its obligations by the State party."

Furthermore, the ICESCR itself recognises that the rights are to be achieved progressively.⁴⁶ The object of the MWO, to forestall excessively low wages, would only strengthen the rights protected under article 7, not undermine them.⁴⁷

⁴⁶ *Mok Chi Hung v Director of Immigration* [2001] 2 HKLRD 125, 133C/D to 134A & 135E to H; *Chan To Foon v Director of Immigration* [2001] 3 HKLRD 109, 131D to 134B; see also cited with approval *Human Rights in the World* (4th ed.), by Robertson and Merrills.

⁴⁷ Bills Committee on Minimum Wage Bill, Administration's response to Hon LEE Cheuk Yan's comments on LC Paper No. CB(2)169/09-10(02), LC Paper No. CB(2)288/09-10(03).

Section 2 Interpretation

In this Ordinance:

"accredited programme" (經評審課程) means a full-time programme that:

- (a) is provided by an education institution specified in Sch. 1;
- (b) is a learning programme of a kind described in s.1, 2 or 3 of Sch.3 to the Accreditation of Academic and Vocational Qualifications Ordinance (Cap.592); and
- (c) if provided by a school registered or provisionally registered under the Education Ordinance (Cap.279), is at the level of post secondary education (within the meaning of that Ordinance);

"assessment-opting PWD" (選擇受評估殘疾人士) means a PWD who, in accordance with s.4(2) of Sch.2, has elected to have an assessment made under that Schedule of his or her degree of productivity in performing the work required under the contract of employment;

"chairperson" (主席) means chairperson of the Commission;

"Commission" (委員會) means Minimum Wage Commission established by s.11;

"Commissioner" (處長) has the same meaning as in the Employment Ordinance (Cap.57);

"contract of employment" (僱傭合約) has the same meaning as in the Employment Ordinance (Cap.57);

"domestic worker" (家庭傭工) means a domestic helper, carer, chauffeur, gardener, boat-boy or other personal helper employed in, or in connection with, a household;

"employee" (僱員) means a person engaged as an employee under a contract of employment other than a person covered by s.7(2), (3), (4) or (5);

"employee with a disability" (殘疾僱員) means an employee who is a PWD and whose degree of productivity in performing the work required under the contract of employment is stated in a certificate of assessment that has effect for the purposes of s.9(1)(b);

"employer" (僱主) has the same meaning as in the Employment Ordinance (Cap.57);

"exempt student employment" (獲豁免學生僱用)—see s.3;

"hours worked" (工作時數)—see s.4;

"member" (委員) means member of the Commission;

"minimum wage" (最低工資), for an employee for a wage period, has the meaning given by s.8(2);

"non-local education programme" (非本地教育課程) means a full-time programme of education which leads to the award of a non-local academic qualification which is at the level of degree or higher;

"option form" (選擇表格) means a form referred to in s.4 of Sch.2;

"place of employment" (僱傭地點), in relation to an employee, 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;

“prescribed minimum hourly wage rate” (訂明每小時最低工資額) means the hourly wage rate specified in column 1 of Sch.3;

“PWD” (殘疾人士) means a person who holds a valid Registration Card for People with Disabilities issued by the Central Registry for Rehabilitation established by the Government;

“student intern” (實習學員) means:

- (a) a student undergoing a period of work arranged or endorsed by an education institution specified in Sch.1 in connection with an accredited programme being provided by the institution to the student; or
- (b) a student resident in Hong Kong and undergoing a period of work arranged or endorsed by an institution in connection with a non-local education programme being provided by the institution to the student, for which the work is a compulsory or elective component of the requirements for the award of the academic qualification to which the programme leads;

“trial period of employment” (僱傭試工期) means a trial period of employment referred to in s.2 of Sch.2;

“wage period” (工資期)—see s.5;

“wages” (工資), subject to s.6, has the same meaning as in the Employment Ordinance (Cap.57);

“work experience student” (工作經驗學員) means a student who:

- (a) is enrolled in an accredited programme; or
- (b) is resident in Hong Kong and enrolled in a non-local education programme,

and who is engaged under a contract of employment at the beginning of which he or she is under the age of 26 years.

COMMENTARY

Enactment history

- [2.01] This section was enacted by the Minimum Wage Ordinance (Commencement) Ordinance 2010.

Definition of “Ordinance”

- [2.02] See [1.02].

Definition of “learning programme”

- [2.03] The term “learning programme” is described in ss.1, 2 and 3 of Sch.3 of the Accreditation of Academic and Vocational Qualifications Ordinance (Cap.592) as follows:⁴⁸

⁴⁸ See further, M Ramsden & L Marsh, ‘Education’ in *Halsbury’s Laws of Hong Kong* (Lexis Nexis), vol. 10(1), 2010 reissue.

- (1) A qualification obtainable from the completion of a learning programme, where the Accreditation Authority determines that:
 - (a) the operator of the learning programme is competent to operate learning programmes that meet QF standards; and
 - (b) the learning programme meets a QF standard.
- (2) A qualification obtainable from the completion of a learning programme operated by a self-accrediting operator, where:
 - (a) the programme has not been excluded in the brackets, if any, next to the name of that self-accrediting operator in Sch.2; and
 - (b) the self-accrediting operator determines that the programme meets a QF standard.
- (3) A qualification obtainable from the completion of a learning programme, where:
 - (a) the Accreditation Authority determines that the operator of the programme is competent:
 - (i) to ensure that the programmes operated by the operator meet QF standards; and
 - (ii) to determine whether the programmes operated by the operator meet QF standards; and
 - (b) the operator determines, within any conditions or restrictions referred to in s.5(1) of the Ordinance, that the programme meets a QF standard.

Definition of “contract of employment”

This phrase is stated by s.2 of the Employment Ordinance (Cap.57) as meaning any agreement, whether in writing or oral, express or implied, whereby one person agrees to employ another and that other agrees to serve his employer as an employee and also a contract of apprenticeship. When work is undertaken without consideration, or where there is no intention to create legal relations, then there is no contract of employment. As a result, voluntary work is not covered by the MWO.⁴⁹

[2.04]

In interpreting a contract of employment, the court should place it in its correct factual matrix, while being assisted by the following ‘cannons of construction’:⁵⁰

- (i) Every contract is to be construed with reference to its object and the whole of its terms, and accordingly, the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated word or clause;⁵¹

⁴⁹ See further *Lees v Whitcomb* (1828) 5 Bing 34; *Sykes v Dixon* (1839) 9 Ad & El 693. For a definition of ‘volunteer’, see: “Reference Guide for Volunteer Service” of the Social Welfare Department (2008). See also decisions of the English Employment Tribunal on volunteer work and contracts of employment: *Melbush v Refbridge Citizens Advice Bureau* [2005] IRLR 419, *South East Sheffield Citizens Advice Bureau v Grayson* [2004] ICR 1138, *Utley v St John Ambulance and Another* (EAT 635/98), *Migrant Advisory Service v Chaudri* (EAT 1400/97).

⁵⁰ See *Jobe Ebon v Muse Production Ltd* [2011] HKEC 365.

⁵¹ Para. 12-063 of *Chitty on Contract*, 13th ed., vol.1.

- (ii) The principle that words should be construed in their natural and ordinary meaning is liable to be departed from where that meaning would involve an absurdity or would create some inconsistency with the rest of the instrument;⁵²
- (iii) The instrument must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be interpreted as to bring them into harmony with the other provisions of the deed if that interpretation does no violence to the meaning of which they are naturally susceptible.⁵³
- (iv) Where different parts of an instrument are inconsistent, effect must be given to that part which is calculated to carry into effect the real intention of the parties as gathered from the instrument as a whole, and that part which would defeat it must be rejected. The old rule was, in such a case, that the earlier clause was to be received and the later rejected. This rule is however just a mere rule of thumb.⁵⁴ A term may also be rejected if it is repugnant to the intention of the parties as it appears from the document. However, an effort should be made to give effect to every clause in the agreement and not to reject a clause unless it is manifestly inconsistent with or repugnant to the rest of the agreement;⁵⁵ and
- (v) Where ambiguity arises, the rule *contra proferentem* should be applied. It is clear in the present case that the Defendant was the draftsman of the contract.⁵⁶

Guidance issued by the Labour Department affirm that employers should not unilaterally vary the employment terms and conditions of employees, which would leave them open to legal action.⁵⁷

Definition of "Commissioner"

- [2.05] This is also defined by s.2 of the Employment Ordinance (Cap.57) as meaning the Commissioner for Labour and includes a Deputy Commissioner for Labour and an Assistant Commissioner for Labour.

Definition of "disability"

- [2.06] "Disability" in relation to a person is defined by s.2 of the Disability Discrimination Ordinance (Cap.487) as:
- (a) total or partial loss of the person's bodily or mental functions;
 - (b) total or partial loss of a part of the person's body;

⁵² Para. 12-055 of *Chitty on Contract*, *ibid.*

⁵³ Per Lord Davey in *N.E. Railway v Hasting* [1990] AC 260, at 267, quoting Lord Watson in *Chamber Colliery Co. v Tynes* (1893) reported in [1915] 1 Ch. 268, 271.

⁵⁴ See 'The Interpretation of Contracts', Lewison, para. 9.08.

⁵⁵ *Chitty on Contract*, *ibid.*, para. 12-078.

⁵⁶ For further analysis, see: M Ramsden, 'Employment', *Halsbury's Laws of Hong Kong* (Hong Kong: Lexis Nexis Butterworths, 2009 reissue).

⁵⁷ See e.g., "Statutory Minimum Wage: Reference Guidelines for Employers and Employees": p. 4: available at http://www.labour.gov.hk/eng/news/pdf/SMW_Guidelines.pdf.

- (c) the presence in the body of organisms causing disease or illness;
- (d) the presence in the body of organisms capable of causing disease or illness;
- (e) the malfunction, malformation or disfigurement of a part of the person's body;
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour, and includes a disability that:
 - (i) presently exists;
 - (ii) previously existed but no longer exists;
 - (iii) may exist in the future; or
 - (iv) is imputed to a person.⁵⁸

The term 'disability' has a wide definition, and seems to allow partial loss of bodily or mental function to be regarded as a disability. Further, the origin of the loss of function seems to be irrelevant. So if a doctor found a loss of bodily or mental function it would follow that for the purposes of the Disability Discrimination Ordinance there was a disability. Alternatively, if a doctor found a disorder, illness or disease that affected an individual's thought process, perception of reality, emotions or judgment or that resulted in disturbed behaviour it would follow that there was a disability. The loss of function or the effect of the disorder on thought process or emotions need not be substantial or long-term.⁵⁹

It has been suggested that the phrase 'may exist in the future' should find its meaning in the other paragraphs as they should be read together. On this view, (iii) refers to a future disability predicated by a past disability and the risk it refers to is the possibility of recurrence of the past disability, not the risk of acquiring any disability.⁶⁰ In *K & O v Secretary for Justice* [2000] 3 HKLRD 777, the court found support for its view in the 'Introduction to the Standard Rules on the Equalisation of Opportunities for

⁵⁸ Section 2 is almost a duplication of the Australian definition of 'disability', the difference being only in the enumeration of the last four paragraphs which appear as (h)-(k) in the definition in s.4(1) of the Disability Discrimination Act 1992. Each of these four paragraphs is descriptive of the disabilities in (a)-(g) of the Hong Kong model.

⁵⁹ *L v Equal Opportunities Commission*, unrep., DCEO Nos. 1 & 6 of 1999 (decision on 13 November 2002), [38], [44] per HH Judge Muttie; see also *Sit Ka Yin Priscilla v Equal Opportunities Commission* [2010] HKCU 370; *Chen Raymond v Lo Sun & Ors* [2007] HKCU 1384; *M v Secretary for Justice* [2007] HKCU 1192; *Wong Kwok Mui Enock v Lee Yuen Tin* [2002] HKCU 1396; *R v Birmingham City Council, ex p. Equal Opportunities Commission* [1989] 1 AC 1155; *Ma Bik Yung v Ko Chuen* [2002] 2 HKLRD 1, [2001] 4 HKC 119, CFA; *Briggs v North Eastern Education and Library Board* [1990] IRLR 181; *Ip Kai Sang v Federal Elite Ltd* [2008] 2 HKLRD 563; *Chung Wai v St Paul's Hospital* [2006] 3 HKC 521; *Siu Kai Yuen v Maria College* [2005] 2 HKLRD 775; *Tong Wai Ting v Secretary for Education* [2009] HKCU 1242; *M v Secretary for Justice* [2008] HKCU 1747.

For further analysis of the statutory definition, see: M Ramsden, L Marsh and K Loper, 'Disability Discrimination Ordinance' in *Hong Kong Discrimination Law: Commentary & Annotations* (Sweet & Maxwell, 2012 forthcoming).

⁶⁰ *K & O v Secretary for Justice* [2000] 3 HKLRD 777.

Persons with Disabilities' promulgated by the United Nations General Assembly.⁶¹ Paragraph 17 of the Introduction provides: '[t]he term 'disability' summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature'.

Definition of "employee"

[2.07] The Ordinance applies to full-time, part-time and casual employees, regardless of the "continuity" of their employment contract. According to the Employment Ordinance (Cap.57), a "continuous contract" is where a person has been employed for 4 or more weeks by the same employer, and has worked 18 hours or more for each of those weeks.⁶²

The potential for employers to try to circumvent the Ordinance by assigning their workers "self-employed" status was apparent long before the Ordinance itself was enacted.⁶³ It is therefore possible that questions as to the definition of an employee will arise in future litigation concerning the MWO. It will be necessary to examine the various common law factors in interpreting the meaning of employee in section 2.⁶⁴ In particular, the following factors are relevant to identifying a contract of employment:

- the degree of control exercised by the employer;
- whether the worker's interest in the relationship involved any prospect of profit or risk of loss;
- whether the worker was properly regarded as part of the employer's organisation;
- whether the worker was carrying on business on his own account or carrying on the business of the employer;
- the provision of equipment;
- the incidence of tax and national insurance;
- the parties' own view of their relationship;
- the structure of the trade or profession concerned and the arrangements within it.⁶⁵

⁶¹ Resolution 48/96, Annex, of 20 December 1993.

⁶² See further the most recent guidance issued on 17th November 2011 by the Legislative Council Panel on Manpower in relation to "Continuous Contracts under the Employment Ordinance" and available at www.legco.gov.hk/english. However, it does not apply to the self-employed, or independent contractors.

⁶³ The Administration specifically addressed this issue at paras. 2 to 4 of the Bills' Committee on Minimum Wage Bill LC Paper No. CB(2)288/09-10(02).

⁶⁴ Bills Committee on Minimum Wage Bill, LC Paper No. CB(2)288/09-10(01).

⁶⁵ See *Chitty on Contracts* (30th edition, 2008, Vol. II, Chapter 39 "Employment", para 39-010); see also *Cheung t/a Yat Cheung Air-Conditioning & Electric Co* [2005] HKCU 187; *Lee Chi-fai v Sunrise Knitting Factory Ltd* [1973] HKDCLR 6; *Law Yiu Chan v Wong Kwok Wai t/a Supper Repairing Co* [2008] HKCU 561; *Sus-Lee Srikanaya v Chung Yat Ming* [2009] 3 HKLRD 152, CA.

This is not an exhaustive list of factors.⁶⁶ The control test was the traditional means by which a court would determine whether or not an individual was an employee. Such status would be established by examining whether or not an employer could control not just what the individual did, but how they did it.⁶⁷ The test consisted of 4 elements: (a) whether the master's 'power of selection' of his servant could be established; (b) whether the payment of wages or other remuneration could be shown; (c) whether the master's right to control the work could be established; and (d) whether or not the master had a right of suspension or dismissal in relation to his servant.⁶⁸ However, in recent times, this test may not be appropriate, particularly when the question of whether or not a person is an employee involves a highly skilled individual.⁶⁹ So, when making such determinations, the court should have regard to the control and integration of the individual into the possible employer's business, as well as such factors as the method of payment involved, stipulations as to hours,⁷⁰ methods of paying income tax,⁷¹ holidays, and which party bears the risk of loss.⁷²

Definition of "employer"

This is stated by s.2 of the Employment Ordinance (Cap.57) to mean any person who has entered into a contract of employment to employ any other person as an employee and the duly authorised agent, manager or factor of such first mentioned person.⁷³ [2.08]

Definition of "person"

"Person" is defined by s.3 of the Interpretation and General Clauses Ordinance (Cap.1) as including any public body and any body of persons, corporate or unincorporate, and this definition shall apply notwithstanding that the word "person" occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation. [2.09]

⁶⁶ *Wong Sham v Chiu Kung Hui and Joseph K A Chiu (t/a Hong Kong Industrial (Woodwork) Co)* (unrep., 29 October 1999; HCA No 1418/1996, [1999] HKCU 1318). See also *Poon Chau Nam v Yim Siu Cheung* [2007] 1 HKLRD 951, CFA; *Pun Wai Ming v Tsang Chung Kai* [2008] HKEC 1324, DC; *Nguyen Van Vinh v Cheung Ying Construction Engineering Ltd* [2008] HKEC 882, CFI; *Tam Hon Leung v Ng Wai Hing* [2006] HKEC 149, CFI; *Lee Ting-sang v Chung Chi-keung* [1990] 1 HKLR 764.

⁶⁷ *Yuen Mei v Hop Sze Machine Shop (a firm)* [1961] HKDCLR 193.

⁶⁸ See further *Wong Man-luen v Hong Kong Wah Yung Stevedore Co* [1971] HKLR 390, CA; *Cheng Yuen v The Royal Hong Kong Golf Club* [1996] 2 HKLR 121.

⁶⁹ See *Poon Chau Nam v Yim Siu Cheung* [2007] 1 HKLRD 951, CFA.

⁷⁰ *HKSAR v Chan Wai Sang t/a Kin Sang Engineering Co* [2000] HKCU 967.

⁷¹ *Poon Chau Nam v Yim Siu Cheung t/a Yat Cheung Air-Conditioning & Electric Co* [2005] HKCU 187.

⁷² *Lee Ting-sang v Chung Chi-keung* [1990] 2 AC 374; see also *Ng Siu Chau v HKSAR* [2000] 2 HKLRD 239.

⁷³ See further *Ng Kam Chun (t/a Chun Mou Estate Agency Co) v Chan Wai-Hing* (unreported; A3036/1992); *Cheung Hung-yuk v Chin Chai* (unreported; A7600/1985); *Far East Fan Manufacturing Ltd v R* (unreported; MA 466/1980); *Lau Chun Fui v Hanin Garment Manufactory Ltd* [1995] 2 HKC 490.

Definition of "government"

- [2.10] Pursuant to s.3 of the Interpretation and General Clauses Ordinance, the term "government" means the Government of the Hong Kong Special Administrative Region.

Definition of "Hong Kong"

- [2.11] Section 3 of the Interpretation and General Clauses Ordinance (Cap.1) states that Hong Kong means the Hong Kong Special Administrative Region.

Definition of "wages"

- [2.12] "Wages" is defined by s.2 of the Employment Ordinance (Cap.57) as all remuneration, earnings, allowances including travelling allowances and attendance allowances, attendance bonus, commission, overtime pay, tips and service charges, however designated or calculated, capable of being expressed in terms of money, payable to an employee in respect of work done or to be done under his contract of employment, but does not include:

- (a) the value of any accommodation, education, food, fuel, light, medical care or water provided by the employer;
- (b) any contribution paid by the employer on his own account to any retirement scheme;
- (c) any commission which is of a gratuitous nature or which is payable only at the discretion of the employer;
- (ca) any attendance allowance or attendance bonus which is of a gratuitous nature or which is payable only at the discretion of the employer;
- (cb) any travelling allowance which is of a non-recurrent nature;
- (cc) any travelling allowance payable to the employee to defray actual expenses incurred by him by the nature of his employment;
- (cd) the value of any travelling concession;
- (d) any sum payable to the employee to defray special expenses incurred by him by the nature of his employment;
- (da) any end of year payment, or any proportion thereof, which is payable under Part IIA;
- (e) any gratuity payable on completion or termination of a contract of employment; or
- (f) any annual bonus, or any proportion thereof, which is of a gratuitous nature or which is payable only at the discretion of the employer.⁷⁴

⁷⁴ See also the Employees' Compensation Ordinance (Cap.282) and generally *Wong Ping-kong v Tai Hing Cotton Mill Ltd* [1994] 2 HKLR 107, CA; *Lam Kit Wah v Sea Wave Hair Design Holdings Ltd* (unrep., 31 May 1999; LTA No. 69/1998); *Chow Wai Yee v Fong's National Engineering Co Ltd* [1996] 2 HKLR 52, [1996] 1 HKC 649; *Star Express Ltd v Cheng Tak* (unrep., 11 May 1999; LTA No. 86/1998); *Neckel Nils v Dual Voltage Co. Ltd* (unreported; LTA No. 110/1996); *Lj. Shuk Man v Ho Wai Ling* (unrep., 26 May 2000; HCA No. 5446/1996 begin_of_the_skype_highlighting; 5446/1996end_of_the_skype_highlighting), [2000] HKCU 332.

This interpretation of the term 'wages' is very broad, and it has been pointed out that while the widest possible interpretation of the term serves employees' interest under the Employment Ordinance (Cap.57), the opposite is true in relation to this piece of legislation, as employers will be keen to argue that the statutory minimum wage has been paid if other emoluments and benefits are taken into account.⁷⁵

The term "wages" does not include rest day pay, holiday pay, annual leave pay, maternity pay, sickness allowance, end of year payments of a gratuitous nature, or free food and/or accommodation. Meal allowances and real estate agents' commission, however, have been said to be included in what constitutes a wage.

During the drafting stage, it was suggested that definition of wages should exclude any overtime premium. However, the Administration's response was that the MWO would only set the lowest level of wages permissible by law; the definition of wages under the MWO would be aligned as closely as possible with the definition of wages under the EO, which includes, inter alia, overtime pay.⁷⁶

Definition of "years"

- According to s.3 of the Interpretation and General Clauses Ordinance (Cap.1), a "year" means a year according to the Gregorian calendar.⁷⁷ [2.13]

Section 3 Exempt student employment

A work experience student and his or her employer may agree to treat a continuous period of up to 59 days during the contract of employment (the current contract) as a period of exempt student employment if:

- (a) no period during another contract of employment to which the work experience student was a party and that commenced in the same calendar year as the current contract was a period of exempt student employment; and
- (b) the work experience student provides to the employer before the commencement of the current contract a statutory declaration (or copy of a statutory declaration) made by him or her verifying the fact set out in paragraph (a).

⁷⁵ *Op. Cit.* p. 2.

⁷⁶ Bills Committee on Minimum Wage Bill, LC Paper No. CB(2)306/09-10(02), The Administration's Response to the Views/Suggestions Made by Deputations to the Bills Committee Meeting on 7 October 2009, p. 9.

⁷⁷ Also known as the Western calendar.

COMMENTARY

Definition of “work experience student”

[3.01] See Section 2 Interpretation.

Definition of “employer”

[3.02] See [2.08].

Definition of “contract of employment”

[3.03] See [2.04].

Definition of “year”

[3.04] See [2.13].

Section 4 Hours worked

The 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:

- (a) in attendance at a place of employment, irrespective of whether he or she is provided with work or training at that time; or
- (b) 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.

COMMENTARY

Enactment history

[4.01] The section was enacted by the Minimum Wage Ordinance (Commencement) (No. 2) Ordinance 2010.

Definition of “employee”

[4.02] See [2.07].

Definition of “contract of employment”

[4.03] See [2.04].

Definition of “employer”

[4.04] See [2.08].

Definition of “place of employment”

See Section 2 Interpretation and [MWO1.5].

[4.05]

Definition of “Hong Kong”

See [2.11].

[4.06]

Meaning of “hours worked”, “in accordance with the contract of employment or with the agreement or at the direction of the employer”

[4.07]

The definition of “hours worked” and whether this clause was needed to meet the objectives of setting and enforcing a statutory minimum wage, was the subject of much disagreement during scrutiny of the Bill. In particular, one view taken was that what constitutes work should not be defined statically by statute. Rather, work should be defined dynamically, taking into account the contract of employment, which more adequately reflects the customs and practices of a particular industry.⁷⁸ The Administration noted that the MWO does not seek to prescribe what is and what is not working hours, which should be subject to the mutual agreement of employers and employees.⁷⁹ This is also clear from the precursor in section 4, ‘*in accordance with the contract of employment or with the agreement or at the direction of the employer*’. However, section 4(a) and (b) does state that certain hours must be included in hours worked, and so inevitably the question will arise as to the content and scope of these statutory requirements. This question will in turn have a bearing on the extent to which the parties can agree to what constitutes hours worked in the contract of employment.

Meaning of “hours worked”, “in attendance at a place of employment, irrespective of whether he or she is provided with work or training at that time”

[4.08]

The Administration provided a number of examples to clarify the hours worked provision in section 4(a) (previously clause 3(1)(a)).⁸⁰ In the first example, it is clear that the lunch break does not constitute part of the hours worked. Nor does an employee arriving at the place of employment for personal reasons earlier than that agreed with the employer:

A shop assistant works in the shop 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.

⁷⁸ Submission to Bills Committee on Minimum Wage Bill, Freshfields, LC Paper No. CB(2)2571/08-09(87).

⁷⁹ Bills Committee on Minimum Wage Bill, Administration’s Response to the Submission from the Employers’ Federation of Hong Kong to the Bills Committee, LC Paper No. CB(2)1120/09-10(01), March 2010, p. 3.

⁸⁰ *Ibid.*

According to clause 3(1)(a), 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 the purpose of computing his minimum wage.

Owing to personal reasons (e.g. to avoid busy traffic), the shop assistant returns to the shop at 8:00 a.m. However, if 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 shop for the purpose of doing work or receiving training, then, for the purpose of computing his minimum wage, the shop from 8:00 a.m. to 9:00 a.m. is not his place of employment as defined in clause 2, and hours worked under clause 3(1)(a) do not include such time from 8:00 a.m. to 9:00 a.m.⁸¹

In the second example, employees leaving their place of employment going off duty for a short period also does not constitute hours worked:

It is the existing practice of some catering establishments to arrange their employees to be off duty say for a few hours in the afternoon during the interval between the service hours of lunch and dinner. It is commonly known as the time of “落場” (literally meaning “leaving the field”). If an employee during this period 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 time of “落場” is not hours worked under clause 3(1)(a) for the purpose of computing his minimum wage.⁸²

In the third example, relating to the airline industry, personal time spent by employees during layover does not count as hours worked, unless otherwise provided by the contract of employment:

In the airline industry, an employer may arrange the cockpit and cabin crew to have a layover in a destination outside Hong Kong after they perform work during the course of a flight. The employer may also provide free accommodation and/or meals for the crew during the layover. If an employee in his personal time (such as sleeping time) during the layover 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 time is not hours worked under clause 3(1)(a) for the purpose of computing his minimum wage.⁸³

Similarly, the fourth example provided by the Administration also illustrates that the personal time an employee spends away from the place of employment, when working outside of Hong Kong, also does not amount to work hours:

An operative works in the factory in Hong Kong on Mondays, and in the factory in Dongguan from Tuesdays to Fridays. The employer may also provide free accommodation and/or meals for the operative when he is in Dongguan. If the operative in his personal time (such as sleeping time) in Dongguan is not in

⁸¹ Bills Committee on Minimum Wage Bill, Administration's Response to Issues Raised at the Bills Committee Meeting Held on 28 January 2010, LC Paper No. CB(2)922/09-10(01).

⁸² *Ibid.*

⁸³ *Ibid.*

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 time is not hours worked under clause 3(1)(a) for the purpose of computing his minimum wage.⁸⁴

The fourth example was also further elucidated by the Administration in response to further queries by members of the Bills Committee, in particular where the employee has to sleep at a hotel before returning to Hong Kong the following day:

In the same scenario, the operative stays overnight in Dongguan as return transport is not available until the next morning. A Member asked at the Bills Committee meeting on 25 February 2010 whether the time when the operative stays at the hotel in Dongguan is hours worked under clause 3(1)(a) or not. It should be noted that when the operative is in his personal time (such as sleeping time) at the hotel in Dongguan, he 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, and accordingly such time is not hours worked under clause 3(1)(a) for the purpose of computing his minimum wage.⁸⁵

In the fifth example, in the context of a tour guide working outside of Hong Kong, a more nuanced approach is needed, taking into account the nature of the employment (looking after a tour group). The tour guide's personal time is not included in the hours worked, however when the need arises for the guide to assist a member of the group this would count towards the hours worked. Furthermore, whether a hotel (where the guide stays with the tour group) is a place of employment will depend on the contract of employment:

In the tourism industry, when an escort guide accompanying a tour group outside Hong Kong is in his personal time (such as sleeping time) and 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 time is not hours worked under clause 3(1)(a) for the purpose of computing his minimum wage. However, when the escort guide works because, for instance, a client in the tour group falls sick at midnight and seeks his assistance, the time spent in attending to and assisting the client is hours worked under clause 3(1)(a) for the purpose of computing his minimum wage.

It is a common practice in the tourism industry for the employer to provide accommodation to an escort guide in the same hotel as the tour group. An escort guide may also have to be on call or standby during the night so that the tour group can seek his assistance as and when necessary. Nevertheless, there is a wide range of on-call or standby arrangements, depending on the terms in the contract

⁸⁴ Bills Committee on Minimum Wage Bill, Administration's Response to Issues Raised at the Bills Committee Meeting Held on 28 January 2010, LC Paper No. CB(2)922/09-10(01).

⁸⁵ Administration's Response to Issues Raised at the Bills Committee Meeting Held on 25 February 2010, LC Paper No. CB(2)1103/09-10(01), p. 3.

of employment or the agreement between the employer and the employee. Whether the on-call or standby time is hours worked under clause 3(1)(a) depends on whether the escort guide is in attendance at a place of employment which is defined in clause 2 as 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, and this includes the place as designated by the employer (such as the hotel, if so designated).

It should be noted that although the escort guide in this example sleeps in the hotel where the employer provides him the accommodation and he is on call or standby during the night, it is not necessarily the case that the hotel is his place of employment during the on-call or standby time. If he is not in attendance at a place of employment, then the on-call or standby time is not hours worked under clause 3(1)(a). The question as to whether he, while on call or standby, is in attendance at the hotel for the purpose of doing work or receiving training is to be determined by the contract of employment or the agreement or the direction of the employer. It is pertinent to note that this is the situation for the purpose of computing SMW under the Bill; whether contractually this escort guide is entitled to any payment for being on call or standby is a different issue.⁸⁶

Finally, the Administration provided an example to illustrate how section 4(a) will apply to real estate agents:

When a real estate agent is, in accordance with the contract of employment, or with the agreement or at the direction of the employer, in attendance at a property sales office or another place for the purpose of doing work such as awaiting customers, according to clause 3(1)(a) such time is hours worked for the purpose of computing his minimum wage.⁸⁷

The real estate example was given further elucidation in a response by the Administration to queries of the Bills Committee. It was noted that preparatory work towards concluding a property sale at whatever place (say the employee's home) amounts to hours worked:

if the working hours of this real estate agent finish at 6:00 p.m. according to the contract of employment, but the employer directs him to continue to make phone calls to his customer from 6:00 p.m. to 11:00 p.m. at whatever place for the purpose of signing the sale and purchase agreement, the time which the employee spends in calling the customer for signing the sale and purchase agreement is hours worked under clause 3(1)(a) for the purpose of computing his minimum wage. Since the

⁸⁶ Administration's Response to Issues Raised at the Bills Committee Meeting Held on 11 February 2010, LC Paper No. CB(2)978/09-10(01), p. 4. See also Administration's Response to Issues Raised at the Bills Committee Meeting Held on 25 February 2010, LC Paper No. CB(2)1103/09-10(01), pp. 3-4.

⁸⁷ Administration's Response to the Submission from the Employers' Federation of Hong Kong to the Bills Committee (February 2010), LC Paper No. CB(2)1120/09-10(01), p. 5.

employer has instructed the employee to make these phone calls at any place, the place at which the employee calls the customer is his place of employment as defined in clause 2.⁸⁸

However, in a further reply to the Bills Committee, the Administration pointed out that where an employee stays in the office of his own volition, such hours do not count towards calculating hours worked:

In another situation, the working hours of a real estate agent finish at 7:00 p.m. according to the contract of employment. However, he stays in the office of his own volition from 7:00 p.m. to 9:00 p.m., 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 or receiving training. Therefore, for the purpose of computing his minimum wage, the office from 7:00 p.m. to 9:00 p.m. is not his place of employment as defined in clause 2, and hours worked under clause 3(1)(a) do not include such time from 7:00 p.m. to 9:00 p.m.⁸⁹

It can be established from these examples that the Administration intended for the hours worked, insofar as it related to section 4(a), to be largely governed by the terms of the employment contract. The precursor in section 4, "in accordance with the contract of employment or with the agreement or at the direction of the employer" acts as a constraint on any broad statutory interpretation of 4(a) or 4(b). The definition of hours worked, therefore, will turn upon all relevant factors of the case such as the contract of employment, the employer's agreement or direction, and any relevant trade practices.⁹⁰

As a general rule, breaks in work time which are specific to particular work arenas, such as "leaving the field" in the catering and hotel industries, may or may not be paid, depending on the terms agreed between employer and employee.

It seems clear from the above examples, and previous drafts of the Minimum Wage Ordinance,⁹¹ that meal breaks do not count towards work hours.⁹² Nor, too, does section 4(a) require on-call or standby time to be calculated as hours worked *as of*

⁸⁸ Administration's Response to Issues Raised at the Bills Committee Meeting Held on 25 February 2010, LC Paper No. CB(2)1103/09-10(01), p. 2.

⁸⁹ *Ibid.*

⁹⁰ Administration's Response to Issues Raised at the Bills Committee Meeting Held on 25 February 2010, LC Paper No. CB(2)1103/09-10(01), pp. 3-4.

⁹¹ Earlier draft of the Minimum Wage Ordinance stated: 3(2) The hours worked by an employee in a wage period must be taken not to include -- (a) any period allowed by the employer for a meal except to the extent (if any) during that period that the employee is doing work in accordance with the contract of employment or with the agreement or at the direction of the employer.

⁹² The Secretary for Labour and Welfare, Mr Matthew Cheung Kin-chung, in the Legislative Council has stated that this should be decided by private negotiation between employers and employees. See <http://www.info.gov.hk/gia/general/201105/18/P201105180210.htm> accessed 06 December 2011.

right. Instead, whether on-call or standby time is hours worked must be determined according to the factual matrix of the case.⁹³ This depends on whether the employee is in attendance at a place of employment, 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. This must be determined by reference to the contract of employment or the agreement or direction of the employer.⁹⁴ However, if the employee, while on call or standby, is in attendance at a place of employment according to the contract of employment, or with the agreement or at the direction of the employer, the on-call or standby time is hours worked.⁹⁵

According to industry specific guidelines issued by the Labour Department, particularly those relating to the real estate industry, the total number of hours worked by an employee is based on the actual hours worked. If the number of rest days is less than normal in a given wage period, the total number of hours worked, and correspondingly the minimum wage, in the wage period will increase. However, if the wages payable are less than the minimum wage due to an increase in the number of hours worked, the employer must pay the difference to the employee in respect of that wage period.⁹⁶

[4.09]

Meaning of “hours worked”, “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”

When an employee is travelling to a usual place of employment,⁹⁷ such time is non-remunerable. But travel time to an overseas workplace outside of Hong Kong, which is not his or her usual place of employment, will be remunerated.⁹⁸ This point is illustrated in the Administration's example to the Bills Committee (referring to clause 3(1)(b), being the equivalent to section 4(b)):

An escort guide meets the tour group at the airport and takes care of the tourists and various co-ordinations for their trip out of Hong Kong. He accompanies the

⁹³ Bills Committee on Minimum Wage Bill, Administration's Response to the Submission from the Employers' Federation of Hong Kong to the Bills Committee, LC Paper No. CB(2)1120/09-10(01), p. 3.

⁹⁴ *Ibid.*

⁹⁵ Bills Committee on Minimum Wage Bill Administration's Response to Issues Raised at the Bills Committee Meeting Held on 28 January 2010, p. 8. The Bills Committee also considered, but rejected, the relevance of two Hong Kong cases relating to standby time: (CFA) in FACV No. 30 of 2005 (CFA case of correctional services officers); FACV Nos. 22 & 23 of 2008 (CFA case of hospital doctors).

⁹⁶ The guidelines for Real Estate Agency Industry were published in June 2011 and are available online.

⁹⁷ As to the definition of place of employment, see section 2.

⁹⁸ For a comparable provision from the United Kingdom, see National Minimum Wage Regulations 1999 (UK).

tour group travelling by air. For the travelling time between Hong Kong and the destination during which the escort guide 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 hours worked under clause 3(1)(b) for the purpose of computing his minimum wage.⁹⁹

One issue that did not appear to be adequately addressed during legislative scrutiny of the SMW was the relationship between section 4(b) and the Employment Ordinance, which provides an entitlement for employees of rest days and statutory holidays. If time spent travelling to an overseas workplace were to constitute “hours worked”, then travel on rest days or statutory holidays would amount to “work” and cause an employer to breach the Employment Ordinance.¹⁰⁰

Section 5 Wage period

(1) The wage period of an employee is the period in respect of which wages are payable to the employee for work done or to be done under his or her contract of employment.

(2) Unless the contrary is proved, that period must be taken to be one month.

(3) For a completed or terminated contract of employment that has had at least one previous wage period, the final wage period is the period commencing at the end of the penultimate wage period and ending on the day of completion or termination of the contract.

(4) For a completed or terminated contract of employment that has not had at least one previous wage period, the final wage period is the period commencing at the beginning of the contract and ending on the day of completion or termination of the contract.

COMMENTARY

Enactment history

This section was enacted by the Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010. [5.01]

Meaning of “wage period”

The SMW is to be calculated over the relevant wage period only, and not on an annual, bi-annual or quarterly basis. [5.02]

⁹⁹ Administration's Response to the Submission from the Employers' Federation of Hong Kong to the Bills Committee (February 2010), LC Paper No. CB(2)1120/09-10(01), p. 7.

¹⁰⁰ Submission to Bills Committee on Minimum Wage Bill, Freshfields, LC Paper No. CB(2)2571/08-09(87).

Definition of "employee"

[5.03] See [2.07].

Definition of "contract of employment"

[5.04] See [2.04].

Definition of "month"

[5.05] According to s.3 of the Interpretation and General Clauses Ordinance (Cap.1), "month" means a calendar month.

Section 6 Wages

(1) A deduction from the wages of an employee made under s.25(3) or 32(2)(b), (c), (d), (e), (f), (g), (h) or (i) of the Employment Ordinance (Cap.57) in respect of any wage period must be counted as part of the wages payable in respect of that period.

(2) A payment made to an employee in any wage period for any time that is not hours worked by the employee must not be counted as part of the wages payable in respect of that or any other wage period.

(3) An advance or overpayment of wages made to an employee in any wage period must not be counted as part of the wages payable in respect of that period.

(4) 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.

(5) Despite subss.(1), (3) and (4), for the purposes of this Ordinance, any commission paid, with the prior agreement of the employee, at any time after the first seven days of a wage period but before the end of the seventh day immediately after that period must be counted as part of the wages payable in respect of that period irrespective of when the work is done or the commission is otherwise payable under the contract of employment.

COMMENTARY**Definition of "wages"**

[6.01] See [2.11].

Definition of "employee"

[6.02] See [2.07].

Definition of "hours worked"

[6.03] See [4.07]–[4.09].

Section 25(3) of the Employment Ordinance (Cap.57)

This section (which relates to payment on termination of employment) states as follows: [6.04]

In addition to any deduction which may be made under s.32, and subject to any order made by a court, an employer may deduct from any sum payable under subs.(1) to an employee who terminates his employment otherwise than under s.6, 7 or 10 such sum as the employee would have been liable to pay if he had terminated his employment under s.7.

Section 32(2)(b) to (i) of the Employment Ordinance (Cap.57)

These subsections state as follows: [6.05]

(b) deductions for damage to or loss of goods, equipment or property belonging to or in the possession or control of the employer or expressly entrusted to an employee for custody, or for loss of money for which an employee is required to account, where such damage or loss is directly attributable to his neglect or default:

Provided that:

- (i) the total amount recoverable by deduction in any one case shall not exceed the equivalent in value of the damage or loss suffered by the employer or \$300, whichever is the less; and
- (ii) the total of such deductions in any one wage period shall not exceed one quarter of the wages payable to the employee in respect of that wage period;

(c) deductions in respect of meals supplied by the employer at the request of the employee not exceeding the cost to the employer of such meals including expenses of production and service;

(d) deduction for accommodation provided by the employer for the employee or his family made in respect of the period such accommodation has been in the occupation of the employee or his family; (e) deductions for the recovery of any advance or overpayment of wages made by the employer to the employee:

Provided that:

- (i) except with the approval in writing of the Commissioner, no such deductions shall be made by way of discount, interest or any similar charge in consideration of such advance or overpayment; and
 - (ii) the total of such deductions in any one wage period shall not exceed one quarter of the wages payable to the employee in respect of that wage period;
- (f) deductions, with the written consent of an employee, for the recovery of any loan made by the employer to the employee;
- (g) deductions made at the request in writing of the employee in respect of contributions to be paid by him through the employer for the purpose of any