

Vigilance will be vital to ensure employers don't try to skirt around the new minimum wage law, writes **Rick Glofcheski**

Maximum alert

The enactment of the Minimum Wage Ordinance marks arguably the most serious legislative incursion to date into Hong Kong's much vaunted free-market economy. It will, no doubt, jeopardise Hong Kong's standing in the US Heritage Foundation rankings as the freest economy in the world.

However, there is nothing terribly revolutionary about a minimum wage law. Indeed, it is surprising with a civil society as developed as Hong Kong's, even taking into account the absence of a legislature fully elected by universal suffrage, that a minimum wage law is so late in coming. Such laws have been in place in developed economies overseas since the beginning of the 20th century. The International Labour Organisation recently reported that 90 per cent of its 183 members have such laws. Unknown to most, minimum wage legislation has been on the books in Hong Kong for 78 years, a colonial legacy that was never activated.

So why the delay in introducing a general minimum wage law? For at least 50

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security guards to pay decent wages. When this failed, a public consultation on a minimum wage law was finally initiated. Regular media attention regarding Hong Kong's Gini coefficient, exposing Hong Kong's wealth gap as the largest in the developed world, increased pressure on the government to include all employees in the new law. The initial minimum wage rate of HK\$28 per hour has now been fixed, with the law to come into full effect on May 1.

The ordinance provides for a minimum hourly wage and applies to every employee except apprentices, live-in domestic workers and student interns. There are special provisions regarding people with disabilities who, after a productivity trial, may agree a rate that is not less than half of the prescribed minimum wage.

A concern with the new law is that it provides nothing in the way of an enforcement mechanism. It is of course an offence under the Employment Ordinance to pay less than the statutory minimum wage, but it will be left to employees to police the system, and to bring civil actions in the Labour Tribunal for underpayment. This will be cumbersome.

A useful step would be to appoint and empower compliance officers under the Labour Department to enter work premises to inspect employee pay records without notice.

A further useful step would be to establish a hotline for employees to report recalcitrant employers. The reporting system should be designed to ensure the reporting employee's anonymity.

The success of the new law will depend on the resolve of the government to ensure its enforcement, and on the approach of the future minimum wage commission in recommending the statutory minimum wage in its periodic reviews.

It is of some concern that the considerations identified in the ordinance that are to guide the commission place more emphasis on safeguarding Hong Kong's economy than on minimising poverty and reducing the wealth gap.

The success of the new law will also depend on the spirit in which it is received by the employers' side. The much-publicised skirmish between the Café de Coral restaurant chain and its staff provides



an example of the sort of attitude that could derail the objectives of the new law. In anticipation of the pay rises required under the Minimum Wage Ordinance, Café de Coral offered to raise wages, in exchange for the withdrawal of a paid lunch break, a benefit that it had always offered its staff. The effect was to leave many workers with a net decrease in take-home pay. After much negative publicity, threats of industrial action and consumer boycotts, the company backed down, to the relief of all, including, no doubt, the government.

It is to be hoped that this incident and its outcome will deter other employers from this or similar forms of creative wage-cutting. However, Hong Kong employers have a history of evading employment law obligations.

The Minimum Wage Ordinance applies to "employees", those working under a contract of employment. It is to be hoped

that this configuration will not trigger an escalation of the practice of engaging staff as self-employed workers. Sham agreements will not be recognised by the courts, but some employers will engage in this practice in the knowledge that many employees will not know their rights, or will not bother to pursue them in litigation.

The Labour Department and the courts must be vigilant to ensure that the law does not become a "Minimal" Wage Ordinance.

For the moment, the enactment of the law is a victory of sorts, not least for its symbolic value, signalling the possibility of other quality-of-life assurances lacking in Hong Kong but long an integral part of the social protection framework in developed economies overseas.

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