

旅遊業最低工資參考指引

Minimum wage guidelines for tourism industry

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今年五月一日，《最低工資條例》生效，首個法定最低工資水平是每小時港幣二十八元。僱員於工資期的總工作時數，乘以法定最低工資水平，所得的款額便是該工資期的最低工資。如僱主就工資期須支付予僱員的工資少於最低工資，僱員有權就該工資期獲付兩者差額，使所得工資不少於最低工資。

最低工資對旅遊業影響甚大，議會在立法期間不斷與政府商議，務求新法例可顧及旅遊業的情況。議會除了透過屬會、出外旅遊委員會收集業界的意見外，還以問卷調查會員的實際情況，然後向勞工處反映。勞工處就《最低工資條例》制訂行業參考指引時，議會也在酒店及旅遊業三方小組會議上提供了意見。

勞工處已因應旅遊業的特性與運作模式，制訂了《酒店及旅遊業〈最低工資條例〉行業性參考指引》，全文可在勞工處網站(www.labour.gov.hk/tc/news/mwo.htm)下載。以下問答摘錄自該《參考指引》：

哪些時間屬計算最低工資的工作時數？

根據《最低工資條例》，僱員的工作時數(不足一小時也須計算在內)，包括僱員按照僱傭合約、在僱主同意下或根據僱主的指示，(1)留駐僱傭地點當值的時間，而不論當時有沒有獲派工作或獲提供培訓；或(2)在關乎受僱工作的情況下用於交通的時間，但不包括用於往來居住地方及僱傭地點(位於香港以外的非慣常僱傭地點除外)的交通時間。

僱傭地點是指僱員按照僱傭合約、在僱主同意下或根據僱主的指示，為執行工作或接受培訓而留駐該地點當值的任何地點。

除《最低工資條例》列明的時間外，如按

The Minimum Wage Ordinance has come into effect since 1 May 2011, and the initial statutory minimum wage rate is HK\$28 per hour. The minimum wage for a wage period is the amount derived by multiplying the total number of hours worked by an employee in the wage period by the statutory minimum wage rate. 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 between the two amounts in respect of the wage period so that his wages will not be less than the minimum wage.

Given the impact of a minimum wage on the tourism industry, the TIC had had repeated discussions with the Government during the legislative process in order that the new law could cope with the industry's situation. Apart from soliciting views of the industry through Association Members and the Outbound Committee, the TIC also surveyed all members and then relayed their concerns to the Labour Department. Later when industry-specific reference guidelines on the Minimum Wage Ordinance were compiled, the TIC aired its opinions again through the Tripartite Committee for Hotel and Tourism Industry.

The Reference Guidelines on Statutory Minimum Wage (Hotel and Tourism), compiled by the Labour Department after taking account of the unique characteristics and mode of operation of the tourism industry, can be downloaded from its website (www.labour.gov.hk/eng/news/mwo.htm). The following questions and answers are extracted from the Guidelines:

What time should be counted as hours worked for computing the minimum wage?

According to the Minimum Wage Ordinance, hours worked (including any part of an hour) by an employee include any time when the employee is, in accordance with the employment contract or with the agreement or at the direction of the employer, (1) in attendance at a place of employment irrespective of whether he is provided with work or training at that time, or (2) travelling in connection with his employment excluding travelling 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 employment contract or with the agreement or at the direction of the employer, in attendance for the purpose of doing work or receiving training.

照僱傭合約或僱傭雙方的協議，某段時間被視作僱員的工作時數，則在計算最低工資時，該段時間也須包括在內。

旅遊票務助理員早上十時上班，晚上九時下班，其間有共兩小時的用膳時間。該段用膳時間是否屬於計算最低工資的工作時數？

如僱員在用膳時間也處於《最低工資條例》工作時數所指的情況，該用膳時間便屬於計算最低工資的工作時數。舉例說，如按照僱傭合約、在僱主同意下或根據僱主的指示，僱員在用膳期間為執行工作而留駐工作崗位當值(不論當時他有沒有獲派工作)，則該用膳時間屬於計算最低工資的工作時數。相反，如在用膳時間無須留在工作崗位當值，而可自由出外用膳或休息，則該用膳時間不屬於計算最低工資的工作時數。

如按照僱傭合約或勞資雙方的協議，用膳時間是屬於僱員的工作時數，計算最低工資時也須包括這些用膳時間。

在團員用膳期間，領隊既要照料團員並安排膳食，但自己也會同時用膳。這些用膳時間是否屬於計算最低工資的工作時數？

領隊在團員用膳時，按照僱傭合約、在僱主同意下或根據僱主的指示，為執行工作而留駐食肆當值，例如監督膳食的安排，為團員充當傳譯員或協助他們選訂飲品。雖然領隊當時也一同用膳，但他同時為執行工作而留駐食肆當值，因此該段用膳時間屬於計算最低工資的工作時數。

旅行社要求領隊在旅客指定集合時間四十五分鐘前到達集合地點等候旅客，該段時間是否屬於計算最低工資的工作時數？

如領隊是按照僱傭合約、在僱主同意下或根據僱主的指示，為執行工作而提早四十五分鐘到達集合地點等候旅客，則不論當時有沒有獲派工作，該段時間都屬於計算最低工資的工作時數。

Apart from the time specified in the Ordinance, if any time is regarded as hours worked under the employment contract or agreement between the employer and the employee, such time should be counted for computing the minimum wage.

A ticketing assistant works from 10 am to 9 pm, during which he has a meal break of two hours. Should the meal break be counted as hours worked for computing the minimum wage?

When an employee during his meal break also falls under the circumstances of hours worked as specified in the Minimum Wage Ordinance, such a meal break is hours worked for computing the minimum wage. If he 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 his post for the purpose of doing work, such time should be included in hours worked for computing the minimum wage irrespective of whether he is provided with work or not. On the contrary, if he can go out to eat or take a rest freely during his meal break without having to be in attendance at his post, such a meal break is not included in hours worked for computing the minimum wage.

If meal breaks are regarded as hours worked by the employee under the employment contract or agreement with the employer, then such meal breaks should be counted for computing the minimum wage.

While taking care of the tour participants and arranging their meals during mealtimes, a tour escort also has his meal at the same time. Should such time be regarded as hours worked for computing the minimum wage?

The tour escort remains at the restaurant during mealtimes for the purpose of doing work in accordance with the employment contract or with the agreement or at the direction of the employer. He may, for example, oversee the arrangement of meals, act as an interpreter or order drinks for the tour participants. Although he has his meal at the same time, he is in attendance at the restaurant for the purpose of doing work. Hence, such a mealtime should be regarded as hours worked for computing the minimum wage.

A tour escort is requested by his travel agent to arrive at the gathering point 45 minutes ahead of the gathering time to wait for the tour participants. Should the waiting time be counted as hours worked for computing the minimum wage?

If the tour escort arrives at the gathering point 45 minutes earlier to wait for the tour participants for the purpose of doing work in accordance with the employment contract or with the agreement or at the direction of the employer, the waiting time should be counted as hours worked for computing the minimum wage irrespective of whether he is provided with work or not during that time.

領隊隨團乘坐航機出發前往其他國家，領隊在航班上的時間是否屬於計算最低工資的工作時數？

由於領隊是按照僱傭合約、在僱主同意下或根據僱主的指示，隨團乘坐航機，因此他在香港與目的地之間用於航機上的交通時間，屬於關乎其受僱工作的情況下用於交通的時間，在計算最低工資時須包括在工作時數內。

一天旅程結束後，領隊安頓團員於酒店休息，然後自己返回酒店房間休息。領隊的休息時間是否屬於計算最低工資的工作時數？

有關時間是否屬於計算最低工資的工作時數，必須根據個別個案的事實和情況而定。

如按照僱傭合約、在僱主同意下或根據僱主的指示，領隊在該段時間為執行工作而留駐酒店當值，以便為有需要的團員提供即時服務，則不論最終有沒有獲派工作，該段時間都屬於計算最低工資的工作時數。

相反，如領隊在該段時間無須留在酒店當值，而可出外自由活動或消遣，則該段時間不屬於計算最低工資的工作時數。不過，如領隊因有團員在深夜感到不適求助等緣故而工作，則該段為團員提供服務及協助的時間便屬於計算最低工資的工作時數。

領隊如按團員要求，在原定行程結束後安排額外節目或者陪伴他們出席行程以外的節目，有關時間是否屬於計算最低工資的工作時數？

有關時間是否屬於計算最低工資的工作時數，必須根據個別個案的事實和情況而定。

如按照僱傭合約、在僱主同意下或根據僱主的指示，領隊需要應團員要求，在原定行程結束後安排額外節目或者陪伴他們出席行程以外的節目，則該段時間便屬於計算最低工資的工作時數。相反，如領隊不需要應團員要求安排額外節目或出席行程以外的節目，則該段時間便不屬於計算最低工資的工作時數。

關於領隊是否需要應團員要求安排額外節目或者陪伴他們出席行程以外的節目，以及有關時段是否屬於工作時數的問題，如僱傭雙方對此有

A tour escort accompanies a tour group on a flight to another country. Should the flight time be regarded as hours worked for computing the minimum wage?

Since the tour escort travels on a flight together with the tour group in accordance with the employment contract or with the agreement or at the direction of the employer, the travelling time spent between Hong Kong and the destination is in connection with his employment. Hence, such time should be included in hours worked for computing the minimum wage.

After finishing a day's activities and taking the tour participants to the hotel for a rest, a tour escort also takes a rest in his hotel room. Should the rest time of the tour escort be regarded as hours worked for computing the minimum wage?

Whether the time should be included in hours worked for computing the minimum wage depends on the facts and circumstances of individual cases.

If the escort is in attendance in the hotel for doing work during that time in accordance with the employment contract or with the agreement or at the direction of the employer in order to offer immediate assistance to those tour participants who are in need, then such time should be included in hours worked for computing the minimum wage irrespective of whether he is provided with work or not.

On the contrary, if he is not required to be in attendance in the hotel and can go out freely for activities during the rest time, such time is not included in hours worked for computing the minimum wage. However, if he has to work because a tour participant is feeling unwell late at night and asks for his assistance, the time during which he provides service or assistance for the tour participant is counted as hours worked for computing the minimum wage.

At the tour participants' request, a tour escort arranges extra activities or accompanies them to activities not on the itinerary after completion of the original itinerary. Should such time be counted as hours worked for computing the minimum wage?

Whether the time should be included in hours worked for computing the minimum wage depends on the facts and circumstances of individual cases.

If the tour escort is required to arrange extra activities for the tour participants or accompany them to activities not on the itinerary at their request in accordance with the employment contract or with the agreement or at the direction of the employer, such time should be counted as hours worked for computing the minimum wage. On the contrary, if he is not required to arrange extra activities or join activities not on the itinerary, such time is not counted as hours worked for computing the minimum wage.

If the employer and the employee have different understanding on whether the tour escort is required to arrange extra activities for the tour participants or accompany them to activities not on the itinerary at their request and whether such time is regarded as hours worked, they should

不同理解，宜及早釐清，以免日後爭議。

可否容許以一年或一季的工資平均數，而非每個工資期的工資，來衡量僱員的工資是否不低於最低工資？

根據《最低工資條例》，僱員有權就任何工資期獲付不少於最低工資的工資。因此，在衡量僱員的工資是否不低於最低工資時，必須逐個工資期計算，而不是以一年或一季的工資平均數來計算。《最低工資條例》的工資期定義與《僱傭條例》吻合，即除非相反證明成立，否則工資期是一個月。

如領隊的薪酬只按出團次數計算，僱主是否須確保每團的收入都符合最低工資？


僱員的最低工資以工資期為單位計算，基本原則是僱員有權就任何工資期獲付不少於最低工資的工資。因此，在衡量領隊的工資是否不低於最低工資時，只要他就工資期的所得工資達到最低工資便可以了。

如領隊在某個月因沒有帶旅行團而收入減少，致使他就該工資期的整體工資低於最低工資，僱主是否須向他支付額外報酬？

如領隊因沒有帶旅行團而導致他就該工資期的獲付工資低於最低工資，則僱主須根據《最低工資條例》向他支付額外報酬，使其工資不低於最低工資。

領隊在境外工作，僱主如何得悉並記錄他的工作時數？

《僱傭條例》及《最低工資條例》都沒有規定僱主記錄僱員工作時數的方式，僱傭雙方可按行業特性及公司的行政措施、監管要求及僱員的實際工作性質等需要，制訂合理而切實可行的記錄工時方式。

僱主和僱員如妥善保存出勤、工時及工資等紀錄，可保障雙方的權益，並且有助減少不必要的糾紛。 

clarify between themselves as soon as practicable in order to avoid disputes in the future.

Can the average wage in a year or in a quarter, rather than the wages in each wage period, be used to determine whether the wages of an employee are above the minimum wage?

According to the Minimum Wage Ordinance, an employee is entitled to be paid wages in respect of any wage period of not less than the minimum wage. Therefore, in determining whether the wages of an employee are above the minimum wage, wage calculation must be based on each wage period, rather than the average wage in a year or in a quarter. The definition of a wage period in the Minimum Wage Ordinance is aligned with that in the Employment Ordinance. Unless the contrary is proved, a wage period is one month.

If the wages of a tour escort are based on the number of tours he has led, must the wages paid by the employer for each tour meet the minimum wage?

The basis for calculating the minimum wage of an employee is the wage period, and in essence, wages payable to an employee in respect of any wage period must not be less than the minimum wage. Therefore, so long as the wages payable to the tour escort in respect of a wage period are not less than the minimum wage, it is good enough.

The income of a tour escort in a certain month is reduced as a result of his not leading any tour, thus making his total wages for the wage period less than the minimum wage. Must the employer pay him additional remuneration?

If the wages payable to the tour escort in respect of the wage period are less than the minimum wage as a result of his not leading any tour, the employer must pay additional remuneration to him according to the Minimum Wage Ordinance in order that his wages will not be less than the minimum wage.

How can the employer know and record the hours worked by a tour escort who works outside Hong Kong?

Both the Employment Ordinance and the Minimum Wage Ordinance do not stipulate how to record hours worked by employees. The employer and the employee may formulate a reasonable and practical way to record hours worked according to the characteristics of the industry, the administrative measures and supervisory requirements of the company and the actual job nature of the employee.

If the employer and the employee can keep proper records in relation to attendance, hours worked, wages, etc, that can safeguard their respective rights and benefits and help avoid unnecessary disputes. 