

立法會
Legislative Council

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**Paper for the House Committee Meeting
of the Legislative Council
on 8 June 2001**

**Legal Service Division Report on
Employment (Amendment) Bill 2001**

Object of the Bill

To rationalise the provisions offsetting severance payment and long service payment against the amount of gratuity, occupational retirement scheme benefits or mandatory provident fund scheme (MPF) benefits.

LegCo Brief Reference

2. LegCo Brief EMB CR 13/6/3231/50 Pt. 2 issued by the Education and Manpower Bureau on 25 May 2001

Date of First Reading

3. 6 June 2001.

Comments

4. Section 31I of the principal ordinance now allows severance payment to be reduced by the amount of gratuity or occupational retirement scheme benefits which has already been paid. Section 31Y makes a similar provision with regard to long service payment.

5. Since the introduction of MPF schemes, the offsetting provisions have been extended to MPF scheme benefits, but only to the amount of the benefits held in a MPF scheme and not to such benefits which have already been paid.

6. Owing to this omission, the offsetting could not be achieved in certain situations. One example would be where an employee has withdrawn his entire accrued MPF scheme benefits as he is entitled upon the retirement age of 65 but continues his employment and subsequently becomes entitled to severance or long service payment. In such a case, the employer who is required to make the payment would not be able to make any offset because no benefit is then held under a MPF scheme.

7. According to the Administration, there have not been any reported cases of double payments so far. However, in order to ensure that the original policy intent is fully achieved and double payments would not arise, it is now proposed that both sections 31I and 31Y be amended to cover the case where MPF scheme benefits have been paid.

8. It is also proposed that the amendments should take effect from the date of gazettal of the Bill, i.e. 25 May 2001. This is intended to safeguard against any possibility of a surge in employees withdrawing MPF scheme benefits and subsequently leaving employment before those amendments are made into law.

Public Consultation

9. According to the LegCo Brief, the Labour Advisory Board has no objection to the proposed amendments.

Consultation with the LegCo Panel

10. The LegCo Panel on Manpower was informed about the proposed amendments at its meeting on 17 May 2001.

Conclusion

11. Members may wish to consider whether they see any issue in the policy or other aspect that may need to be explored. The Bill is otherwise in order legally and in drafting.

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