

## **LEGISLATIVE COUNCIL BRIEF**

Employment Ordinance  
(Chapter 57)

### **Employment (Increase in Penalty for Offences under Section 63C) Bill 2005**

#### **INTRODUCTION**

A At the meeting of the Executive Council on 29 November 2005, the Council ADVISED and the Chief Executive ORDERED that the Employment (Increase in Penalty for Offences under Section 63C) Bill 2005, at Annex A, be introduced into the Legislative Council. The Bill seeks to raise the maximum penalty for wage offences under section 63C of the Employment Ordinance (“Cap. 57”) from the existing fine of \$200,000 and imprisonment for one year to a maximum fine of \$350,000 and imprisonment for three years.

#### **JUSTIFICATIONS**

2. In recent years, wage defaults by employers have increasingly become a significant cause for labour disputes and claims handled by the Labour Department (LD). Whereas non-payment and under-payment of wages accounted for 27% of all labour cases handled by the LD in 2000, the proportion climbed to 34% in 2004. The spate of catering establishments closing business and defaulting in payment of wages earlier this year has heightened public concern over the need for more effective sanctions under Cap. 57 against unscrupulous employers evading wage payment.

3. The LD takes a serious view on wage offences and makes every effort to prosecute employers who have contravened wage provisions under Cap. 57, where there is sufficient evidence and the employees concerned are willing to testify in court. As a result of LD’s rigorous enforcement efforts, the number of convicted summonses on wage offences rose from 139 in 2002 to 445 in 2003 – registering a hefty increase of 220%. The figure increased to 504 in 2004, up 13% on 2003. In the first ten months of this year, 493 summonses resulted in convictions.

4. In tandem with LD's all-out efforts to combat wage defaults, it is necessary to raise the maximum penalty to ensure that Cap. 57 has effective sanctions against wage offences. In particular, there is a strong body of public opinion that employers wilfully evading their wage obligations should be more severely punished.

5. The proposed fine of \$350,000 and imprisonment for three years is considered an appropriate maximum penalty for wage offences under section 63C. It would send a clear message to employers that they must pay wages on time. It is also on a par with the maximum penalty for the offence of employing not lawfully employable persons under section 17I of the Immigration Ordinance (Cap. 115).

## **THE BILL**

6. The main provision is clause 3 which amends section 63C of Cap. 57 to raise the maximum penalty for wage offences to a fine of \$350,000 and imprisonment for three years.

## **LEGISLATIVE TIMETABLE**

7. The legislative timetable will be -

Publication in the Gazette	2 December 2005
First Reading and commencement of Second Reading debate	14 December 2005
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **IMPLICATIONS OF THE PROPOSAL**

8. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. Cap. 57 does not contain an express provision binding the Government as a result of which the Bill will not affect the current binding effect of the Ordinance. The proposal has no economic, productivity, environmental or sustainability implications. There are no staffing, civil service or financial implications for the Government.

## **PUBLIC CONSULTATION**

9. The Labour Advisory Board, at its meeting on 6 October 2005, endorsed the proposal. The Legislative Council Panel on Manpower also lent its full support at its meeting on 17 November 2005.

## **PUBLICITY**

10. A press release will be issued on 30 November 2005. A spokesman from LD will be available to handle press enquiries.

## **BACKGROUND**

11. Sections 23, 24 and 25 of Cap. 57 regulate the payment of wages. Under these provisions, wages shall become due on the expiry of the last day of the wage period. An employer should pay wages to an employee as soon as practicable but in any case not later than seven days after the end of the wage period. Under section 63C, any employer who wilfully and without reasonable excuse contravenes section 23, 24 or 25 commits an offence and is liable to a fine of \$200,000 and imprisonment for one year.

12. The LD has stepped up enforcement action against wage offences. We have adopted a proactive and pre-emptive approach to forestall problematic establishments from evading their wage liabilities by conducting consultation sessions and paying surprise visits to the establishments to forewarn the management of their liabilities under Cap.57 and the serious consequences of non-compliance. We have also strengthened our promotional efforts to remind employers of their statutory wage payment obligations and urge employees to protect their rights by pursuing wage claims promptly and coming forward as prosecution witnesses. Among other things, we have recently produced two newly-designed leaflets on tackling wage offences for distribution to employers and employees respectively.

## **ENQUIRIES**

13. Enquiries on this brief should be addressed to Mr. Alan WONG, Assistant Commissioner for Labour (Labour Relations), on 2852 4099 or Mr. KOO Chiu-shing, Senior Labour Officer of LD, on 2852 3517.

Economic Development and Labour Bureau  
November 2005

**EMPLOYMENT (INCREASE IN PENALTY FOR OFFENCES UNDER  
SECTION 63C) BILL 2005**

## A BILL

### To

Amend the Employment Ordinance to raise the maximum penalty for the offences under section 63C of the Ordinance to a fine of \$350,000 and imprisonment for 3 years.

Enacted by the Legislative Council.

#### **1. Short title**

This Ordinance may be cited as the Employment (Increase in Penalty for Offences under Section 63C) Ordinance 2005.

#### **2. Commencement**

This Ordinance shall come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

#### **3. Offences relating to time and payment of wages**

Section 63C of the Employment Ordinance (Cap. 57) is amended –

- (a) by repealing “\$200,000” and substituting “\$350,000”;
- (b) by repealing “1 year” and substituting “3 years”.

### **Explanatory Memorandum**

Sections 23, 24 and 25 of the Employment Ordinance (Cap. 57) (“the Ordinance”) stipulate the time of payment of wages, etc. by employers. Under section 63C of the Ordinance, contravention of those sections wilfully and without reasonable excuse is an offence.

2. The object of this Bill is to amend section 63C of the Ordinance to increase the maximum penalty for the offences (clause 3).

3. Offences committed on or after the commencement date appointed by the Secretary for Economic Development and Labour (clause 2) will be subject to the new maximum penalty.