

For information on
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Legislative Council Panel on Manpower

Measures to protect the statutory entitlements of employees under the Employment Ordinance

Introduction

This paper briefs Members on measures adopted by the Labour Department (LD) to protect the statutory entitlements of employees under the Employment Ordinance (EO) in two scenarios: one where the employer is solvent and still in operation and the other where the employer has become insolvent.

Measures taken to assist employees when the employer is solvent and in operation

2. The Labour Relations Division (LRD) of the LD provides conciliation service to help employers and employees settle disputes and claims arising under the EO or their contracts of employment. In 2005, the LRD handled 26 189 cases, down 8.6% on 2004 and the lowest level since 1998. The average waiting time for conciliation of claims was shortened from 3.3 weeks in 2004 to 2.4 weeks in 2005. The successful rate of conciliation also went up to 69.8%, from 67.3% in 2004 – the highest level since 1994.

3. If, in the process of conciliation, suspected offences under the EO are detected and the employees are willing to be prosecution witnesses, the LRD will refer the case to our Employment Claims Investigation Division (ECID) for in-depth investigation with a view to taking prosecution. It is noteworthy that in about 20% of the cases handled by ECID, the employers paid the employees as a result of its enforcement action. If prosecution is taken out, the trial magistrate may, under section 65 of EO, order payment of outstanding wages and other statutory sums in respect of which an offence was committed to the employee. In 2005, the magistrates' courts made 73 such orders involving a total sum of \$1,567,321.

4. At the LegCo Manpower Panel meeting held in December 2005, we briefed Members on the multi-pronged approach taken by LD to tackle wage offences. Such all-out enforcement efforts against wage offences have created a deterrent effect on employers who attempt to evade liabilities to pay wages. In 2005, LD secured successful convictions of 587 summonses for wage offences, representing an increase of 16.5% over 2004. This, coupled with the declining trend of cases handled by LRD and the improved settlement rate, has helped tackle the problem upstream and resulted in a further decrease in the number of cases requiring adjudication at the Labour Tribunal (LT). In 2005, LRD referred 6 194 unsettled cases to the LT, down 18.6 % over 7 612 for 2004.

5. In 2005, LD's labour inspectors handled 223 cases in which the employers defaulted payment of awards made by the LT or the Minor Employment Claims Adjudication Board involving wage items. Of these, 82 cases were recommended for prosecution with sufficient evidence established¹ after thorough investigation. LD secured 110 convicted summonses on wage offences for cases of defaulted payment of awards.

Measures taken to assist employees when the employer is insolvent

6. The Protection of Wages on Insolvency Fund (PWIF) has been set up to provide timely relief in the form of ex gratia payment to employees of insolvent employers. The LRD assists employees affected by closure of business and the insolvency of their employers to apply for ex gratia payment from the PWIF. LRD will also refer such employees to the Legal Aid Department (LAD) for assistance in instituting liquidation proceedings against the insolvent employer. The presentation of a winding-up or bankruptcy petition against the insolvent employer is a necessary procedure to trigger payment from the PWIF to ensure that the employer concerned is truly insolvent so as to prevent abuse of the PWIF. In 2005, the LAD handled 762 applications for legal aid from employees to institute winding-up or bankruptcy proceedings against their insolvent employers. Of these, only 12 applications (1.6%) failed to pass the means test and were refused legal aid².

¹ The remaining cases could not be proceeded for prosecution for reasons such as the employer could not be located despite strenuous efforts made by LD, employer's insolvency/bankruptcy, or the worker declined to come forward as prosecution witness.

² Out of these 12 refusal cases, legal aid was ultimately granted in 4 cases because there were other employees who could meet the means test.

7. The Commissioner for Labour has discretionary power under section 18 of the Protection of Wages on Insolvency Ordinance to waive the requirement for presentation of winding-up/bankruptcy proceedings subject to certain conditions³. In 2005, the Commissioner exercised such discretion in 377 cases involving 1 221 employees.

8. In 2005, the PWIF made ex gratia payment amounting to a total of \$205.1 million to 10 444 employees of 1 123 insolvent employers. The average time for processing applications and making payment from the PWIF was shortened from 4.1 weeks in 2004 to 3.8 weeks in 2005.

Improvement measures

9. The LD is committed to adopting efficient and user-friendly procedures in handling labour disputes and claims, in referring unsettled cases to the LT for adjudication and in processing PWIF applications. To this end, we have, in collaboration with the LT and LAD, made constant improvement to such procedures. Examples are:

- (a) Standardising the claim form used by the claimants in the LRD and the LT. This has obviated the need for claimants to repeat to the LT information that they have already given to LRD.
- (b) Introducing a set of user-friendly guidance notes and checklist to facilitate PWIF applicants to submit supporting information and documents.
- (c) Streamlining work procedures in processing PWIF applications, including simplifying the case processing guidelines.
- (d) Dispensing with the need for referral to LAD for certain categories of insolvency cases, namely, where winding-up/bankruptcy petitions have already been issued, where winding-up/bankruptcy orders have been made and where the employer concerned employed less than 20 employees and is under voluntary liquidation. In 2005, this

³ The conditions prescribed by section 18 are: (a) the employer employs less than 20 employees; (b) sufficient evidence exists to support the presentation of a winding-up/bankruptcy petition; and (c) it is unreasonable or uneconomic to present a petition in that case.

arrangement benefited 384 PWIF applicants as processing of their applications could be expedited.

- (e) Dispensing with the requirement for PWIF applicants to attend interviews at the Wage Security Division, thus obviating the need for in-person applications.

10. We will continue to explore ways to further improve our services to our clients and work closely with the LAD and LT in this respect.

Economic Development and Labour Bureau
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