

For information on
20 July 2006

Legislative Council Panel on Manpower

A proposal to amend the Employment Ordinance to adequately express the Government's policy intention concerning the calculation of statutory entitlements

Progress Report

INTRODUCTION

At the meeting of the Legislative Council (LegCo) Panel on Manpower held on 30 May 2006, the Administration briefed Members on its intention of amending the Employment Ordinance ("EO") to put beyond doubt that all components of "wages", including commission of a contractual nature, however designated or calculated, are to be reckoned for the purpose of calculating the following statutory entitlements under the EO:

- (a) holiday pay;
- (b) annual leave pay;
- (c) maternity leave pay;
- (d) sickness allowance;
- (e) wages in lieu of notice; and
- (f) end-of-year payment.

Members noted that employer groups had urged the Administration to study the issue carefully and in depth before going down the route of legislative amendment whilst employee groups would like the proposal to be taken forward as soon as possible. This paper sets out the latest position since that meeting.

CONSULTATION WITH EMPLOYER AND EMPLOYEE ORGANISATIONS

2. We have invited all Labour Advisory Board (LAB) Members to put forward to us their views on the proposal as well as those of the organisations which they represent and know of. As at 14 July 2006, we have received submissions from eight employer/professional organisations and 52 labour groups/trade unions.

Views of employer organisations

3. The views of employer/professional organisations are mixed and can be summed up as follows:

- (a) The method of calculation of statutory entitlements under the EO should be revised to make reference to the average of the daily wages earned by an employee during a 12-month period immediately preceding or expiring on the statutory holiday, first day of the annual leave, or other relevant dates.
- (b) Any proposed amendments to the EO should cater for the unique circumstances of different economic sectors. In particular, the Administration should take full account of the wide-ranging remuneration systems whereby commission is calculated and paid as Hong Kong evolves into an increasingly service-based economy since the current relevant provision in the EO was enacted in 1997.
- (c) Commission should not be included in the calculation of some employment benefits which are of an ad-hoc nature e.g. sickness allowance and maternity leave pay.
- (d) A wage ceiling should be introduced for the purpose of calculating statutory entitlements. This is to lessen the cost impact on employers whilst protecting the interests of employees at the lower end of the wage spectrum. After all, the EO is meant to provide a minimum level of protection for employees' rights and benefits.
- (e) Some economic sectors where commission accounts for a significant proportion of payroll would be hard hit by the proposed amendments.

- (f) The Government should undertake a comprehensive review of the EO before making any proposal for legislative amendments in this respect. A piecemeal approach would be counter-productive.
- (g) Some employers may turn their employees into self-employed persons to contain cost if the EO is amended as proposed. In the end, this would result in a no-win situation and the employees would suffer.
- (h) The proposed amendments are unnecessary because there is no policy intention that commission, regardless of the system and mode of payment, should form part of an employee's wages for the purpose of calculation of statutory employment benefits.

Views of employee organisations

4. The labour groups and trade unions unanimously support the proposed amendments. They urge the Administration to expedite the legislative process and introduce the proposed amendment into LegCo as soon as possible. Most of them are not receptive to the ideas of imposing a wage ceiling for the purpose of calculating statutory entitlements and providing differential treatment for different economic sectors.

WAY FORWARD

5. We are seeking the legal advice of the Department of Justice (DoJ) to clarify certain problems and issues that have been raised during the consultation process. We will continue to discuss with the relevant parties with a view to addressing their concerns and ironing out any differences. In the light of DoJ's advice and the outcome of our efforts, we will finalise our amendment proposal and consult the LAB in the first instance. Our plan is to introduce an amendment Bill into the LegCo in its next session.