

For information  
on 20 July 2006

## **LegCo Panel on Manpower**

### **Tackling Age Discrimination in Employment**

#### **Purpose**

This paper briefs members on the measures taken by the Administration to tackle age discrimination in employment.

#### **Background**

2. Concerning the issue of age discrimination in employment, particularly in recruitment, some young and middle-aged job-seekers may attribute their failure to get a job to their age. The unemployment figures are often cited as evidence of such practice. The latest unemployment rate for the 15-24 age cohort is 9.2%, as compared to the overall unemployment rate of 4.9%. The number of middle-aged (aged 40 and over) accounts for half of the 170 000-plus unemployed people. Against this background, there are calls for legislation to deter age discrimination.

3. To gauge the views of the public on the issue, the then Education and Manpower Bureau conducted a survey in December 2001 and the survey findings were subsequently presented to the Manpower Panel in April 2002. The key findings of the survey showed that:

- A sizeable gap existed between people's perception on the extent of age discrimination and actual experience. Whilst 82% of the household respondents considered that age discrimination in recruitment existed in Hong Kong, only 13% claimed to have experienced age discrimination in recruitment;
- Over 85% of the household respondents were aware of the Government's publicity programmes against age discrimination in recruitment. Companies that have been more exposed to publicity were less inclined to link age with work performance and more inclined to have anti-age discrimination guidelines in recruitment;

- 72% of the household respondents and 75% of the employers interviewed considered promoting equal opportunities in recruitment through basic education effective;
- 54% of the household respondents and 36% of the employers interviewed considered introducing legislation more effective in guarding against age discrimination in employment, while 37% of the household respondents and 48% of the employers interviewed felt otherwise; and
- only 8.3% of the recruitment advertisements studied were found to have either an age range preference or a stated age restriction.

### **Legislation against Age Discrimination in Employment**

4. Legislating against age discrimination in employment would have far-reaching implications on the local economy. Besides, there is no consensus in the local community on the effectiveness of, or need for, such legislation, as indicated by the above survey findings.

#### *Likely impact on the economy*

5. There are concerns that an age discrimination legislation would hinder the free play of market forces, and impose rigidities on employers' operations and so constitute a disincentive for business investment in Hong Kong. There are also concerns that such legislation could affect the ability of the economy and the labour market to respond to externally induced fluctuations and, as such, could hamper the growth potential of the local economy over the longer term.

6. To avoid being held liable for breaching the law, businesses would have to maintain comprehensive record of all employment-related exercises (e.g. recruitment, promotion, redundancy). They would also need to spell out in specific terms the standards adopted to prove that "age" has not been a factor in conducting employment-related exercises. All these would increase business cost, especially for small and medium sized enterprises which make up some 98% of all enterprises in Hong Kong and most of which do not have proper human resources support.

*Likely impact on employers and employees*

7. Given the diversity of jobs that may genuinely require employing workers of specific attributes which are related to age (e.g. number of years of experience), such legislation would create rigidities on recruitment. For instance, campus recruitment schemes that clearly focus on recruiting young graduates could be viewed as age bias. A job advertisement requiring over 10 years' working experience could effectively eliminate job-seekers below 30. It is debatable whether such requirements should be banned. If so, employers would need to consider other channels or criteria for recruitment and this would create additional hurdles for them.

8. To adopt an entirely objective mechanism for the selection process for promotion, dismissal, retirement and other relevant employment-related arrangements, employees, irrespective of age, may have to undergo regular physical and skills assessments. All these would inevitably create additional pressure on the working population of all age groups.

*Enforcement Difficulties*

9. Enforcement would be a major problem for an age discrimination legislation. Specifically, it would be difficult to prove that a job application is rejected solely on the grounds of age as many other attributes (e.g. eye sight, dexterity) are affected by age.

10. It is important to note that age discrimination, which can be perceived as a condition affecting all age groups, is different in nature from other areas of discrimination. For instance, whilst sex can only be divided into two distinct categories and the disadvantaged groups could easily be identified, age discrimination entails a concept of comparative grading which renders distinction in protection coverage difficult. Even if the application was indeed turned down because of the job seeker's age, the employer could claim that the former did not possess a certain prerequisite of the job. It is much more difficult to challenge the legitimacy of job requirements.

**Measures to promote equal opportunity in employment**

*Enhancing the Employability of youth and the middle-aged*

11. Given that Hong Kong is now facing structural unemployment brought about by the restructuring of our economy, employees of all ages are facing challenges in keeping their jobs or securing new ones, and these

challenges are not solely age-based. The HKSAR Government believes that assisting the workforce to upgrade their skills and knowledge so as to enhance their employability and competitiveness in the labour market would be a more effective and appropriate approach. In the long run, only through education and skills upgrading would the local workforce be able to rise to the challenges arising from globalisation and a knowledge-based economy.

12. To upgrade the skills and knowledge of the workforce, various subsidised vocational training and education opportunities are offered to cater for that need. These include courses operating under the Skills Upgrading Scheme and the Continuing Education Fund, as well as retraining courses provided by the Employees Retraining Board. Institutions such as the Vocational Training Council, the Construction Industry Training Authority and the Clothing Industry Training Authority also offer courses to those who wish to equip themselves with vocational skills and enhance their competitiveness in the workforce. In addition, the Administration is in the process of developing a Qualifications Framework, which enables workers to set clear goals and directions for obtaining quality-assured qualifications.

#### *Labour Department (LD)'s employment services*

13. The LD provides free employment service to job-seekers and assist employers to recruit staff through a network of 10 job centres, the telephone employment service centre, the web-based interactive employment service and the job vacancy processing centre. As an administrative measure, the LD rejects all age discriminatory vacancies received from employers. Employers should not specify any requirements on the age, gender or race of the job-seekers in the Vacancy Order Forms when using the department's employment services.

14. To specifically assist middle-aged workers to find employment, the LD has implemented the "Employment Programme for the Middle-aged". With respect to youth employment, the LD has since 1999 launched a series of youth employment programmes including the "Youth Pre-employment Training Programme" and the "Youth Work Experience and Training Scheme".

#### *Publicity Campaign for Eliminating Age Discrimination in Employment*

15. The HKSAR Government is committed to eliminating all forms of discrimination. In respect of age discrimination in employment, the Government has since 1998 published the "*Practical Guidelines for Employers on Eliminating Age Discrimination in Employment*" and "*A Simple Guide to Employers on Eliminating Age Discrimination in Employment*" to encourage

employers and employment agencies to take the initiative to guard against unfair or different treatment on the ground of age towards employees or job-seekers.

16. In early 2006, we published a set of newly-designed posters and leaflets. These, together with the above guidelines, were sent to all the major employer's bodies, 350 employer's associations, 300 Tripartite Committees members, 1 900 HR Managers Club members and some 730 trade unions. The public may obtain these publications from the job centres and the Workplace Consultation Promotion Division of the LD, public libraries and Home Affairs Department's district offices. These documents may also be downloaded from the LD's homepage<sup>1</sup>.

17. To bring home the message of equal employment opportunities, we have also launched a new publicity campaign in early 2006. A new Announcement of Public Interest (API) entitled "Count on Talent Not Age in Employment" has been broadcast on local TV channels, radio stations and buses.

18. In 2006/07, we will continue with the publicity campaign. We will widely publicise the newly produced TV API through various channels, including the MTR concourses and platforms, an outdoor TV screen as well as LCD monitors installed at lift lobbies of selected commercial buildings.

## **Conclusion**

19. The Administration attaches great importance to safeguarding employees' rights and equal opportunities in employment. As the local community has yet to reach a consensus on whether anti-discrimination legislation on age should be introduced and given that this is an issue with far-reaching implications, we consider it more appropriate to focus on public education and publicity at this juncture in tackling age discrimination in employment. The Government will continue its efforts on this front.

Economic Development and Labour Bureau  
July 2006

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<sup>1</sup> <http://www.labour.gov.hk/eng/plan/eade.htm>