

經濟發展及勞工局
常任秘書長 (勞工)

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LC Paper No. CB(2)2969/05-06(01)

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23 August 2006

The Hon. LAU Chin-shek, JP
Chairman
Panel on Manpower
Legislative Council
(c/o Secretary, Panel on Manpower
Legislative Council)
8 Jackson Road
Hong Kong

Handwritten signature of Lau Chin-shek in black ink.

Decision taken by the Labour Advisory Board

I attach for information a summary of decision taken by the Labour
Advisory Board at its meeting on 22 August 2006.

Handwritten signature of Matthew Cheung Kin-chung in black ink.

(Matthew CHEUNG Kin-chung)
Permanent Secretary for Economic
Development and Labour (Labour)
and Chairman, Labour Advisory Board

**Decision taken by the Labour Advisory Board
at its meeting on 22 August 2006**

**To Amend the Employment Ordinance to Adequately Express the Policy
Intention Concerning the Calculation of Statutory Entitlements**

In the light of an earlier ruling of the Court of Final Appeal on a case concerning whether commission accrued and calculated on a monthly basis should be included in the calculation of holiday pay and annual leave pay, the Government considers it necessary to amend the Employment Ordinance (EO) in the following ways to adequately express the policy intention:

- (a) 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:
 - (i) holiday pay;
 - (ii) annual leave pay;
 - (iii) maternity leave pay;
 - (iv) sickness allowance;
 - (v) wages in lieu of notice for termination; and
 - (vi) end-of-year payment;and
- (b) to modify the existing mode of calculation of the above statutory entitlements by making reference to the average daily wages earned by an employee during the 12-month period, or such lesser period when the employee is under the employment of the concerned employer, immediately preceding or expiring on the statutory holiday, first day of the annual leave, or other relevant dates.

The Labour Advisory Board endorsed the above proposal.