

The HK Government seeks to increase its intervention in the private contract between providers and purchasers of labour services, by imposing requirements to include commissions in holiday pay. In a submission to the Legco Panel on Manpower, we urge the Government to step back and let the free market function.

## **Submission to the Legislative Council Panel on Manpower Regarding Commissions for Labour 27th September 2006**

Honourable members, the HKSAR Government has [proposed](#) to increase its level of intervention in the private contract between a willing employer and a willing employee, by broadening the scope of the [Employment Ordinance](#) to require that "holiday pay", "annual leave pay" and various other types of pay defined in the ordinance shall include commissions that the employee might have earned if he had been working.

The HKSARG has proposed that holiday pay be calculated based on all commissions earned in a rolling 12-month period prior to the leave date, or in the period of employment prior to the leave date if shorter.

In a free market, the arrangements for remuneration between an employee and employer, or any other terms of the contract, should be nobody's business but their own. The risk that you take by interfering in this and imposing contract terms by law is that you distort the economy and incentivise both parties to game the system. You will also drive more employers to seek "self-employed" people who provide services to the would-be employer as an independent contractor rather than enter into a contract of employment, thereby avoiding the Employment Ordinance altogether.

Surely if a person is willing to provide services in return for remuneration, part or all of which is performance-related or results-based, then he is willing to accept fluctuations in his income. He knows the terms of his contract, and enters into it of his own free will. If the contract states that when he doesn't work, he will only receive a base level of pay, or none at all, then he has accepted that too, and if he wishes to optimise his income, then he will take leave when his market is quiet and he is least likely to have earned commissions. This of course suits the employer too, because they need fewer staff around when they are less busy. For example, a person who gets commissions for selling mooncakes might take her leave after the mid-autumn festival.

When a person decides to accept a job, he is perfectly capable of taking into account the pay structure and other terms and benefits on offer. So if you believe in the free markets, then tell the Government to mind its own business and let employers and employees negotiate freely.

Government policy should, in fact, be moving in the opposite direction, to liberalise the labour market, making it more flexible and dynamic, and encouraging entrepreneurs and risk-takers on both ends of the contract. This would involve repealing large chunks, if not all of, the Employment

Ordinance. Fundamentally, an employer is just a buyer of services, and an employee is just a provider of those services. Negotiation brings them together by mutual agreement. Seen in that light, if it were not for the Employment Ordinance, there would be no difference between an independent contractor and an employee. It is only the Employment Ordinance that imposes a distinction by stipulating a rigid array of terms of the services contract. The provision of those services should be on any terms that the service provider and service buyer can agree.

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