

The Clerk to the Bills Committee considering
The Employment (Amendment) Bill 2006
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Sir/Madam

22 February 2007

In response to the Employment (Amendment) Bill 2006 which was gazetted in December 2006, we as a group of senior human resources practitioners in major banks in Hong Kong had a meeting to discuss the implications to the banking industry. We welcome the introduction of the Bill which clarifies the basis of calculating items of pay such as payment in lieu of notice, sickness allowance, maternity leave pay, holiday pay and annual leave pay.

However, we have the following views about the proposed changes covered in the Bill:

1. The proposed changes are not fair to employees whose pay package does not have a variable element, such as commissions or sales bonuses. If the leave / holiday pay is determined based on wages in the previous 12-month period, an employee who did not receive variable pay and who has a pay increase during the previous 12 months will have salary deducted on their leave / holiday days. This will definitely arouse grievances from employees and negatively impact the employee relations.
2. There is inconsistency in determining the 12-month reference period under different sections of the Employment Ordinance. For example, when calculating the payment in lieu of notice under S7, the date of notification is used in determining the 12-month wage period while under other sections of the Ordinance, the wage period refers to a period immediately preceding the leave / holiday day or the day on which the employment contract is terminated.
3. The proposed changes require a lot of manual tracking and manual calculation by employers in order to administer the payments accurately. For example, under S7.1A., "any period in the period of 12 months or shorter period for which the employee was not paid his wages or full wages by reason of any leave taken by him are to be disregarded". Such exclusion involves a labour intensive process on manually tracking days on which an employee is not paid full wages or any wages.
4. Some terms are not clearly defined, e.g. the term "full wages". It is not clear whether employees are considered as not being paid "full wages" under the following circumstances:
 - Employees who are converted from part-time to full-time employment (or vice versa) during the 12-month period. Will employees be considered as not being paid "full wages" for the period they work on a part-time basis?
 - Some employees are eligible for job-related allowance, for example teller allowance. However, he is not paid this job-related allowance while he is on statutory annual leave. As he is paid less on a statutory annual leave day than what he earns on a day he works, will the statutory leave period be considered as not being paid full wages?
 - Some employees are eligible for shift allowance for the days they perform shift duty. If an employee works shift duty and receives shift allowance in the previous month but does not work shift duty and receive shift allowance this month, will he be considered as not receiving full wages this month?
5. Sufficient time should be allowed for implementation as significant changes to the existing payroll system, record keeping and administration procedures, etc. are required. Although employers may have records of leave / holiday days taken by employees, the existing way in which the records are kept may not be able to let them directly linked to the payroll system and may not be able to cater for the changes. We suggest that a 12-month lead time for implementation is necessary.

We suggest that the Government may consider making the following changes to the Bill so as to make the changes more practical from an employer's perspective and to treat employees more fairly:

1. For employees who are in a job that is paid fixed wages (ie employees who are paid fixed salary and/or allowance without any variable pay) when the leave/holiday is taken or employment is terminated, the calculation of the daily or monthly average of wages should be determined based on the fixed salary and/or allowance on the day before the commencement of leave / holiday or the last day of employment. We believe that this is a fair approach because the employees are paid what they would earn if they work

on a particular day. By doing so, employees who earn fixed wages will not have pay deducted when they enjoy their statutory entitlement such as statutory holiday and annual leave.

2. For employees who are in jobs eligible for variable pay in addition to fixed pay, they will be paid “variable pay on leave / holiday” in addition to fixed pay on holiday / leave days. The “variable pay on leave / holiday” will be determined based on the actual daily average variable pay received in the previous 12 months or a shorter period if the employee is eligible for variable pay for part of the 12-month period. The variable pay earned in a 12-month period is a good indication of the trend of variable pay earned by employees.

In the banking industry, it is quite common that employees who are in sales roles are paid monthly or quarterly incentive payments which are calculated based on their sales performance in the previous months or quarters. It is reasonable that the normal incentive payment they receive on the leave/ holiday days based on the sales performance in the previous months or quarters, which is considered as wages, to be counted as part of “variable pay on leave / holiday”.

3. When calculating the daily average or monthly average of wages earned by an employee, a period of 365 days should be used instead of 12 calendar months. This will clearly specify the dates for easy calculation purpose. Daily average is suggested to be calculated on a calendar day basis.
4. Remove the condition “any period in the period of 12 months or shorter period for which the employee was not paid his wages or full wages by reason of any leave taken by him are to be disregarded” under Sections 7.1A., 11A(3), 14(3A), 15(2A), 33(4BAAA), 35(2), 41(2), 41C(2), as such exclusion involves a labour intensive process in tracking days on which an employee was not paid full wages.
5. In respect of payment in lieu of notice, it is suggested to align with other sections of the Ordinance where the wage period refers to a period immediately preceding the leave / holiday day or the day on which the employment is terminated. This will save administrative efforts and will be easier to explain to employees.

Should you need any further information, please feel free to contact Daisy Cheng, Senior Manager Compensation & Benefits of HSBC on 2822 1266.

Yours sincerely,

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