

For information on
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LegCo Panel on Manpower

Latest position on the Administration's efforts to tackle wage offences

Purpose

The Administration is firmly committed to tackling wage offences. This paper briefs Members on the progress of the effort made by the Administration in this area.

Increasing the maximum penalty for wage offences

2. Employers have a statutory responsibility to pay wages. Sections 23, 24 and 25 of the Employment Ordinance (EO) (Cap.57) stipulate that wages should be paid not later than seven days after the end of the wage period, the day of completion of contract and the day of termination of employment respectively. An employer who fails to pay wages in accordance with the EO wilfully and without reasonable excuse commits a serious offence and is liable to prosecution. To enhance the deterrent effect against employers defaulting wage payment, the maximum penalty for wage offences has been substantially raised from a fine of \$200,000 and imprisonment for one year to a fine of \$350,000 and imprisonment for three years with effect from 30 March 2006. This effectively complements the Labour Department (LD)'s proactive efforts to clamp down on blatant wage defaulters.

Vigilant monitoring

3. The LD has since August 2005 launched a pilot exercise codenamed Operation COMBAT aimed at proactively forestalling problematic restaurants from evading their wage liabilities. As at 31 December 2006, 118 restaurants employing altogether 5 687 employees have been put under Operation COMBAT. Of these 118 restaurants, 96 involving a total of 4 335 employees already ceased operation. After the intensive monitoring actions under Operation COMBAT, employees in 56 of the 96 restaurant closures had their wages and termination compensation payments cleared by their own employers. Employees of the remaining 40 restaurants have resorted to the Protection of Wages on Insolvency Fund for assistance. As for the 22 restaurants which are still in operation, they have been under close observation and regular liaison with the management has been established.

Enforcement against wage offences

4. LD's all-out enforcement initiatives against wage offences have proactively pre-empted employers who attempt to evade liabilities to pay wages. Details of our efforts are as follows:

- (a) Since the setting up of the Employment Claims Investigation Division (ECID) in September 2002 as part of LD's strategy to step up enforcement efforts against wage offences, the number of summonses taken out has increased dramatically. A summary of the detailed figures is set out in paragraph 5 below. It is noteworthy that in about 21% of the non-payment and underpayment cases investigated by the ECID in 2006, the employers paid back the outstanding sums to the employees after the ECID commenced investigation into the suspected wage offences.
- (b) The ECID has also reinforced its capacity in intelligence gathering and evidence collection. Once a major insolvency case occurs, officers of the ECID would immediately conduct proactive investigation into any suspected wage offences. The aim is to identify at an early stage the responsible persons of the company and to seize evidence at the workplace such as wage and employment records, books of account and financial/bank statements. Such timely and prompt actions have contributed to a substantial increase in the number of convicted summonses for wage offences, in particular those against the responsible persons of companies under section 64B of the EO.
- (c) The Labour Inspection Division has continued its vigorous workplace inspection programmes to clamp down on employers defaulting on wage payments. Targeted inspections were undertaken particularly to establishments of the catering and construction industries. In 2006, a territory-wide campaign covering a total of 1 338 catering establishments was organized to detect wage offences under the EO. This sent a strong message to employers that LD does not tolerate wage offences and would spare no effort in combating them. In addition, Labour Inspectors (LIs) conducted two special campaigns to construction sites to detect wage offences. A total of 72 construction sites were visited and wage offences mostly involving late payment were detected in 21 of them. Subsequent prosecution actions successfully secured convictions of 22 summonses. In the course of their inspections, LIs will distribute to employees leaflets containing LD's wage offence complaint hotline (2815 2200) and highlights of statutory provisions on employees' rights and benefits. This facilitates employees to lodge complaints to LD when necessary.

- (d) LIs also investigate cases in which the employers defaulted payment of awards involving wage items made by the Labour Tribunal or the Minor Employment Claims Adjudication Board. In 2006, LD secured 124 convicted summonses on wage offences for cases of defaulted payment of awards. This exceeded the 110 convicted summonses in 2005.

Prosecution efforts and results

5. The enforcement measures outlined in paragraph 4 above have led to a record-high level of prosecutions and convictions on wage offences. In 2006, LD secured 785 convicted summonses for wage offences, representing an increase of 34% over the figure of 587 in 2005.

6. To further increase the deterrent effect, the LD has also adjusted its strategies in investigation and prosecution. Since 2005, the LD has focused on collecting evidence against directors and responsible persons culpable for wage offences committed by the limited companies. Section 64B(1) of the EO stipulates that where any wage offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officers of the body corporate, the director, manager, secretary or other similar officer shall be guilty of the like offence. In 2006, the LD has secured 69 convicted summonses on directors and responsible persons of limited companies, which has exceeded the figure of eight in 2005 by more than seven times. These successful convictions have helped convey a clear message to the public that one cannot evade liability to pay wages under a corporate veil.

7. In 2005 and 2006, two employers were heavily fined \$120,000 and \$114,000 respectively. In the same period, three company directors and three other employers were given custodial sentence, with the heaviest being three months' imprisonment. These have sent a strong warning to employers on the seriousness of wage defaults.

8. LD will continue to take out prosecution whenever there is sufficient evidence to establish a wage offence. We will also apply to the Magistrate under section 65 of the EO upon convicting the employer to order payment of outstanding wages to the employees through court. In 2006, the Magistrate has made 70 such orders on employers convicted of offences under the EO to pay back through the court the wages due to their employees under their contracts of employment. The wage amount involved in these 70 orders totalled \$3,792,689.

Combating wage offences in the construction industry

9. Sub-contracting is a common practice in the construction industry. If properly managed, it will facilitate the execution of works in a cost-effective manner with efficient use of resources. However, in the absence of proper management, uncontrolled multi-layered sub-contracting may lead to ambiguous appointment and employment relationships. Where there is a lack of formal employment agreements or proper attendance and wage records for the workers on site, it would be difficult to control and monitor wage payments to workers. Workers in the construction industry are therefore particularly vulnerable to wage arrears incidents.

10. To safeguard employees in the construction industry against wage default, the Environment, Transport and Works Bureau (ETWB) and Housing Authority (HA) have incorporated monitoring measures into Government new public works contracts as well as Housing Department's building contracts since 1 May 2006. Details of these measures are as follows:

- (i) installing a computerised smart card system at construction sites to keep records of workers' attendance;
- (ii) requiring all on-site workers to enter into written employment contracts with their employers;
- (iii) arranging for bank auto-payment in respect of wages and requiring main contractors to submit copies of wage payment records;
- (iv) the employment of Labour Relations Officers (LROs) to check and verify the wage payment records and be responsible for receiving, acknowledging and recording complaints and inquiries from workers. Suspicious cases, complaints and defaults would be reported to the LD for further investigation, verification, resolution, prosecution and enforcement as appropriate under the relevant legislation;
- (v) monitoring and restricting subcontracting layers on specified work trades and work elements;
- (vi) in cases of wage default, the Administration has the right to utilise contract monies to make payment directly to the workers who are owed wages after the Labour Tribunal has awarded in favour of workers. The workers have the responsibility, however, to report the arrears of wages to the LRO within seven days after they are owed wages; and

- (vii) extending the imposition of On-demand Bond to all HA new works contracts to address the residual problem encountered in the situation where the contractor is in liquidation or under a petition for winding up, the HA is bound by the insolvency law and cannot utilise contract monies to pay the workers of their proven wages in arrears.

11. The above new measures have been adopted in all new works contracts tendered since 1 May 2006. The ETWB and HA will make necessary adjustments to the measures as they are being implemented in the light of practical experience in order to enhance the protection for construction workers. It is the Administration's intention to encourage private sector developers to follow suit if the above measures are proven successful.

12. In parallel with the Administration's pre-emptive strategy to combat the problem, the LD has set up an early warning system in collaboration with trade unions in the construction industry to gather intelligence on non-payment of wages. Trade unions will inform the LD whenever they are aware of any labour disputes so that the department can promptly provide conciliation service and follow up on the wage offences concerned. On the publicity front, the LD has also stepped up its efforts to alert the construction workers about their rights and the need to report wage defaults at an early stage. Details of our work in this area are set out at paragraph 14.

13. As regards prosecution, 261 convicted summonses for wage offences in the construction industry were secured in 2006, representing an increase of 85% over the figure of 141 in 2005.

Promotional and educational activities

14. LD has spared no efforts in sending out a clear message to the community that the Government does not tolerate wage offences. To this end, we have mounted promotional campaigns to remind employers of their statutory obligation to pay wages on time and to alert them to the penalty clauses and successful conviction cases. We also educate employees on their right to lodge claims and the importance of serving as prosecution witnesses. Our major publicity and promotional efforts include:

- launching a publicity campaign through the production of TV and radio Announcements in the Public Interest (APIs), bus advertising and posters to make the increased wage offence penalty widely known to the public;

- disseminating revised promotional leaflets targeting at employees and employers respectively on the seriousness of wage offences through various channels including trade unions in the non-government sector and employer associations; and
- designing a new leaflet to enhance the awareness of construction workers of their statutory rights. We have also produced a poster to remind construction workers of the major provisions on wage protection under the EO and encourage them to act as prosecution witness in wage default cases. It will be ready for display at various construction sites and trade unions shortly.

Way forward

15. The Administration will continue to adopt a proactive and pre-emptive strategy on various fronts to deter employers defaulting on wage payments.

Labour Department
Economic Development and Labour Bureau
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