

立法會
Legislative Council

LC Paper No. CB(2)1134/09-10
(These minutes have been seen by
the Administration)

Ref : CB2/BC/10/08

Bills Committee on Employment (Amendment) Bill 2009

Minutes of meeting
held on Thursday, 11 February 2010, at 8:30 am
in the Chamber of the Legislative Council Building

- Members present** : Hon WONG Ting-kwong, BBS, JP (Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon LI Fung-ying, BBS, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
- Members absent** : Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Sing-chi
Hon Paul TSE Wai-chun
- Public Officers attending** : Mr Byron NG, JP
Assistant Commissioner for Labour (Labour Relations)
- Mr Ernest IP
Chief Labour Officer (Labour Relations)
Labour Department
- Miss Bonny WONG
Senior Labour Officer (Labour Relations) 1
Labour Department

Miss Betty CHEUNG
Senior Assistant Law Draftsman
Department of Justice

Miss Emma WONG
Senior Government Counsel
Department of Justice

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mrs Eleanor CHOW
Senior Council Secretary (2) 4

Mr Ian CHOW
Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

I. Election of Chairman

The Bills Committee proceeded to the election of Chairman as Mr Alan LEONG, former Chairman of the Bills Committee, had resigned from the Legislative Council. Mr WONG Ting-kwong was elected Chairman of the Bills Committee.

II. Meeting with the Administration

2. The Bills Committee deliberated (index of proceedings attached at **Annex**) and completed the clause-by-clause examination of the Employment (Amendment) Bill 2009.

3. The Administration was requested to -

- (a) relay to the Labour Tribunal members' concern about the need to explain to employees the effect of a consent award involving only non-specified entitlements; and
- (b) provide a paper on the Administration's proposed Committee Stage amendments to the Bill and the rationale behind.

4. The Administration undertook to keep records as far as possible on the time required to complete the relevant procedures under the proposed section 43S and report the progress of implementation of the Bill to the Panel on Manpower one year after commencement.

III. Date of next meeting

5. The Bills Committee agreed that the Clerk would liaise with the Administration and consult the Chairman on the date for the next meeting.

(Post meeting note: The next meeting will be held on 29 March 2010 at 2:30 pm.)

6. The meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
19 March 2010

**Proceedings of meeting of the
Bills Committee on
Employment (Amendment) Bill 2009
on Thursday, 11 February 2010, at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000254	Hon LEE Cheuk-yan Hon Andrew LEUNG Hon WONG Ting-kwong	Election of Chairman	
000255 - 000410	Chairman	Opening remarks	
000411 - 001212	Chairman Admin	Briefing on the Administration's response to issues raised by members at the meeting on 13 January 2010 (LC Paper No. CB(2)855/09-10(01))	
001213 - 002100	Chairman Hon WONG Kwok-hing Admin	Feasibility of providing a performance pledge or an administrative guideline for completing the procedures under proposed section 43S(1) and (2) (paragraphs 7-9 of LC Paper No. CB(2)855/09-10(01)) Undertaking by the Administration to keep records as far as possible on the time required to complete the relevant procedures under proposed section 43S and report the progress of the implementation of the Bill to the Panel on Manpower one year after commencement	Admin to report progress to the Panel on Manpower
002101 - 002915	Chairman Hon LEE Cheuk-yan Admin	Issues raised by Hon LEE Cheuk-yan - (a) non-payment of an employee's entitlements under the Employment Ordinance (EO) not yet covered as specified entitlements under proposed section 43N(1); (b) time taken by the Labour Department (LD) to complete procedures under section 64 of EO on which proposed section 43S was based; (c) adequacy of manpower in LD to investigate and prosecute cases arising from defaults of Labour Tribunal (LT) and Minor	

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		<p>Employment Claims Adjudication Board (MECAB) awards after passage of the Bill; and</p> <p>(d) lengthy time taken by LD to handle a case of an Indonesian domestic helper</p> <p>Response of the Administration -</p> <p>(a) the majority of an employee's entitlements under EO had been included as specified entitlements under the Bill;</p> <p>(b) one category of payments not covered under proposed section 43N(1), even with the CSAs contemplated, was outstanding wages of the first two months owed to an employee by a subcontractor for which the principal contractor or superior subcontractor became vicariously liable under Part IXA of EO;</p> <p>(c) time taken by LD to complete procedures under section 64 of EO depended on complexity of the case; and</p> <p>(d) cases involving Indonesian domestic helpers might take more time to process, one of the reasons being the difficulty in finding an interpreter who spoke the same dialect</p>	
002916 - 003227	Chairman Hon IP Wai-ming Admin	<p>Issues raised by Hon IP Wai-ming -</p> <p>(a) need to stipulate payment in lieu of notice in the definition of "specified entitlement" in the Bill; and</p> <p>(b) record by LD on the time required to complete the relevant procedures under proposed section 43S</p> <p>Response of the Administration on (a) above set out in LC Paper No. CB(2)80/09-10(01)</p>	

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003228 - 004022	Chairman Hon Jeffrey LAM Admin	<p>Basis for including compensation under section 32P and terminal payments under section 32O of EO arising from unreasonable and unlawful dismissal as specified entitlements under the Bill (paragraphs 4-6 of LC Paper No. CB(2)855/09-10(01))</p> <p>Stakeholders consulted by the Administration on the possible read-across implications of including compensation under section 32P and terminal payments under section 32O of EO arising from unreasonable and unlawful dismissal as specified entitlements</p>	
004023 - 004319	Chairman Hon Andrew LEUNG Admin	<p>Issues raised by Hon Andrew LEUNG -</p> <p>(a) read-across implications of the proposal to criminalize non-payment of LT awards on other parts of the civil adjudication system;</p> <p>(b) need to restrict the proposed inclusion of non-payment of an employee's entitlements under sections 32P and 32O of EO arising from unreasonable and unlawful dismissal as specified entitlements;</p> <p>(c) request for the Administration to provide a paper setting out the Committee Stage amendments (CSAs) to be proposed and the rationale behind; and</p> <p>(d) progress to be reported by LD one year after implementation of the Bill</p>	Admin to provide a paper on its proposed CSAs to the Bill
004320 - 004925	Chairman Admin	<p>Issues raised by the Chairman -</p> <p>(a) whether a claimant could enquire about progress of the investigation and legal proceedings in respect of the proposed section 43P offence; and</p> <p>(b) whether an employee defaulted payment to an employer would be</p>	

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		<p>criminalized</p> <p>Response of the Administration -</p> <p>(a) a claimant could enquire about progress of the investigation and legal proceedings in respect of offences under EO, even at present; and</p> <p>(b) employers were usually in a better position to enforce defaulted awards against an employee. Nevertheless, experience suggested that they rarely made claims against an employee (mainly payment in lieu of notice)</p>	
004926 - 005420	Chairman Admin Hon IP Wai-ming	Clause-by-clause examination of the Bill Examination of the long title Examination of Clause 1 on the short title, Clause 2 on timing for commencement of the Bill and Clause 3 on consequential amendments to section 31O of EO	
005421 - 010213	Admin Chairman Hon IP Wai-ming Hon Cyd HO	Examination of Clause 4 on Part IXB added (proposed sections 43N - 43S) Examination of proposed section 43N on interpretation of Part IXB	
010214 - 010258	Chairman Admin	Examination of proposed section 43O on application to the awards made on or after the commencement date	
010259 - 013359	Chairman Admin Hon LEE Cheuk-yan Hon Cyd HO ALA9	Examination of proposed section 43P on offence of employer Issues raised by members and ALA9 - (a) whether the phrase "unless there is evidence to the contrary" in proposed section 43P(3) was necessary; (b) whether "any sum payable under an award" in proposed section 43P(2) included costs and expenses and interests on the award ordered by LT or MECAB; and	

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		<p>(c) how interest of the defaulted LT award was calculated</p> <p>Response of the Administration that -</p> <p>(a) the phrase "unless there is evidence to the contrary" in proposed section 43P(3) was necessary to cover the situation where the sum awarded by LT did not include specified entitlements not claimed by the claimant e.g. claim of specified entitlement found mistakenly filed in the course of proceedings;</p> <p>(b) the Administration would relay members' concerns to LT about the need to explain to employees the effect of a consent award involving only non-specified entitlements;</p> <p>(c) an employer who had defaulted part of a lump-sum settlement which was treated as LT award covering both specified and non-specified entitlements would be subject to criminal sanctions by virtue of proposed section 43P(1);</p> <p>(d) if LT or MECAB made an award covering specified entitlements and including costs, expenses as well as interests in the same award, "any sum payable under an award" in proposed section 43P(2) included costs and expenses and interests on the award; and</p> <p>(e) the court would order the interest payable under a LT award for wages not paid within seven days after the date on which the payment was due</p>	<p>Admin to relay members' concern to LT</p>
013400 - 013606	Chairman Admin	Examination of proposed section 43Q on liability of directors, partners etc.	
013607 - 014004	Chairman Admin	Examination of proposed section 43R on proof of certain matters in proceedings	

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014005 - 020151	Chairman Admin Hon Cyd HO Hon LEE Cheuk-yan Hon LEUNG Yiu-chung	Examination of proposed section 43S on prosecution of offences Issues raised by members - (a) procedures for notifying an employer of the opportunity of being heard and instituting criminal proceedings under proposed section 43S; (b) how to determine whether the excuses given by an employer in a hearing under proposed section 43S(2) were reasonable; (c) whether an employer could appeal against the decision of the Commissioner for Labour that the excuses given were not reasonable; and (d) reason for using the word "must" instead of "shall" in proposed section 43S(2) Response of the Administration - (a) procedures for proposed section 43S followed those of section 64 of EO; (b) whether an excuse was reasonable would be assessed based on facts of the case; (c) an employer could explain to the court why his excuse was reasonable; and (d) the modern trend in legislative drafting in common law jurisdictions was to use the word "must" in place of "shall" because "must" denoted an obligation in ordinary usage whereas "shall" was commonly understood in ordinary language as referring to the future	

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020152 - 020227	Chairman Admin	The Chairman concluded that the Bills Committee had completed clause-by-clause examination of the Bill. Date of next meeting	

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