

立法會
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**Subcommittee on Employees Retraining Ordinance
(Amendment of Schedule 3) Notice 2008**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper summarises past discussions by Members on the Employees Retraining Levy.

The Employees Retraining Levy

Introduction of the Levy

2. On 25 February 2003, the Chief Executive in Council ordered that an Employees Retraining Levy (the Levy) of \$400 per month for each foreign domestic helper (FDH) be imposed on employers of FDHs with effect from 1 October 2003 and the minimum allowable wage of FDHs be reduced by \$400 with effect from 1 April 2003. The Levy would be used for the training and retraining of the local workforce.

Discussions by the Panel on Manpower

3. The Panel on Manpower discussed the Levy at its meetings on 12 March and 24 April 2003.

4. Some members expressed support for the imposition of the Levy on employers of FDHs. Some of these members considered that the Levy should be imposed on all employers of imported employees, including those importing employees under the Admission of Talents Scheme and the Admission of Mainland Professionals Scheme. They also called upon the Administration to comprehensively review the policy on importation of FDHs with a view to improving the employment of local workers.

5. Some other members pointed out that the legislative intent of the Employees' Retraining Ordinance (ERO) did not cover FDHs as imported foreign workers under a labour importation scheme. These members queried whether the Administration was empowered under ERO to impose a levy on

employers of FDHs without the need to legislate.

6. The Administration took the view that although the importation of FDHs was not designated as a labour importation scheme when ERO was enacted, it should not prevent the inclusion of such importation under ERO in the light of changing social and economic circumstances. Given that employers of FDHs were enjoying services offered by foreign workers, and having regard to the economic situation and high unemployment rate at that time, the Administration considered it reasonable to bring the admission of FDHs on par with the Supplementary Labour Scheme and to require employers of FDHs to contribute towards the training and retraining of the local workforce and promotion of job opportunities for local workers.

Judicial Review on the imposition of the Employees Retraining Levy on employers of foreign domestic helpers and the reduction of the minimum allowable wage for foreign domestic helpers in 2003

7. In March 2003, five FDHs applied to the High Court for judicial review of the imposition of the Levy on employers of FDHs and the reduction of the minimum allowable wage for FDHs in 2003. The application for judicial review was dismissed by the High Court on 4 January 2005 and the Court of Appeal on 19 July 2006.

Motion urging the Government to cease the imposition of the Employees Retraining Levy at the Council meeting on 30 April 2008

8. At the Council meeting on 30 April 2008, Hon Tommy CHEUNG moved a motion urging the Government to cease the imposition of the Levy on employers of FDHs. The motion moved by Hon Tommy CHEUNG as amended by Hon LEE Cheuk-yan and Hon Andrew LEUNG was carried.

Suspension of the Employees Retraining Levy for a period of two years

9. During the Chief Executive's Question and Answer Session on 16 July 2008, the Chief Executive announced that the Levy would be waived for the coming two years to relieve the burden on middle-income families hiring FDHs. The Administration subsequently announced that the levy suspension would take effect from 1 September 2008. A number of employers with pre-existing FDH contracts were then found to have terminated their contracts prematurely in order to enjoy the suspension of levy as soon as possible. The Government announced on 21 July 2008 that the implementation of the proposal to suspend the collection of the Levy would be advanced from 1 September 2008 to 1 August 2008. The Employees Retraining Ordinance (Amendment of Schedule 3) Notice 2008, which gave effect to the suspension of the Levy, was published in the Gazette on 1 August 2008. The levy suspension is applicable

to all employment contracts for which visas for the imported labour/FDHs concerned are issued by the Director of Immigration between 1 August 2008 and 31 July 2010.

Relevant papers

10. Members may wish to refer to the following minutes of meetings and papers for further details of the discussions -

- (a) minutes of special meeting of the Panel on Manpower on 12 March 2003 [LC Paper No. CB(2)1785/02-03];
- (b) minutes of meeting of the Panel on Manpower on 24 April 2004 [LC Paper No. CB(2)2281/02-03];
- (c) Official Record of Proceedings of the Council meeting on 30 April 2008 on the motion on ceasing the imposition of the levy of employers of foreign domestic helpers;
- (d) Administration's paper concerning the imposition of a levy on employers of FDHs for the meeting of the Panel on Manpower on 12 March 2003 [LC Paper No. CB(2)1438/02-03(02)]; and
- (e) Administration's paper on review of the policy on FDHs for the meeting of the Panel on Manpower on 24 April 2003 [LC Paper No. CB(2)1730/02-03(01)].

11. The above minutes and papers are also available on the website of the Legislative Council (<http://www.legco.gov.hk>).

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