

Panel on Manpower

List of outstanding items for discussion

(position as at 13 March 2009)

**Proposed timing
for discussion**

Items proposed by members

1. Age discrimination in employment

At the meeting on 20 July 2006, the Administration briefed members on measures to address the problem of age discrimination in employment. Members considered that the Administration should introduce legislation on age discrimination in employment.

To be confirmed

2. Protection for employees who are not employed under a continuous contract

At the meeting on 2 November 2001, Hon LEUNG Fu-wah indicated that he and two other members in the Labour Constituency would jointly introduce a Member's Bill to extend the applicability of the Employment Ordinance (EO) to those who are employed by the Government on non-civil service contract terms. They would make another proposal to extend the same to those who are not employed under a continuous contract ("continuous contract" is defined under EO as a contract of employment under which an employee has been employed for four weeks or more and has worked for 18 hours or more in each week, i.e. fulfilling the so-called "4-18" requirement). The Member's Bill, jointly proposed by Hon CHAN Kwok-keung, Hon LI Fung-ying and Hon LEUNG Fu-wah, was ruled out of order by the President on 14 March 2002, as the Bill related to public expenditure and Government policy.

To be confirmed

At the meeting on 16 May 2002, the Panel agreed that the protection of workers not employed under a continuous contract should be discussed at a future meeting. On 16 June 2005, the Administration advised the Panel that the Census and Statistics Department (C&SD) would conduct a special topic enquiry to gather updated information on employees who were not working under a continuous contract and study overseas experience. The matter would then be discussed by the Labour Advisory Board (LAB) before reverting to the Panel.

At the meetings on 12 October 2006 and 16 November 2006, the Administration advised the Panel that it was awaiting the result of the survey conducted by C&SD. At the meetings on 18 October 2007 and 15 November 2007, the Administration advised that pursuant to the compilation of the relevant information by C&SD which would be available shortly, it would revert to the Panel.

The Panel considered the report on the result of C&SD's survey on "Benefits of employees under the Employment Ordinance" (LC Paper No. CB(2)665/07-08 issued on 19 December 2007) at the meeting on 17 January 2008. The Panel urged the Administration to consider relaxing the "4-18" requirement and enhancing the rights and benefits of employees who were not employed under a continuous contract. The Administration advised that it would conduct an internal review on the definition of "continuous contract" under EO in the light of recent developments in the labour market. The Administration further advised in its letter dated 5 March 2008 that given the complexity of the subject, the review would take time. It hoped to complete the review by the end of 2008. The Administration's response was circulated to members vide LC Paper No. CB(2)1308/07-08 on 10 March 2008.

In their letter dated 14 October 2008, Hon WONG Kwok-kin, Hon WONG Kwok-hing, Hon IP Wai-ming and Dr Hon PAN Pey-chyou requested the Government to review EO, in particular the "4-18" requirement.

3. Provision of one-stop service by the Labour Department in handling cases of arrears of wages

At the meeting on 21 November 2002, Hon LEUNG Yiu-chung pointed out that employees who were owed wages by their insolvent employers were normally required to go through a number of processes with LD, the Labour Tribunal (LT) and the Legal Aid Department before they could apply for financial assistance from the Protection of Wages on Insolvency Fund (PWIF). To streamline the administrative procedures involved and to expedite the process, he suggested exploring the feasibility of LD providing one-stop service for handling cases of arrears of wages.

To be confirmed

Hon LEE Cheuk-yan raised the subject again at the meetings in June and December 2003, and January 2007. At the meeting on 18 January 2007, the Administration advised that the procedures for claiming PWIF had constantly been streamlined and according to the performance pledge of LD, payment to PWIF applicants could be effected within ten weeks upon receipt of all relevant information and documents required for processing the applications. The Administration did not find the idea of providing one-stop service useful in reducing the time required for the different services.

At the meeting on 17 January 2008, Hon LEUNG Yiu-chung suggested that the provision of assistance to employees of insolvent employers not meeting the means test for legal aid should be discussed by the Panel. At the meeting on 8 July 2008, some Members requested the Administration to explain the discretionary power of Legal Aid Department to waive the means test. The Administration responded on 18 July 2008 that under section 5AA of the Legal Aid Ordinance, Director of Legal Aid was granted the power to waive the upper limit of the means tests in meritorious applications where a breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong was an issue. Such power was granted as a matter of human rights consideration.

4. Review on the scope of the Protection of Wages on Insolvency Fund and its operation

At the meeting on 15 November 2007, Hon Lee Cheuk-yan, Hon Li Fung-ying and Hon Leung Yiu-chung requested the Administration to review the scope of ex gratia payment from PWIF to provide more protection for employees of insolvent employers so that they could also apply for ex gratia payment on items such as annual leave pay and maternity leave pay. Members requested the Administration to revert to the Panel before the end of the 2007-2008 legislative session.

To be confirmed

The Administration advised that the suggestion to broaden the scope of ex gratia payment from PWIF would require discussions by the Fund Board and labour-management consensus. The Administration would consider the issue on the operation of PWIF subsequent to the revision of the Business Registration Certificate levy rate in early 2008.

At the meeting on 18 December 2008, the Administration briefed members on the latest financial position of PWIF, including its income/expenditure and reserve.

5. Protection against anti-union discrimination

At the meeting on 6 May 2003, Hon LEE Cheuk-yan requested the Administration to respond to the recommendations of the International Labour Organisation (ILO) to address the complaints lodged by the trade union of Cathay Pacific Airways concerning discrimination against trade union. The Administration undertook to respond when official documents were received from ILO. In November 2003, May 2005 and May 2006, the Administration prepared submissions to ILO about the case progress.

To be confirmed

6. Establishment of a central compensation insurance fund

Following the "911" terrorist attack in 2001 and the outbreak of SARS in 2003, there were concerns over the potential non-availability of employees' compensation insurance (ECI) cover for certain risks e.g. infectious diseases. LegCo passed a motion on 10 December 2003 urging the Administration to study the feasibility and desirability of establishing a central ECI fund.

To be confirmed

Hon LEE Cheuk-yan followed up the matter at the Panel meeting on 20 May 2004. The Panel was advised that apart from the Administration, the insurance industry was also conducting a study on the issue. The issue would not be ready for discussion until after September 2004.

On 19 May 2005, the Panel was briefed on the proposed measures to improve the ECI system in Hong Kong. The Administration presented its research findings on the operation of the ECI schemes in some overseas countries and the views received from the insurance industry. As replacing a private market by a central ECI scheme would have significant impact on insurers, LAB agreed to test run a "residual scheme" proposed by the Hong Kong Federation of Insurers. The scheme sought to act as a market of last resort to assist employers who had difficulties finding ECI cover. At the meeting, the Panel urged the Administration that, while introducing the residual scheme, it should also consider

pursuing a central ECI scheme in the long run.

At the meeting on 15 March 2007, the Panel was briefed on the structure and mode of operation of the Employees' Compensation Insurance Residual Scheme (the Scheme), scheduled to be launched by the insurance industry on 1 May 2007. The Panel was advised that a mid-term review of the progress of the Scheme would be conducted one year after implementation and an overall review after operating the Scheme for two years.

The outcome of the mid-term review of the Scheme was circulated to members vide LC Paper No. CB(2)2632/07-08 on 17 July 2008.

7. Employment policy

Hon CHAN Yuen-han, Hon WONG Kwok-hing and Hon KWONG Chi-kin suggested in their letter dated 16 December 2004 that the relationship between population and employment policy should be examined to facilitate the formulation of long term population policy and employment policy.

To be confirmed

8. Establishment of a re-employment support scheme and employment services for unemployed Comprehensive Social Security Assistance recipients

Hon CHAN Yuen-han, Hon WONG Kwok-hing and Hon KWONG Chi-kin suggested in their letter dated 16 December 2004 that the establishment of a re-employment support scheme to encourage the unemployed to join the labour force should be discussed by the Panel.

To be confirmed

At the meeting on 17 November 2005, Hon CHAN Yuen-han expressed concern about the employment services provided to unemployed Comprehensive Social Security Assistance recipients.

9. Progress of establishment of a Qualifications Framework

Hon CHAN Yuen-han, Hon WONG Kwok-hing and Hon KWONG Chi-kin suggested in their letter dated 16 December 2004 that the progress of the establishment of the

To be confirmed

Qualifications Framework (QF) proposed by the Administration should be discussed by the Panel.

The Accreditation of Academic and Vocational Qualifications (AAVQ) Bill was introduced into the Legislative Council on 6 July 2005. At the House Committee meeting on 8 July 2005, a Bills Committee was formed to scrutinise the Bill. The Bills Committee completed its scrutiny of the Bill on 27 March 2007. The Bill, with amendments, was enacted on 2 May 2007.

The AAVQ Ordinance commenced full operation on 5 May 2008. The Administration reported to the Panel the progress of implementation of the QF during the policy briefing on 23 October 2008. It will further report progress to the Panel in due course.

10. Recognition of sick leave certificates issued by registered chiropractors as valid sick leave certificates

The item was proposed by Hon CHAN Yuen-han, Hon WONG Kwok-hing and Hon KWONG Chi-kin on 8 April 2005. They considered that EO should be amended to recognise sick leave certificates issued by registered chiropractors as valid sick leave certificates.

To be confirmed

Hon WONG Kwok-hing raised the subject again at the meeting on 18 January 2007. According to the Administration, a working group, comprising officers from different departments and bureaux, had been set up to study the issues pertinent to the recognition of medical treatment, examination and certification given by registered chiropractors for entitlement of employee benefits under the relevant labour legislation. Members noted that the Administration would revert to the Panel on its findings and recommendations when the working group completed the study.

In their letter dated 14 October 2008, Hon WONG Kwok-kin, Hon WONG Kwok-hing, Hon IP Wai-ming and Dr Hon PAN Pey-chyou requested that the issue be discussed by the Panel.

11. Review of the Employment Ordinance

At the meeting on 19 January 2006, Hon WONG Kwok-hing suggested that as the Administration had undertaken to conduct a full review on EO at the Council meeting on 11 January 2006, the issue should be discussed by the Panel.

To be confirmed

At the meeting on 30 May 2006, the Administration informed the Panel of its intention to include commission in the calculation of statutory entitlements. The Panel held a special meeting on 25 September 2006 to discuss the matter.

The Employment (Amendment) Bill 2006 which sought mainly to put beyond doubt that all components of wages, including commission of a contractual nature, should be used as the basis for calculating certain statutory entitlements under EO, was passed at the Council meeting on 2 May 2007. The major provisions of the Bill came into operation on 13 July 2007, and the one concerning keeping of wage and employment records by employers came into operation on 13 January 2008. Noting that some employers of the securities and real estate sectors were seeking means to evade the statutory responsibility to provide their employees with benefits calculated on the basis of commission earned by the employees, Hon WONG Kwok-hing and Hon LI Fung-ying suggested at the meeting on 21 June 2007 that the implementation of the main provisions of the Bill should be reviewed and discussed at a future Panel meeting.

After a spate of restaurant closure cases that took place in early 2005, there had been calls to review section 64B of EO to make it easier to hold company directors criminally liable for wage offences. LAB endorsed a review be conducted for that purpose in February 2006.

The Panel was briefed on the findings on the review of section 64B at the meeting on 20 December 2007. The Administration concluded that the provisions in their present form were adequate and amendment to section 64B was not necessary. Some members thought otherwise and the Panel passed a motion requesting the Administration to amend section 64B for better protection of employees' lawful rights and interests. In response to the motion, the Administration provided a written reply on 17 July 2008 supplementing that with the enhanced investigation strategies and targeted enforcement actions, LD had achieved more effective

prosecutions against the responsible persons for wage offences under section 64B, which further demonstrated that the provisions in their present form were adequate and amendment was not necessary at this stage. The reply was circulated to members vide LC Paper No. CB(2)2650/07-08 on 18 July 2008.

12. Paternity leave

On 21 June 2006, Hon WONG Kwok-hing raised a question on paternity leave at the Council meeting. In response to his request, the Administration sought the advice of the Equal Opportunities Commission and the Department of Justice and responded on 11 October 2006 that it was unlikely that any lack of legislation for paternity leave would constitute family status discrimination under the Family Status Discrimination Ordinance.

To be confirmed

Noting that the Administration was studying the feasibility of legislating for paid paternity leave, Hon LEUNG Yiu-chung requested at the meeting on 19 April 2007 that a progress report should be submitted to the Panel. The Administration agreed to report to the Panel the findings of the study at an appropriate time.

In their letter dated 14 October 2008, Hon WONG Kwok-kin, Hon WONG Kwok-hing, Hon IP Wai-ming and Dr Hon PAN Pey-chyou requested that the provision of paternity leave be discussed by the Panel.

13. Severance payment claimed by workers employed under short-term contracts

In her letter dated 20 October 2006, Hon LI Fung-ying referred to a court case and expressed concern that EO was ineffective in protecting employees' labour rights, as employers could evade their obligations for severance payment by offering employees with short-term contracts of less than two years intermittently. She suggested that the issue be discussed by the Panel.

To be confirmed

At the meeting on 16 November 2006, the Administration advised that it was examining the Court's judgement and would report to the Panel as soon as possible.

14. Statutory minimum wage

In 2007-2008, the Panel discussed and received views on special measures for vulnerable groups such as people with disabilities, the definitions of cleaning workers and security guards, definition of SMW, enforcement and penalty in relation to the implementation of SMW, setting of the level of SMW, and the mechanism for reviewing the SMW level.

To be confirmed

In his Policy Address 2008-2009, the Chief Executive announced that the Government was inclined to go for an across-the-board SMW. A bill on SMW will be introduced into LegCo in the 2008-2009 session. The Provisional Minimum Wage Commission was established on 27 February 2009 to advise the Administration on the initial SMW level.

The Panel discussed issues relevant to the introduction of the SMW legislation at the meeting on 20 November 2008. On 19 February 2009, the Panel discussed the views of stakeholders on the special arrangement for persons with disabilities under SMW.

(See also item 23.)

15. Implementation of family-friendly employment practices and provision of rest break for employees

At the meeting on 21 December 2006, some members expressed concern that working long hours without breaks would have adverse impact on occupational safety. Hon LEE Cheuk-yan suggested that the provision of rest break for employees be discussed by the Panel.

To be confirmed

At the meeting on 17 January 2008, Hon LEE Cheuk-yan suggested that issues in connection with the implementation of family-friendly employment practices such as reduction of working hours, provision of rest breaks for employees, and same entitlement of general holidays and statutory holidays for employees should be discussed by the Panel.

In their letter dated 14 October 2008, Hon WONG Kwok-kin, Hon WONG Kwok-hing, Hon IP Wai-ming and Dr Hon PAN Pey-chyou suggested that the formulation of family-friendly policies and inclusion of general holidays as statutory holidays be discussed by the Panel.

**Proposed timing
for discussion**

16. Overnight work

At the meeting on 17 January 2008, Hon WONG Kwok-hing suggested that the Administration should report to the Panel on its follow-up on the issue of overnight work which was regarded as probably carcinogenic to humans by the International Agency for Research on Cancer of the World Health Organization. The Administration advised that a guide on shift-work arrangements was being prepared. At the meeting on 20 March 2008, the Administration agreed to report to the Panel on the issue within the 2007-2008 session. The Administration's report was circulated to members vide LC Paper No. CB(2)2644/07-08 on 18 July 2008.

To be confirmed

The Administration advised that a guide on shift work had been released on 24 October 2008.

17. Guidelines for outdoor work in very hot weather

In their letter dated 14 October 2008, Hon WONG Kwok-kin, Hon WONG Kwok-hing, Hon IP Wai-ming and Dr Hon PAN Pey-chyou suggested that the issue be discussed by the Panel.

To be confirmed

18. Localization of sea crews

In their letter dated 14 October 2008, Hon WONG Kwok-kin, Hon WONG Kwok-hing, Hon IP Wai-ming and Dr Hon PAN Pey-chyou suggested that the Panel should discuss the policy of localization of sea crews.

To be confirmed

19. Employment protection for employees after maternity leave

In their letter dated 14 October 2008, Hon WONG Kwok-kin, Hon WONG Kwok-hing, Hon IP Wai-ming and Dr Hon PAN Pey-chyou suggested that the Administration should extend the period of employment protection under EO to six months beyond maternity leave, so as to ensure that employees would not be unreasonably dismissed. They also suggested that the aforesaid issue be discussed by the Panel.

To be confirmed

**Proposed timing
for discussion**

20. Protection of employees against sexual harassment at work

In their letter dated 14 October 2008, Hon WONG Kwok-kin, Hon WONG Kwok-hing, Hon IP Wai-ming and Dr Hon PAN Pey-chyou suggested that the Administration should review the Sex Discrimination Ordinance so as to protect employees against sexual harassment at work. They also requested that the issue be discussed by the Panel.

To be confirmed

21. Protection of local domestic helpers by Mandatory Provident Fund

In their letter dated 14 October 2008, Hon WONG Kwok-kin, Hon WONG Kwok-hing, Hon IP Wai-ming and Dr Hon PAN Pey-chyou suggested that the aforesaid issue be discussed by the Panel.

To be confirmed

22. Employee compensation for injury/death caused by accidents en route to work

The item was proposed by Hon LEE Cheuk-yan at the Panel meeting on 19 February 2009.

To be confirmed

Items likely to be proposed by the Administration

23. The coverage of workers under the statutory minimum wage

2nd quarter of 2009

24. Review of the Labour Department's youth employment and training programmes

1st quarter of 2009

25. Legislative proposals to enhance the enforcement of Labour Tribunal awards

1st quarter/
2nd quarter of 2009

26. System for recognition and monitoring of Mandatory Safety Training Courses

1st quarter/
2nd quarter of 2009

**Proposed timing
for discussion**

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| 27. Collaboration between the Labour Department and the "Community Investment and Inclusion Fund" on the promotion of youth employment | 2 nd quarter of 2009 |
| 28. A review of occupational diseases in Hong Kong in 2008 | 2 nd quarter of 2009 |

Council Business Division 2
Legislative Council Secretariat
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