

For information on
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Legislative Council Panel on Manpower

Labour Department's response to the recent labour relations scene amidst the financial tsunami

Introduction

This paper briefs Members on the measures taken by the Labour Department (LD) in response to the recent labour relations scene amidst the financial tsunami.

An overview of the labour relations scene after the financial tsunami

2. Hong Kong's social stability and economic success have been firmly underpinned by our generally harmonious labour relations. In 2008, the total number of labour disputes¹ and claims² handled by LD was 20 743, down 5% on 21 822 cases in 2007, the lowest since 1998, probably reflecting the economic buoyancy at the time. However, with the onset of the financial tsunami in September 2008 which left few economies around the world unaffected, the economy of Hong Kong experienced a severe setback, resulting in more business closures, insolvencies/ bankruptcies and redundancies.

3. Between October 2008 and February 2009, the number of labour disputes handled by LD registered a 57% increase over the same period in the preceding year (from 46 to 72), while the number of labour disputes involving business closures, insolvencies/bankruptcies and redundancies increased by 157% (from 14 to 36) over the corresponding period. Between October 2008 and February 2009, although the number of claims handled by LD recorded a moderate increase of 9% over the same period in the preceding year (from 8 060 to 8 821), the number of claims involving business closures, insolvencies/ bankruptcies and redundancies increased significantly by 49% (from 257 to 384).

¹ A labour dispute is a case involving more than 20 employees.

² A claim is a case involving 20 or fewer employees.

4. The Protection of Wages on Insolvency Fund (PWIF) provides ex gratia payment to employees who are owed wages and other termination benefits by their insolvent employers. By providing a safety net for employees affected by closure of business, the PWIF has played a pivotal role in sustaining harmonious labour relations and social stability. In 2008, the PWIF received a total of 6 448 applications, an increase of 33% over the figure of 4 836 in 2007. Between October 2008 and February 2009, the PWIF received 4 073 applications, a significant increase of 110% over the figure of 1 937 for the same period in the preceding year. The accumulated surplus of the PWIF was \$1,512 million by the end of February 2009.

Measures adopted to alleviate the impact of the financial tsunami on labour relations

5. LD is forging ahead on all fronts to alleviate the impact of the financial tsunami on labour relations. Proactive and pragmatic measures have been adopted to monitor the labour relations scene, safeguard employees' legal rights, provide employment support for retrenched employees, promote good people management practices and combat illegal employment with a view to minimising the adverse impact of retrenchments and labour disputes on the economy.

Vigilant monitoring

6. As an integral part of LD's long-standing strategy, we commit ourselves to building rapport with enterprises, giving judicious advice to human resources personnel on good people management practices, and fostering effective communication between employers and employees. Mindful of the need for early intervention in the current austere operating environment, LD also keeps selected sectors and establishments under close vigilance with a view to forestalling and detecting at an early stage cases of wage arrears, underpayment of wages or evasion of other statutory payments. We also appeal to employers to hold constructive dialogue with their staff when important decisions affecting staff interests are to be made, and handle retrenchment, if at all unavoidable, with consideration and sensitivity. Through proactive communication with enterprises and early intervention, LD has successfully forestalled and defused a number of potential labour disputes before they erupt into full-blown conflicts.

Safeguarding employees' statutory rights

7. In safeguarding employees' statutory entitlements, we provide timely assistance in resolving labour disputes and refer employment claims to conciliation/adjudication promptly. Concomitantly, employees' statutory rights are sturdily defended through efficient processing of PWIF applications and rigorous law enforcement against wage offences. LD's efforts on these fronts are set out in paragraphs 8 to 15 below.

Timely assistance in resolving disputes

8. Many labour disputes stem from inadequate communication, suspicion and misunderstanding among the employers and employees. As impartial conciliators, officers of the Labour Relations Division (LRD) of LD assist employers and employees in resolving their disputes and reaching agreement amicably. In 2008, 72.7% of the disputes and claims handled by LRD were successfully settled through conciliation. At this trying time when only trust and mutual respect can help employers and employees weather the harsh external economic environment, we place special emphasis on the need for both parties to exercise restraint, stand in the position of each other, and appreciate the difficulties that partners at the other side of the negotiation table may face. In respect of cases of disputes in strategic sectors, LD's work does not end with successful conciliation. We would continue to communicate with management and employees with a view to improving the dialogue and enhancing trust between the two sides.

9. Where conciliation fails to yield mutually acceptable outcomes, LD facilitates employees in their recourse to the Labour Tribunal (LT) or the Minor Employment Claims Adjudication Board, depending on the amount claimed, for adjudication. In the event that the employer has become insolvent, LD renders prompt assistance to employees to facilitate their application for ex gratia payment from the PWIF. Where appropriate, we also refer retrenched employees facing acute financial hardship or emotional distress to the Social Welfare Department or other agencies for assistance.

Expeditious processing of PWIF applications

10. Over the last few months, a modus operandi has been developed whereby LD would facilitate submission of preliminary applications to the PWIF the very moment that bankrupt employers or Provisional Liquidators announce the decision to wind up the companies. In cases of winding-up/bankruptcy cases affecting a large number of employees, LD officers would, where appropriate, directly brief affected employees on their rights under the law and provide means of contacts for those who may need LD's assistance in safeguarding their statutory rights and/or job/retraining referrals.

11. As the Protection of Wages on Insolvency Ordinance (Cap. 380) requires the presentation of a winding-up or bankruptcy petition as a prerequisite for payment from the PWIF, LD would refer employees to the Legal Aid Department (LAD) for assistance of presenting petition against their insolvent employers. In case there is sufficient evidence to support the employees' claims, the concerned employees would no longer be required to seek adjudication at LT before referral to LAD. Furthermore, LD would urge the Provisional Liquidators for early submission of adjudication schedules to ensure sufficient supporting documents for prompt processing of applications. Concurrently, MPF trustees would be contacted to obtain the necessary information with a view to shortening the time taken for verification of claims. The aforesaid work enhancement initiatives have effectively expedited the processing of PWIF applications.

12. In 2008, the time required for processing applications upon receipt of all relevant information and documents has been shortened to 2.4 weeks, down from 3.8 weeks, 3.2 weeks and 2.9 weeks in 2005, 2006 and 2007 respectively.

Rigorous enforcement action against wage offences

13. In parallel, LD spares no effort in enforcing the law through rigorous inspections, investigation of complaints and prosecutions. We take a very serious view on wage offences, and will continue to take rigorous enforcement action by strengthening LD's capacity in intelligence gathering and evidence collection. If there is sufficient evidence that an employer has no genuine financial problems and yet has defaulted on wage payment, we would prosecute the employer as well as the company responsible persons involved. On top of conducting proactive inspections to workplaces to detect wage offences, we call upon employees who are deprived of their statutory rights and benefits to come forward to lodge wage claims promptly and to serve as prosecution witnesses in wage default cases. To this end, we disseminate through various channels information on the complaint hotline (2815 2200) to facilitate employees to report wage offences. Speedy investigation will be conducted into the complaints upon receipt of such intelligence.

14. In 2008, our rigorous enforcement has resulted in 958 convictions on wage offences, similar to the figure of 960 convicted summonses in 2007. In 2008, 199 convicted summonses on wage offences were secured against company responsible persons, an increase of 58% over the figure of 126 in 2007. In the period from October 2008 to February 2009, there were 467 convicted wage summonses, an increase of 7% over the figure of 436 for the same period in the preceding year.

15. Apart from rigorous enforcement, LD will continue to step up our educational and promotional efforts through various channels to remind employers of their statutory obligations to pay wages on time.

Promotion of good people management practices and harmonious labour relations

16. On the promotion front, LD has been advising employers and human resources practitioners, through its network of 18 Human Resources Managers Clubs formed in various trades and industries, that employees are their most valuable assets. In contemplating wage reduction or retrenchment, the management should take into consideration the risk of protracted confrontation, morale of remaining staff, business goodwill, corporate image as well as customer loyalty. We also impress upon employers that other cost-saving alternatives and revenue-generating measures should first be considered. Even if measures affecting staff interest are unavoidable, employers should consider retrenchment as the last resort and, should retrenchment be necessary, management should try to do so through natural wastage or voluntary exit schemes. LD encourages employers to take the lead in cultivating mutual trust and communicate clearly and in a timely manner to their employees the gravity of the organisation's financial problems. We also provide advice to employers on good people management practices and the importance of staff consultation in handling wage reduction and retrenchment.

Combating illegal employment

17. To protect the employment opportunities of local workers, LD will continue its rigorous enforcement actions against illegal employment. We have strengthened collection of intelligence and launched operations targetting at employers engaging illegal workers jointly with the Police and the Immigration Department (ImmD). In 2008, LD launched 186 joint operations with the Police and ImmD, representing an increase of 9.4% as compared to 170 joint operations in 2007. In January and February 2009, a total of 27 joint operations were launched.

18. On the publicity front, LD will continue to launch intensive publicity to remind employers of the serious consequences of employing illegal workers through press releases, advertisements on public transport, distribution of free souvenirs and calendar cards etc. We will also widely publicise LD's Complaint Hotline (2815 2200) to encourage members of the public to provide intelligence on illegal employment activities.

Conclusion

19. In the face of unprecedented challenges, the Administration is determined to keep up its efforts to foster peace and harmony at the workplace through speedy resolution of disputes, effective law enforcement and comprehensive promotion. To protect the statutory rights and employment opportunities of local workers, we will continue to intensify our efforts in collecting intelligence and conduct rigorous enforcement actions.

Labour and Welfare Bureau
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