

For information on
22 October 2009

Legislative Council Panel on Manpower

Policy Initiatives of the Labour and Welfare Bureau for 2009-10

Purpose

The Chief Executive delivered his 2009-10 Policy Address on 14 October 2009. This paper elaborates on the new initiatives and on-going initiatives pertaining to the labour and manpower portfolio under the Labour and Welfare Bureau (LWB) in the 2009-10 Policy Address and Policy Agenda.

2009-10 Policy Address and Policy Agenda

2. The Labour Department (LD) helps promote employment by enhancing labour market efficiency and job seekers' employability through recruitment and job-matching services as well as various targeted placement and support programmes. LD will further improve its employment services in 2009-10. First, it will set up a pioneer one-stop employment and training centre, which seeks to streamline, integrate and enhance the existing employment and training/retraining services of LD, Social Welfare Department (SWD) and Employees Retraining Board (ERB). Second, LD will set up a recruitment centre tailor-made for the retail industry. Lastly, for closer partnership with stakeholders, LD will share its vacancy database with non-governmental organisations (NGOs) and disseminate information to job seekers through modern messaging technology. Concurrent with these initiatives, LD will continue its efforts in expanding its employer network to canvass more vacancies. We shall also complete the review of the Transport Support Scheme. To offer more effective employment protection to workers against unreasonable and unlawful dismissal, we will introduce a Bill into the Legislative Council (LegCo) in the 2009-10 legislative session to give greater latitude for the court to order reinstatement and to provide for an additional sum to be paid to the employee should the employer decide not to implement the reinstatement order. To enhance the safety of tower crane operations on construction sites, we will review the Code of Practice for Safe Use of Tower Cranes, taking into account the guidelines issued by the Construction Industry Council.

3. In 2008-09, we introduced into LegCo three Bills aimed to safeguard the well being of workers by, for instance, enhancing the enforcement of Labour Tribunal (LT) awards, introducing a statutory minimum wage (SMW) regime and improving statutory compensation for persons with occupational deafness. Scrutiny of the Bills in the LegCo Bills Committees is underway. Other ongoing work includes the promotion of occupational safety and health and family-friendly employment measures.

New Initiatives

(A) To set up a pioneer one-stop employment and training centre in Tin Shui Wai

4. At present, LD, SWD and ERB are playing different roles in rendering public-sector employment support. LWB has decided to streamline, integrate and enhance employment services of these three bodies. The exercise would kick-start a long-term effort to rationalise the distribution of duties and responsibilities, and possibly the workflow as well as the user databases of LD, SWD and ERB.

5. Given the complexity of the exercise, we consider it prudent to start with a pilot project before the one-stop model is widely applied. To this end, a pioneer one-stop employment and training centre in Tin Shui Wai will be set up in early-2011. The pioneer centre will have the following special features –

- (a) Job seekers' employment needs will be analysed with a view to streaming them for targetted services, e.g. case management throughout their pathway to employment; personalised counselling, employment, training/retraining and post-placement support services tailored to their needs. Where appropriate, the one-stop shop would enrol job seekers in special employment programmes to enhance their employability.
- (b) Employment assistance for unemployed able-bodied Comprehensive Social Security Assistance (CSSA) recipients in the district will be progressively transferred from SWD to the one-stop service centre.
- (c) To support the integrated service, an information system would be developed to enhance data-sharing among LD, SWD, ERB and concerned service providers.

We anticipate that the one-stop shop would facilitate the delivery of training/retraining, job-matching, referral and/or counselling services for job seekers and, in particular, unemployed able-bodied CSSA recipients.

(B) To set up a recruitment centre for the retail industry

6. In face of the financial tsunami, LD established, on a pilot basis and through internal redeployment, the Recruitment Centre for the Catering Industry (RCCI) in February this year to provide tailor-made job-matching service and on-the-spot interview arrangements for catering establishments and job seekers. Given the strong support of catering employers and employees and their organisations, RCCI has been effective in its operation. During the first eight months of operation of RCCI, 115 catering employers offered over 13 000 job vacancies for on-the-spot applications, with some 11 800 job seekers attending interviews at RCCI. Despite the overall drop in job vacancies amidst the economic downturn, the number of catering vacancies received by LD increased by 16% during the period.

7. The success of RCCI indicates that despite the economic downturn, there are certain sectors with continuous demand for manpower. The RCCI service model is considered suitable for extending to the retail industry in view of –

- (a) the large number of retail vacancies that can be offered throughout the territory and year-round, even at times of economic adversity;
- (b) its high staff turnover rate; and
- (c) suitability for application by job seekers with various academic qualification and skills level.

8. Our plan is to set up the Recruitment Centre for the Retail Industry in mid-2010 to provide enhanced support to retail employers and job seekers and to meet their recruitment and employment needs in a more effective and speedy manner. LD will continue with its efforts to enhance its employment services both generally and on a sectoral basis.

(C) To expand LD's employer network and pilot the sharing of its vacancy database with stakeholders

9. LD possesses an extensive employer network and a rich job vacancy database. It will build on its strength to further expand its vacancy database so as to enhance employment opportunities for job seekers. To this end, LD will adopt various measures, including strengthening collaboration with employer organisations and human resources managers of various industries. In addition, noting that SMEs constitute over 90% of Hong Kong's commercial

establishments and provide substantial employment opportunities to the low-skilled and less-educated, LD will step up promotion of its free recruitment services to trade associations and SME organisations.

10. At present, LD provides convenient employment services to job seekers by disseminating vacancy information through its 12 Job Centres, RCCI, Telephone Employment Service Centre, interactive employment service website as well as Vacancy Search Terminal (VST) kiosks stationed at various sites. To further enhance the public's access to its vacancy information network, LD will share its vacancy database with selected NGOs in some remote districts with less employment opportunities and where there are no Job Centres in the vicinity. LD will strengthen its partnership with these NGOs by providing them with VSTs to facilitate their provision of placement service to the public. This would be particularly useful to job seekers who have no computer knowledge or do not have ready access to internet facilities.

(D) To enhance the user-friendliness and efficiency of LD's employment services through greater use of messaging technology

11. LD has been providing a wide range of free employment services to job seekers. At times of economic downturn, LD's role in facilitating the dissemination of employment information becomes increasingly important. To capitalise on the widespread use of mobile phones and Short Message Service (SMS), LD will make use of SMS to disseminate information on job vacancies and recruitment activities to job seekers. Our aim is to launch this service progressively by mid-2010. This free-of-charge service will be available to job seekers through subscription.

(E) To complete the review of the Transport Support Scheme and decide on the way forward

12. LD launched the Transport Support Scheme (TSS) on a pilot basis in June 2007 and introduced relaxation measures in July 2008 with a view to providing needy job seekers and low-income employees living in the four designated remote districts (i.e. Yuen Long, Tuen Mun, North and Islands) with a time-limited transport incentive to encourage them to find jobs and work across districts.

13. At the time that the relaxation measures were announced, the Government undertook to conduct a comprehensive review on the implementation of TSS in July 2009, i.e. one year after the implementation of the relaxation measures. The review is now in full swing. Apart from

evaluating whether the policy objective of TSS has been achieved, the review will also assess the overall effectiveness of TSS; the case processing procedures and practices adopted by the NGOs participating in administering TSS; and the modus operandi, control and monitoring measures put in place. The review will also take account of the views and suggestions of different quarters of the community on TSS. We aim at completing the review by the end of this year.

(F) To introduce a Bill into the LegCo to remove the requirement for an employer's agreement to the making of an order for reinstatement or re-engagement of an employee who has been dismissed unreasonably and unlawfully, and to require the employer to pay a further sum to the employee for failing to comply with such an order

14. Under the existing provisions of the Employment Ordinance (Cap. 57) (EO), an employee who has been unreasonably and unlawfully dismissed by his employer (including dismissal during pregnancy and maternity leave, during paid sick leave, after work-related injury, or by reason of the employee exercising trade union rights or giving evidence for enforcement of labour legislation) may claim remedies against his employer. If the employer fails to provide a valid reason¹ as specified in the EO for the dismissal, LT may make an order of reinstatement or re-engagement subject to the mutual consent of the employer and the employee. LT may also make an award of terminal payments and/or compensation not exceeding \$150,000 if no order of reinstatement or re-engagement is made.

15. Under the EO, LT has no power to make an order of reinstatement or re-engagement without the employer's consent even if it considers such appropriate.

16. To enhance employees' protection against unreasonable and unlawful dismissal, we shall, on the basis of the proposal supported by the Labour Advisory Board (LAB) and LegCo Panel on Manpower in late 2007 and 2008, introduce a Bill into LegCo in the 2009-10 legislative session to amend the EO by removing the requirement for an employer's agreement before an order for reinstatement or re-engagement of an employee who has been dismissed unreasonably and unlawfully can be made. The Bill will, in addition, require the employer to pay a further sum, which is fixed at three times the employee's monthly wages, subject to a maximum of \$50,000, to the employee if the employer subsequently fails to comply with the order. This further sum should

¹ The valid reasons include the conduct of the employee; the capability or qualifications of the employee for performing his work; redundancy or other genuine operational requirements of the business; statutory requirements; and other substantial reasons.

be an additional compensation over and above the terminal payments and award of compensation stipulated in the EO.

(G) To review the Code of Practice for Safe Use of Tower Cranes, taking into account the guidelines issued by the Construction Industry Council, to enhance the safety in the use of tower cranes on construction sites

17. The use of tower cranes for lifting operations is common in the construction industry and is high risk by nature.

18. The Code of Practice for Safe Use of Tower Cranes (the Code) was approved and issued in 2002 by the Commissioner for Labour under section 7A of the Factories and Industrial Undertakings Ordinance (Cap. 59). It provides practical guidance to duty holders in the industry as to how to use tower cranes safely and properly to prevent accidents.

19. In 2008, the Construction Industry Council issued the “Guidelines on Safety of Tower Cranes” (the Guidelines) setting out the good practices for enhancing the safety of tower crane operations. The Guidelines recommend measures for further enhancing the safety of tower cranes based on the good practices suggested by industry stakeholders, including tower crane owners, specialist contractors and professionals. The recommended good practices include –

- (a) inspection and certification of tower cranes before installation;
- (b) enhancement of site supervision by professionals with relevant qualification and experience;
- (c) proper keeping of maintenance and operation records; and
- (d) enhancement of the requirements with respect to competence of specialist contractors and working crew.

Since the promulgation of the Guidelines, the recommended measures have been widely adopted by the industry, thanks to the concerted efforts of all relevant stakeholders including the Hong Kong Construction Association and the Construction Industry Council Training Academy.

20. LD plans to review the 2002 Code with a view to incorporating, where appropriate, the measures recommended in the Guidelines into the Code so as to upgrade the safety standard of operations of tower cranes on construction sites.

On-going Initiatives

(A) Continuing with the legislative amendment exercise to enhance the enforcement of LT awards with a view to strengthening the protection of employees' rights and benefits

21. The Administration takes a serious view on default of LT awards. After careful consideration, we have decided to make non-payment of LT awards a criminal offence. This is generally welcomed by stakeholders. LAB and LegCo Panel on Manpower were consulted on the proposed new offence in December 2008. The Employment (Amendment) Bill 2009 for the said purpose was introduced into LegCo for First Reading and commencement of Second Reading on 8 July 2009. It is now being scrutinised by a Bills Committee.

22. Under the Bill, an employer who wilfully and without reasonable excuse fails to pay any sum awarded by LT or the Minor Employment Claims Adjudication Board comprising wages and entitlements underpinned by criminal elements under the EO will be liable to prosecution and, on conviction, will be subject to maximum penalty of \$350,000 and three years' imprisonment. The proposed new offence balances the interests of the employers and employees by targeting only the wilfully defaulting employers.

23. The introduction of the new offence will serve as an important deterrent against default of LT awards and represent a significant milestone in safeguarding employees' rights.

(B) Continuing with the legislative exercise for the Minimum Wage Bill and undertaking preparatory work for its implementation

24. On 8 July 2009, the Administration introduced the Minimum Wage Bill (the MW Bill) into LegCo. Our aim is to design an optimal SMW regime which would provide an hourly wage floor to forestall excessively low wages but without unduly jeopardising our labour market flexibility, economic freedom and competitiveness and without causing significant adverse impact on the employment opportunities for the vulnerable workers. LegCo has set up a Bills Committee to study the MW Bill, and the Committee has since held four meetings and received views and depositions from members of the public and interested parties. We will work closely with the Bills Committee to facilitate the early passage of the Bill.

25. In tandem with LegCo's scrutiny of the MW Bill, the Census and Statistics Department (C&SD) has been undertaking statistical data collection and processing to support the setting of an appropriate SMW rate. The first set of statistical data will be available within the first quarter of 2010 for careful and objective deliberation by the Provisional Minimum Wage Commission. In recommending the initial SMW rate to the Government, the Commission will adopt an evidence-based approach through data research and analysis as well as extensive consultations with stakeholders.

(C) Continuing with the legislative amendment exercise of the Occupational Deafness (Compensation) Ordinance (ODCO)

26. The Occupational Deafness (Compensation) (Amendment) Bill 2009 (the ODC Bill) was introduced into LegCo in the 2008-09 legislative session. The ODC Bill seeks to extend the coverage of the Occupational Deafness Compensation Scheme by providing compensation for employees suffering from monaural hearing loss owing to their employment in noisy occupations; increase the maximum reimbursable amount for the expenses of hearing assistive devices; and provide compensation for persons having received compensation under the ODCO but whose sensorineural hearing loss deteriorates as a result of their continued employment in noisy occupations.

27. A Bills Committee was formed to examine the ODC Bill. We will continue to work closely with the Committee to facilitate the early passage of the Bill to benefit persons with occupational deafness.

(D) Collecting statistical data on employees not engaged under a continuous contract to facilitate the review on the definition of continuous employment under the EO, and continuing to consult relevant stakeholders

28. At present, irrespective of their duration of employment and hours of work per week, all employees covered by the EO are entitled to certain employment rights and benefits such as payment of wages, restriction on deductions from wages, granting of statutory holidays, protection against anti-union discrimination, employment protection in respect of unreasonable and unlawful dismissal, etc. Employees engaged under a "continuous contract"² are further entitled to other employment benefits under the EO such as rest days,

² According to the EO, an employee engaged under a "continuous contract" is defined as one who has been employed under a contract of employment by the same employer for four weeks or more and has worked for 18 hours or more in each week.

paid statutory holidays and annual leave, sickness allowance, severance payment and long service payment, subject to their fulfillment of the respective qualifying requirements as specified in the EO.

29. To facilitate the review on the definition of “continuous contract” under the EO, LD has commissioned the C&SD to further collect statistical data on the profile of employees who are not engaged under a “continuous contract”, including their distribution and proportion in the labour market, as well as their occupational characteristics, etc.

30. As “continuous contract” is the basis for determining an employee’s eligibility for various statutory employment rights and benefits under the EO, any amendment to this statutory definition will have far-reaching implications on the labour market and the community as a whole. Accordingly, it is important for the Administration to conduct an in-depth and thorough study on the subject and consider Hong Kong’s own circumstances in the first place. We will duly consult the relevant stakeholders.

(E) Continuing to promote family-friendly employment practices

31. LD has been promoting family-friendly employment practices which are conducive to harmonious labour relations. Such promotion work has become an integral part of LD’s close and regular liaison with different stakeholder groups, including the network of Human Resources Managers Clubs formed in various trades and industries, industry-based Tripartite Committees and roving exhibitions. In addition, LD organised a large-scale seminar in September 2009 to promote family-friendly employment practices and other good people management measures. The seminar was well received. At present, LD is producing a video with a view to deepening public understanding of family-friendly employment practices and encouraging wider adoption of such practices in the workplace.

(F) Continuing with enforcement action against wage offences

32. In 2009, LD has continued with its rigorous enforcement against wage offences. It has also enhanced promotional efforts to remind employers of their statutory obligations, urge employees to protect their rights by pursuing wage claims promptly, and publicise its complaint hotline (2815 2200). The rigorous enforcement efforts have resulted in 826 convicted summonses on wage offences in the first eight months of 2009, up 52% over the same period last year.

33. LD will make every effort to take prosecution actions against wage offences if there is sufficient evidence. If the employer is a limited company, it will, apart from prosecuting the company, consider prosecuting the directors and other responsible persons of the company as well. In the first eight months of 2009, four company directors or responsible persons and one employer were given jail sentences for defaulting wage payments, and three company directors were sentenced to community service orders. The convicted summonses against company directors and responsible persons for defaulting wage payment totalled 212, up 88% over the same period last year.

(G) Continuing with intelligence-based and proactive strategy in combating illegal employment

34. The Government attaches great importance to protecting the employment opportunities of local workers. In the first eight months of 2009, LD mounted 134 joint operations with other law enforcement departments to raid targeted establishments to combat illegal employment. This represented an increase of 5.5% as compared over the same period in last year.

35. Apart from enforcement action, LD has launched publicity programmes through various channels to remind the public of the serious consequences of employing illegal workers. These channels include advertisements in public transport like MTR and trams, press releases and publicity leaflets. LD has also widely publicised its complaint hotline (2815 2200) to encourage the public to report illegal employment activities.

36. We will step up our publicity and enforcement efforts to combat illegal employment.

(H) Continuing to promote the occupational safety and health performance of renovation and maintenance works through publicity and promotion to heighten safety awareness of people engaged in such works and stepping up enforcement to ensure compliance with relevant legislation

37. Renovation and maintenance works are high-risk activities. Accidents involving such works have contributed to an increasing share of construction accidents over the last few years. The growth in renovation and maintenance works owing to the ageing of buildings and various initiatives by the Government to accelerate minor works for creation of jobs may also result in a further increase in renovation and maintenance accidents. The rising trend in the number of fatalities arising from these works is a cause for concern.

38. In 2008, LD launched a series of intensive promotion and publicity campaigns, targetting work-at-height and renovation and maintenance works, to enhance the safety awareness of all parties involved. In the coming year, we will continue to organise various publicity and promotional activities focusing on work-at-height and renovation and maintenance works safety, including organising large-scale safety seminars for frontline workers in collaboration with the Occupational Safety and Health Council, trade associations and workers' unions; launching publicity on television, radio, public transport and other media, including broadcasting Announcements in the Public Interest, mini dramas as well as short documentaries on safety and health messages; and partnering with District Councils and District Offices to organise publicity and promotional activities at the district level to promulgate work-at-height and renovation and maintenance works safety.

39. In addition, LD will continue to step up enforcement with respect to renovation and maintenance works, in particular those involving work-at-height and the use of truss-out scaffolds. Apart from regular inspections to workplaces to ensure compliance with relevant occupational safety and health legislation, targeted enforcement campaigns will also be launched. Where circumstances warrant, we will conduct patrol inspections not just on normal working days, but also in evenings and during holidays. Moreover, we will continue to make full use of the established referral system with strategic partners, including the Housing Department, Hong Kong Housing Society and Hong Kong Properties Management Companies Association, to gather intelligence on renovation and maintenance works involving high-risk activities, such as the use of truss-out scaffolds, confined space works and use of flammable substances to facilitate prompt and targetted enforcement actions. We have allocated additional resources to set up a specialised team in LD in October this year to coordinate and implement enforcement action as well as safety promotion in respect of renovation and maintenance works.

Way Forward

40. Members are invited to note the content of this paper. The Administration will exercise its best endeavour in delivering the above initiatives.