

For discussion on  
17 February 2011

## **Legislative Council Panel on Manpower**

### **Replacement holiday arrangements**

#### **Purpose**

This paper seeks Members' views on amending the Employment Ordinance (Cap. 57) (EO) for the purpose of changing the arrangement for replacement holiday when a Lunar New Year holiday or the day following the Chinese Mid-Autumn Festival falls on a Sunday.

#### **Background**

2. According to the EO, all employees, irrespective of their lengths of service, are entitled to days off on statutory holidays designated by the Ordinance. Yet, in view of the diverse circumstances and needs of different sectors, establishments and occupations, the EO provides certain flexibilities whereby employers who cannot release their employees on a statutory holiday may, with advance notice, grant an alternative holiday to the employees within a specified period of time<sup>1</sup>.

3. Prior to 1983, when a statutory holiday fell on an employee's rest day, the day following the holiday was designated as a replacement holiday across the board. The Administration then conducted consultation and re-examined the holiday arrangement. After considering the views of the public, amendments were introduced to the EO such that should any of the first three days of Lunar New Year fall on a Sunday, the day immediately preceding

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<sup>1</sup> According to the EO, if an employer requires an employee to work on a statutory holiday, the employer should grant the employee an alternative holiday on another day (which is not a statutory holiday or a substituted holiday) within the period of 60 days immediately preceding or next following the statutory holiday, if the employer has notified the employee, either orally or in writing or by notice posted in a conspicuous place in the place of employment, of the day on which he will be granted the alternative holiday. Where the alternative holiday is to be taken on a day within the period of 60 days preceding the statutory holiday, the employer has to notify the employee not less than 48 hours before that day; where the alternative holiday is to be taken on a day within the period of 60 days following the statutory holiday, the employer has to notify the employee not less than 48 hours before the statutory holiday. If the employer and employee agree, any day within 30 days before or after the statutory or alternative holiday may be taken by the employee as a substituted holiday.

the Lunar New Year's Day (i.e. Lunar New Year's Eve) is designated as a replacement holiday; and in the event that the day following the Chinese Mid-Autumn Festival falls on a Sunday, the day of the Chinese Mid-Autumn Festival (i.e. Saturday) is designated as a replacement holiday. The purpose of the amendments was to facilitate employees to maintain the Chinese tradition of preparing for family gathering during important festivals. Such amendments were effective from 1983. Since then, the arrangement for replacement holidays in respect of the Lunar New Year and Chinese Mid-Autumn Festival holidays was distinct from that of other statutory holidays.

## **Review**

4. With the changes in Hong Kong's social circumstances and economic structure in recent years, the work patterns of employees have undergone adjustments as well. In the past decade, the number of employees in the non-government sector working five days or less a week increased gradually from 480 000 in 2001 to almost 850 000 in 2008<sup>2</sup>. Many employees now enjoy days off on Saturdays and Sundays. Besides, it has been common for many employers in the public and private sectors to release their employees earlier from duty on Lunar New Year's Eve and Chinese Mid-Autumn Festival. Against this background, some members of the public have expressed concern over whether the arrangement of designating replacement holidays for the Lunar New Year and Chinese Mid-Autumn Festival holidays ahead of the said holidays under the EO still suits present-day circumstances. Hence, there are calls in the community for the Government to review the relevant arrangement.

5. It has been the Government's practice to review labour legislation from time to time in the light of Hong Kong's changing social circumstances and economic development to ensure that the statutory protection accorded to employees keep abreast of the times whilst being reasonably affordable to employers. In considering whether a legislative change is warranted, we have to strike a balance between the interests of employees and employers.

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<sup>2</sup> Source of information: 'Social Data Collected via the General Household Survey : Special Topics Report - Report No.32' published on 30 December 2002 and 'Social data Collected via the General Household Survey : Special Topics Report - Report No.50' published on 10 March 2009, both by the Census and Statistics Department.

## **Recommendation**

6. Having regard to the recent development in the work patterns of local employees and the views of the public, we propose to designate the fourth day of Lunar New Year as a replacement holiday when any of the Lunar New Year's Day, the second day of Lunar New Year or the third day of Lunar New Year falls on a Sunday. By the same token, when the day following the Chinese Mid-Autumn Festival falls on a Sunday, the day thereafter (i.e. the 17th day of the eighth month of the lunar calendar) will be designated as a replacement holiday. According to this proposal, the replacement holiday arrangement regarding the Lunar New Year holidays and the day following the Chinese Mid-Autumn Festival which happen to fall on a Sunday will be restored to the pre-1983 position whereby the replacement holiday came after the holiday concerned. This would also align the replacement arrangement of the concerned holidays with that of other statutory holidays so that whenever a statutory holiday falls on an employee's rest day, the day thereafter will be designated as a replacement holiday.

7. The next time when the Lunar New Year's Day falls on a Sunday is in February 2013. If the above proposal is supported by Members, we plan to introduce the relevant bill into the Legislative Council in the next legislative session with a view to completing the relevant amendments in the first quarter of 2012.

## **Views of the Labour Advisory Board**

8. At the meeting of the Labour Advisory Board on 24 January 2011, members unanimously supported the proposal as set out in paragraphs 6 and 7 above. In addition, some members suggested that employees should also be granted a replacement holiday should a statutory holiday or general holiday fall on a Saturday. On the other hand, there were also views that as many establishments remained open on Saturdays and many employees were still required to work on Saturdays, the impact of such arrangement on business operation and costs should not be underestimated and that the suggestion should not be considered before its full implications were carefully assessed.

## **Advice Sought**

9. Members are requested to advise on the proposal on replacement holiday arrangements when a Lunar New Year holiday or the day following the Chinese Mid-Autumn Festival falls on a Sunday as set out in paragraph 6 above.

Labour and Welfare Bureau  
Labour Department  
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