

Panel on Manpower

List of outstanding items for discussion

(position as at 11 May 2011)

**Proposed timing
for discussion**

Items proposed by members

1. Review of the Employment Ordinance - the requirement of "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.

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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 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. 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.

At the meeting on 17 February 2011, Hon LEUNG Yiu-chung enquired about the progress of the review conducted by the Administration on the definition of "continuous contract" under EO and the Administration's timetable for completing the review. The Administration advised that the Labour Department had commissioned C&SD to collect further statistical data of employees who were not engaged under a "continuous contract", including their distribution and proportion in the labour market as well as their occupational characteristics. The review on the definition of "continuous contract" was carried out in the light of the survey findings. The Administration would strive to complete the data compilation and analysis of the survey findings in mid-2011 and revert to the Panel within the current term of the Administration.

2. 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.

To be confirmed

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, the Labour Advisory Board ("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 review of the Scheme was circulated to members vide LC Paper No. CB(2)2509/08-09 on 22 September 2009.

At the Panel meeting on 19 February 2009, Hon LEE Cheuk-yan proposed that the employee compensation for injury/death caused by accidents en route to work be discussed by the Panel.

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

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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 scrutinize 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 at its meetings on 23 October 2008, 16 July 2009, 22 October 2009, 17 June 2010 and 21 October 2010. It will further report progress to the Panel in due course.

4. Working group's findings on the study on 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 recognize sick leave certificates issued by registered chiropractors as valid sick leave certificates.

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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.

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5. 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.

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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. Noting that the Administration was studying the feasibility of legislating for paid paternity leave, Hon LEUNG Yiu-chung requested that a progress report should be submitted to the Panel. The Administration advised at the Special Finance Committee meeting on 24 March 2011 that the study could be completed in the next few months.

6. Measures to tackle the problem of false self-employment

At the meeting on 19 November 2009, in the context of discussing the item "Employees" vis-à-vis "Self-employed persons", members expressed concern about the proliferation of false self-employment. Members requested the Administration to provide in one year's time statistics on cases relating to claims of false self-employment, together with an analysis of the problem, for follow-up discussion by the Panel. At the meeting on 17 June 2010, the Administration advised that it planned to provide the relevant statistics and analysis of the problem at the end of 2010.

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7. Regulatory framework governing work safety and occupational health in the construction industry

At the meeting on 14 December 2009, Hon LEE Cheuk-yan expressed concern about the need to conduct a comprehensive review of the existing regulatory framework governing occupational safety and health in the construction industry, with a view to mapping out comprehensive plans and strategies for enhancing industrial safety at construction sites. He suggested that the issue be discussed by the Panel at a future meeting.

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8. Implementation of the Employment (Amendment) Ordinance 2010

The item was referred to the Panel by the Bills Committee on Employment (Amendment) Bill 2009. The Administration was requested to keep records as far as practicable on the time required to complete the relevant procedures for the Commissioner for Labour to give consent for prosecution, and review the implementation of the Amendment Ordinance one year after its commencement, including the Commissioner for Labour's consent for prosecution and other procedural requirements, and report to the Panel.

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9. Implementation of the Minimum Wage Ordinance

At the Panel meeting on 17 June 2010, Hon IP Wai-ming suggested discussing the adequacy of manpower resources for enforcement of the Minimum Wage Ordinance ("MWO"). The Administration advised that appropriate measures and strategies would be adopted in order to safeguard employees' entitlements to SMW and resources required would be handled according to the established mechanism. A written response was provided on 21 June 2010 to the Bills Committee on Minimum Wage Bill which had raised the issue (LC Paper No. CB(2)1890/09-10(01)).

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At the meeting on 16 December 2010, the Administration briefed members on the guidelines on SMW for employers and employees, as well as the productivity assessment of persons with disabilities under the SMW regime and its decision to take on the responsibility of paying the assessment costs. The subjects were further discussed by the Panel at the meeting on 20 January 2011.

During the deliberations of the Subcommittee on Minimum Wage (Criteria for Approved Assessors) Notice and Minimum Wage (Assessment Methods) Notice, the Administration has undertaken to provide the Panel its administrative guidelines for approved assessors and the relevant forms contained therein including the certificate of assessment. The Administration has also undertaken to review the special arrangement for persons with disabilities, including whether there is a need for an appeal mechanism and the impact of SMW on the employment opportunities of persons with disabilities, in the light of operational experience within two years after the implementation of SMW and report the results to the Panel.

At the Panel meeting on 17 March 2011, the Administration briefed members on the progress of the preparatory work undertaken by the Labour Department for the implementation of SMW.

The *Statutory Minimum Wage: Reference Guidelines for Employers and Employees* was discussed at the Panel meeting on 11 April 2011.

The Panel will discuss "Progress of implementation of statutory minimum wage" at the meeting on 17 May 2011.

10. Legislative proposal on compulsory reinstatement and re-engagement

At the Panel meeting on 17 June 2010, the Administration advised that LAB would re-visit the legislative proposal on compulsory reinstatement and re-engagement in respect of cases of unreasonable and unlawful dismissal, taking into

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account the implications of the Employment (Amendment) Ordinance 2010, and that it would revert to the Panel at the earliest opportunity. At the Panel meeting on 14 October 2010, Hon WONG Kwok-hing suggested that the subject should be discussed by the Panel.

11. Mental impairment arising from occupational injury

In his letter dated 10 May 2010 (LC Paper No. CB(2)1589/09-10(01)), Dr Hon PAN Pey-chyou expressed concern about the definition of occupational injury under the Employees Compensation Ordinance, and whether the Ordinance would cover mental impairment arising from occupational injury. He proposed that mental impairment arising from occupational injury should be discussed by the Panel.

To be confirmed

12. Standard working hours

At the Panel meeting on 14 October 2010, Hon WONG Kwok-hing suggested that the subject should be discussed by the Panel.

To be confirmed

13. Performance of driving duties by foreign domestic helpers

At the Panel meeting on 17 March 2011, Hon LI Fung-ying suggested that the issue of abuse by employers of the existing policy regarding the granting of special permission for foreign domestic helpers to perform driving duties should be discussed by the Panel.

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14. System for recognition and monitoring of mandatory safety training courses

At the Panel meeting on 11 April 2011, the Administration briefed members on the results of its review on the system for recognition and monitoring of mandatory safety training courses and the proposed improvement measures

To be confirmed

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to the existing system for phased implementation from 2011. While members in general supported the implementation of improvement measures proposed by the Administration, there was a suggestion that the Administration should introduce a smart card to replace the industrial safety training certificates issued to workers upon their completion of the courses. Members agreed that the Panel should follow up the matter with the Administration.

Items proposed by the Administration

- 15. A review of occupational diseases in Hong Kong in 2010** To be confirmed

The Administration intends to brief the Panel on its review of occupational diseases in Hong Kong in 2010.

- 16. Occupational Safety in Hong Kong in 2010**

The Administration intends to brief the Panel on the occupational safety performance in 2010, including occupational safety in construction safety and minor renovation works. The Administration briefed the Panel on Hong Kong's occupational safety performance in the first half of 2010 at the meeting on 20 January 2011.

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