

LEGISLATIVE COUNCIL BRIEF

Employment Ordinance
(Chapter 57)

General Holidays Ordinance
(Chapter 149)

GENERAL HOLIDAYS AND EMPLOYMENT LEGISLATION (SUBSTITUTION OF HOLIDAYS)(AMENDMENT) BILL 2011

INTRODUCTION

At the meeting of the Executive Council on 1 November 2011, the Council ADVISED and the Chief Executive ORDERED that the General Holidays and Employment Legislation (Substitution of Holidays)(Amendment) Bill 2011, at **Annex**, which seeks to alter the holiday in substitution under the Employment Ordinance (EO) and the General Holidays Ordinance (GHO) should any of the first three days of Lunar New Year or the day following the Chinese Mid-Autumn Festival (being both statutory holidays and general holidays) fall on a Sunday, such that the day immediately after instead of before the said holiday will be designated as the holiday in substitution, should be introduced into the Legislative Council (LegCo).

Annex

JUSTIFICATIONS

2. Under the existing provisions of EO and GHO, should any of the first three days of Lunar New Year fall on a Sunday, the day immediately preceding Lunar New Year's Day (i.e. Lunar New Year's Eve) is designated as a holiday in substitution; 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, which is a Saturday, is designated as a holiday in substitution. It is also stipulated in EO that where a statutory holiday falls on a rest day, the employee is entitled to be granted a holiday on the next day thereafter, provided it is not a statutory

holiday or an alternative holiday¹ or a substituted holiday² or a rest day.

3. The prevailing arrangement of designating as a holiday in substitution the day immediately before the holiday when any of the first three days of Lunar New Year or the day following the Chinese Mid-Autumn Festival falls on a Sunday may not in essence bring about a de facto holiday for employees working on a five-day workweek basis with a day-off on Saturdays and Sundays. This is because the day on which the holiday in substitution falls (i.e. a Saturday in the case of Lunar New Year's Day and the day following the Chinese Mid-Autumn Festival falling on a Sunday) is usually not a rest day as defined under EO for most employees and accordingly, they would not be entitled to a holiday on another day as stated in paragraph 2 above. To address the concerns of some members of the public in this regard, we propose to amend s.39(1) of EO to designate the fourth day of Lunar New Year as a holiday in substitution when either Lunar New Year's Day, the second day of Lunar New Year or the third day of Lunar New Year falls on a Sunday. In the same vein, 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 holiday in substitution. This proposed arrangement will enable employees working on a Monday-to-Friday five-day workweek basis to have their holiday in substitution and their Saturday day-off on different days in the aforesaid circumstances. Besides, employees who work five-and-a-half days a week from Monday to Saturday (including those who follow such pattern on an alternate week basis) will also benefit from the proposed amendments.

4. Apart from making the above proposed amendments to EO, corresponding amendments will also need to be introduced to the Schedule to GHO so that the holiday in substitution in respect of the aforesaid holidays, which are designated as both statutory holidays and general holidays under EO and GHO respectively, can be aligned.

OTHER OPTIONS

5. Introducing legislative amendments is the only way to alter the holiday in substitution when any of the first three days of Lunar New Year or the day following the Chinese Mid-Autumn Festival falls on a Sunday. Without the necessary legislative amendments, there is no legal basis for re-designating other

¹ An employer may, with appropriate notification as stipulated under EO, grant an employee an alternative holiday on another day within the period of 60 days immediately preceding or next following a statutory holiday.

² A substituted holiday is a holiday to be granted by the employer to the employee, with mutual agreement, within the period of 30 days of a statutory holiday or alternative holiday or holiday as specified in EO.

days in substitution of these holidays.

GENERAL HOLIDAYS AND EMPLOYMENT LEGISLATION (SUBSTITUTION OF HOLIDAYS) (AMENDMENT) BILL 2011 (THE BILL)

- 6. The main provisions of the Bill are to amend EO and GHO to provide that -
 - (a) if any of the first three days of Lunar New Year falls on a Sunday, the fourth day of Lunar New Year is to be a statutory holiday and general holiday in substitution; and
 - (b) if the day following the Chinese Mid-Autumn Festival falls on a Sunday, the second day following that Festival is to be a statutory holiday and general holiday in substitution.

LEGISLATIVE TIMETABLE

7. The legislative timetable is as follows -

Publication in the Gazette	11 November 2011
First Reading and commencement of Second Reading debate	23 November 2011
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

Economic Implications

8. The proposal would benefit employees working on a five-day or five-and-a-half-day week basis with a full or half day-off on Saturday. As the Lunar New Year and Chinese Mid-Autumn Festival holidays are paid statutory holidays for employees under a continuous contract for not less than three months as stipulated under EO, the proposal should not incur any additional compliance costs on employers in principle. It would, however, reduce the cost savings currently enjoyed by employers owing to employees' de facto though incidental loss of holidays if the holidays in substitution happen to fall on a

Saturday. However, given that the occurrence of “overlapping holidays” is low, the economic implications should be insignificant. On the other hand, employees who benefit from the proposal could enjoy more leisure time and healthier work-life balance with more time to spend with their family, which should be conducive to productivity enhancement.

Financial Implications

9. Similarly, Government employees who work on a Monday-to-Friday five-day workweek basis and those who are on an alternate Saturday off work pattern will benefit from the proposal as they will be able to enjoy the holiday in substitution in addition to their Saturday day-off/half-day-off in the said circumstances. As the proposed amendments only cover the situation where the concerned holidays fall on a Sunday, and the occurrence of such a situation is only occasional, the staffing or financial implications for the Government should be minimal. Additional workload, if any, will be absorbed within the existing resources of the concerned departments.

Other Implications

10. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Bill does not affect the current binding effect of EO and GHO, and has no environmental or sustainability implications.

PUBLIC CONSULTATION

11. The Labour Advisory Board (LAB) and the Panel on Manpower of LegCo (the Panel) were consulted on 24 January and 17 March 2011 respectively. Members of the LAB and the Panel supported the proposed amendments put forward by the Administration.

PUBLICITY

12. A press release will be issued on the day when the LegCo Brief is issued. A spokesman from the Labour Department will also be made available to handle press enquiries.

BACKGROUND

13. According to the current provisions of EO, an employee, irrespective of his length of service, is entitled to be granted a statutory holiday by his

employer on each of the following days -

- (a) Lunar New Year's Day or, if that day falls on a Sunday, then the day immediately preceding Lunar New Year's Day;
- (b) the second day of Lunar New Year or, if that day falls on a Sunday, then the day immediately preceding Lunar New Year's Day;
- (c) the third day of Lunar New Year or, if that day falls on a Sunday, then the day immediately preceding Lunar New Year's Day;
- (d) Ching Ming Festival;
- (e) Labour Day, being the first day of May;
- (f) Tuen Ng Festival;
- (g) the day following the Chinese Mid-Autumn Festival or, if that day falls on a Sunday, the Chinese Mid-Autumn Festival Day;
- (h) the Chung Yeung Festival;
- (i) the Chinese Winter Solstice Festival or Christmas Day, at the option of the employer;
- (j) the first day of January;
- (k) Hong Kong Special Administrative Region Establishment Day, being the first day of July; and
- (l) National Day, being the first day of October.

14. While the statutory holidays as provided for by EO are a form of statutory benefit for employees, general holidays as stipulated in GHO are days on which all banks, education establishments, public offices including the courts and Government departments need not open or operate. Although the numbers of holidays stipulated under these two Ordinances are not identical³, the days designated as holidays in both Ordinances are largely the same⁴ to enable the days on which employees are on holiday fit in with the days on which the

³ Under EO, there are 12 statutory holidays whereas under GHO, there are 17 general holidays apart from Sundays.

⁴ Under GHO, Good Friday, the day following Good Friday, Easter Monday, the Birthday of the Buddha and the first weekday after Christmas Day are general holidays, but they are not statutory holidays under EO.

aforementioned institutions need not open or operate.

15. As a general rule, when a statutory holiday stipulated in EO falls on a rest day or a general holiday under GHO falls on a Sunday, the day following the holiday is taken or designated as a holiday in substitution⁵. However, the arrangement with regard to the Lunar New Year and the Chinese Mid-Autumn Festival holidays is different. Section 39 of EO provides that if any of the first three days of Lunar New Year or the day following the Chinese Mid-Autumn Festival falls on a Sunday, the holiday in substitution will fall on the day immediately preceding Lunar New Year's Day and on the day of the Chinese Mid-Autumn Festival respectively. Similar provisions in respect of general holidays in the event of the first three days of Lunar New Year or the day following the Chinese Mid-Autumn Festival falling on a Sunday are laid down in the Schedule to GHO.

16. The existing arrangement of designating the holiday in substitution on a pre-holiday basis when any of the Lunar New Year holidays or the day following the Chinese Mid-Autumn Festival falls on a Sunday was a result of the legislative amendments passed by LegCo in 1982. Prior to 1983, when a statutory holiday or a general holiday fell on an employee's rest day and Sunday respectively, the day following the holiday was taken or designated as a holiday across the board. After considering the then prevailing public views, amendments were introduced to EO and the then Holidays Ordinance (subsequently retitled as General Holidays Ordinance in 1998) to the effect that should any of the first three days of Lunar New Year fall on a Sunday, the day immediately preceding Lunar New Year's Day (i.e. Lunar New Year's Eve) is designated as a holiday in substitution; 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 holiday in substitution. The purpose of the amendments was to facilitate employees in maintaining the Chinese tradition of preparing for family gathering during important festivals. The amendments were effective from 1983. Since then, the arrangement for holidays in substitution in respect of the Lunar New Year and Chinese Mid-Autumn Festival holidays was distinct from that for other statutory holidays and general holidays.

17. Reviewing the existing arrangement for replacement holiday in the event a Lunar New Year holiday falls on a Sunday was included as one of the new initiatives in the 2010-11 Policy Agenda.

⁵ Under s.39(4)(a) of EO, where a statutory holiday falls on a rest day, the employee shall be granted a holiday on the next day thereafter which is not a statutory holiday or an alternative holiday or a substituted holiday or a rest day. For a general holiday falling on a Sunday, the general arrangement of designating the following day as the holiday is stipulated in the Schedule to GHO.

ENQUIRIES

18. Any enquiries on this brief can be directed to Mr Byron NG, Assistant Commissioner for Labour (Labour Relations), on 2852 4099, Ms Melody LUK, Chief Labour Officer (Labour Relations), on 2852 3457 or Miss Candice CHENG, Senior Labour Officer (Labour Relations)(Policy Support), on 2852 3696.

Labour and Welfare Bureau
November 2011

General Holidays and Employment Legislation (Substitution of Holidays)
(Amendment) Bill 2011

Part 1
Clause 1

1

A BILL

To

Amend the General Holidays Ordinance and the Employment Ordinance to change the day that is to be substituted as a general holiday and statutory holiday where any of the first 3 days of a Lunar New Year, or the day following the Chinese Mid-Autumn Festival, falls on a Sunday.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the General Holidays and Employment Legislation (Substitution of Holidays) (Amendment) Ordinance 2011.
 - (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.
-

Part 2

Amendments to General Holidays Ordinance

2. General Holidays Ordinance amended

The General Holidays Ordinance (Cap. 149) is amended as set out in section 3.

3. Schedule amended (general holidays)

(1) The Schedule, paragraph (c)—

Repeal

everything after “a Sunday, then”

Substitute

“the fourth day of Lunar New Year;”.

(2) The Schedule, paragraph (d)—

Repeal

everything after “a Sunday, then”

Substitute

“the fourth day of Lunar New Year;”.

(3) The Schedule, paragraph (e)—

Repeal

everything after “a Sunday, then”

Substitute

“the fourth day of Lunar New Year;”.

(4) The Schedule, paragraph (o)—

Repeal

“the day of that Festival”

Substitute

General Holidays and Employment Legislation (Substitution of Holidays)
(Amendment) Bill 2011

Part 2

Clause 3

3

“the second day following that Festival”).

Part 3

Amendments to Employment Ordinance

4. Employment Ordinance amended

The Employment Ordinance (Cap. 57) is amended as set out in section 5.

5. Section 39 amended (grant of holidays)

(1) Section 39(1)(a)—

Repeal

everything after “a Sunday, then”

Substitute

“the fourth day of Lunar New Year;”.

(2) Section 39(1)(b)—

Repeal

everything after “a Sunday, then”

Substitute

“the fourth day of Lunar New Year;”.

(3) Section 39(1)(c)—

Repeal

everything after “a Sunday, then”

Substitute

“the fourth day of Lunar New Year;”.

(4) Section 39(1)(f)—

Repeal

everything after “a Sunday,”

Substitute

General Holidays and Employment Legislation (Substitution of Holidays)
(Amendment) Bill 2011

Part 3

Clause 5

5

“then the second day following that Festival;”.

Explanatory Memorandum

The purpose of this Bill is to designate another day as a holiday in substitution in case any Lunar New Year holiday or Chinese Mid-Autumn Festival holiday falls on a Sunday.

2. Clause 3 amends the General Holidays Ordinance (Cap. 149) to provide that—
 - (a) if any of the first 3 days of a Lunar New Year falls on a Sunday, the fourth day of the Lunar New Year is substituted as a general holiday; and
 - (b) if the day following the Chinese Mid-Autumn Festival falls on a Sunday, the second day following that Festival is substituted as a general holiday.
3. Clause 5 amends the Employment Ordinance (Cap. 57) to provide that—
 - (a) if any of the first 3 days of a Lunar New Year falls on a Sunday, the fourth day of the Lunar New Year is substituted as a statutory holiday; and
 - (b) if the day following the Chinese Mid-Autumn Festival falls on a Sunday, the second day following that Festival is substituted as a statutory holiday.