

立法會

Legislative Council

LC Paper No. LS8/11-12

Paper for the House Committee Meeting on 25 November 2011

Legal Service Division Report on General Holidays and Employment Legislation (Substitution of Holidays) (Amendment) Bill 2011

I. SUMMARY

- 1. Object of the Bill** To amend the General Holidays Ordinance (Cap. 149) (GHO) and the Employment Ordinance (Cap. 57) (EO) to change the day that is to be substituted as a general holiday and statutory holiday where any of the first three days of a Lunar New Year, or the day following the Chinese Mid-Autumn Festival, falls on a Sunday.
- 2. Comments** To provide that:-
 - (a) if any of the first three days of a Lunar New Year falls on a Sunday, the fourth day of the Lunar New Year (instead of the day immediately preceding Lunar New Year's Day) is substituted as a general holiday under GHO and as a statutory holiday under EO; and
 - (b) if the day following the Chinese Mid-Autumn Festival falls on a Sunday, the second day following that Festival (instead of the day of that Festival) is substituted as a general holiday under GHO and as a statutory holiday under EO.
- 3. Public Consultation** The Labour Advisory Board was consulted on 24 January 2011 and supported the proposed amendments.
- 4. Consultation with LegCo Panel** The Panel on Manpower was consulted on the legislative proposal at its meeting on 17 March 2011. Members in general welcomed the proposal but expressed concerns as to its scope and the non-alignment of general holidays under GHO with statutory holidays under EO.
- 5. Conclusion** Subject to Members' views, the Bill is ready for resumption of second reading debate.

II. REPORT

Object of the Bill

To amend the General Holidays Ordinance (Cap. 149) (GHO) and the Employment Ordinance (Cap. 57) (EO) to change the day that is to be substituted as a general holiday and statutory holiday where any of the first three days of a Lunar New Year, or the day following the Chinese Mid-Autumn Festival, falls on a Sunday.

LegCo Brief Reference

2. LD LRD 12-1/1-12/2(C) issued by the Labour and Welfare Bureau in November 2011.

Date of First Reading

3. 23 November 2011.

Comments

Background

4. Currently under section 39 of EO, an employee is entitled to be granted 12 statutory holidays by his employer, which include: -

- (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; and
- (d) the day following the Chinese Mid-Autumn Festival or, if that day falls on a Sunday, the Chinese Mid-Autumn Festival Day.

5. Under GHO, general holidays are days which, subject to certain exceptions, are required to be kept as holidays by all banks, educational establishments, public offices and Government departments. According to

section 3 and the Schedule to GHO, there are presently 17 general holidays apart from every Sunday, including those specified in paragraph 4.

Proposed amendments to EO

6. The prevailing arrangement is to designate the day immediately before the continuous holidays or holiday respectively when any of the first three days of Lunar New Year or the day following the Chinese Mid-Autumn Festival falls on a Sunday.

7. To address the concerns of some members of the public that the holiday in substitution may not be a de facto holiday to employees working on a Monday-to-Friday workweek, clause 5 of the Bill proposes to amend: -

- (a) section 39(1)(a), (b) and (c) of EO such that where any of the first three 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) section 39(1)(f) of EO such that where the day following the Chinese Mid-Autumn Festival falls on a Sunday, the second day following that Festival is substituted as a statutory holiday.

8. According to paragraph 3 of the LegCo Brief, the 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. Employees who work five-and-a-half days a week from Monday to Saturday (including those who follow such pattern on an alternative week basis) will also benefit from the proposed amendments.

Proposed amendments to GHO

9. In view of the proposed amendments to EO, clause 3 of the Bill also suggests to make corresponding amendments to paragraphs (c), (d), (e) and (o) of the Schedule to GHO so that the holidays in substitution for the aforesaid holidays, which are designated as both statutory holidays and general holidays under EO and GHO respectively, can be aligned.

Commencement

10. The Bill, if enacted, will come into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

Public Consultation

11. The Labour Advisory Board was consulted on 24 January 2011. According to the Administration, its members supported the proposed amendments put forward by the Administration.

Consultation with LegCo Panel

12. The Panel on Manpower was consulted on the Administration's legislative proposal at its meeting on 17 March 2011. While members in general welcomed the proposal, there were concerns that employees working on a five-day workweek basis were unlikely to benefit from the proposal. The Administration was requested to further examine the feasibility of extending the replacement holiday arrangement to cover the situation where a statutory holiday or general holiday fell on a Saturday. Some members were also concerned that there were 17 days of general holidays but 12 days of statutory holidays in a year. They called for the Administration to consider aligning these two types of holidays.

Conclusion

13. No difficulties in the legal or drafting aspects of the Bill have been identified. Subject to Members' views, the Bill is ready for resumption of second reading debate.

Prepared by

KAN Wan-ye, Wendy
Assistant Legal Adviser
Legislative Council Secretariat
22 November 2011