

For information on  
20 October 2011

## **Legislative Council Panel on Manpower**

### **Policy Initiatives of the Labour and Welfare Bureau for 2011-12**

#### **Purpose**

The Chief Executive delivered his 2011-12 Policy Address on 12 October 2011. This paper sets out the new initiatives and on-going key initiatives pertaining to the labour and manpower portfolio under the Labour and Welfare Bureau in the 2011-12 Policy Address and Policy Agenda.

#### **New Initiatives**

**(A) Introduce a bill into the Legislative Council to improve the existing arrangement on replacement holiday should a Lunar New Year holiday or the day following the Chinese Mid-Autumn Festival fall on a Sunday**

2. With the change in Hong Kong's socio-economic circumstances in recent years, the number of employees working five days a week and taking days off on both Saturdays and Sundays has been increasing. For these employees, if any of the Lunar New Year holidays or the day following the Chinese Mid-Autumn Festival falls on a Sunday, the existing arrangement under the Employment Ordinance (Cap. 57) (EO) and the General Holidays Ordinance (Cap. 149) (GHO) of designating as holidays in substitution those days ahead of the said holidays would result in the holidays in substitution overlapping with their Saturdays day-off. There is a body of opinion that where such happens these employees would have a de facto loss of a day of holiday and that the current arrangement should be changed as it no longer suits present-day circumstances.

3. To address this concern, we have completed a review on the existing arrangement for replacement holiday in the event a Lunar New Year holiday or the day following the Chinese Mid-Autumn Festival falls on a Sunday, and consulted the Labour Advisory Board (LAB) and this Panel. With their endorsement of the amendments proposed by the Administration to the relevant provisions of the EO and the GHO, we plan to introduce a bill into the Legislative Council (LegCo) in the 2011-2012 legislative session to improve the replacement holiday arrangement.

**(B) Launch a pilot scheme under the Vocational Training Council to provide structured traineeship arrangement for the service industries, which comprises in-service training and complementary vocational education**

4. To suit the different aspirations and interests of youths, the Government has been offering apprenticeship training over the years with a view to encouraging them to engage in proper on-the-job training. In order to nurture the manpower to keep abreast with the fast growth of the service industries, the Vocational Training Council will launch a pilot scheme to provide structured traineeship arrangement for the service industries, with beauty care and hairdressing as the starting point, offering youths aged 15 or above with in-service training and complementary vocational education.

5. The pilot scheme will cover foundation training in the first year and courses on more specific skills in the second year. We expect to provide a total of about 1 000 training places a year. This pilot scheme will not only provide the Government and the industries with valuable experience for studying and developing structured traineeship arrangements that suit the service industries, but also offer youths with more diversified training and working opportunities.

**(C) Intensify systematic preventive and enforcement measures in construction safety in view of the commencement of major infrastructure projects and expected rapid growth in building renovation and maintenance works**

6. The commencement of a number of major infrastructure projects (MIPs) and rapid growth in building repair, maintenance, alteration and addition (RMAA) works arising from the mandatory requirements for inspection of old buildings present new challenges to the safety performance of the construction sector.

7. Regarding new works under MIPs, Labour Department (LD) will step up enforcement and enhance co-operation with various stakeholders (e.g. contractors, project management teams and relevant government departments/project clients), including participating in regular site safety management meetings and safety walks of MIPs, and taking rigorous enforcement actions to ensure that safe systems of work are in place. As to RMAA works, LD will step up inspections of workplaces to follow up referrals from our strategic partners, including the Housing Department, Hong Kong Housing Society and property management companies. LD will also step up area patrols and inspections during non-office hours to check whether

contractors have evaded monitoring and adopted unsafe work practices. In collaboration with the Occupational Safety and Health Council and relevant organisations of the industry, LD will step up promotion and publicity work to raise the safety awareness of contractors.

### **On-going Initiatives**

#### **(D) Monitoring the implementation of the Work Incentive Transport Subsidy Scheme, and conducting a mid-term review one year after implementation**

8. The Work Incentive Transport Subsidy (WITS) Scheme has just started receiving applications on 3 October. LD is processing the applications at full steam, with a view to making payments to the first batch of eligible applicants before the end of this year. We will closely monitor the implementation of the Scheme and conduct a mid-term review having regard to the operating experience. If circumstances warrant, we will consider advancing the timing of the mid-term review. A comprehensive review of the effectiveness of the WITS Scheme will be conducted three years after implementation.

#### **(E) Completing the policy study on standard working hours by mid-2012**

9. The issue of standard working hours is a highly complex and controversial one. At present, employers, employees and various sectors of the community have divergent views on whether standard working hours should be introduced in Hong Kong. We must be prudent in handling the matter which has far-reaching implications on our society and economy.

10. Following the announcement of the 2010-11 Policy Address, LD has embarked on the policy study on standard working hours. The study covers the systems and experiences of other places in regulating working hours, and the Census and Statistics Department will also assist in collecting statistics on the current working hours situation of our labour force and various sectors of Hong Kong, e.g., data on contractual working hours and overtime work, so as to facilitate in-depth and objective analysis. We aim to complete the study by mid-2012. The findings of the study would provide a solid foundation for future discussion in the community, deepen society's understanding of this topic and facilitate exchange of opinions.

**(F) Continuing with the preparatory work for setting up a pioneer one-stop employment and training centre in Tin Shui Wai to streamline, integrate and enhance the existing employment and training/retraining services of the Labour Department, Social Welfare Department and Employees Retraining Board**

11. LD will continue to strengthen the employment support for the disadvantaged groups. We will set up a pioneer one-stop employment and training centre in Tin Shui Wai by the end of 2011 to provide employment and training support to needy job seekers, including unemployed Comprehensive Social Security Assistance recipients, in a holistic manner. The centre will streamline, integrate and enhance the existing employment and training/retraining services of LD, Social Welfare Department (SWD) and Employees Retraining Board (ERB). We will analyse the employment needs of job seekers with a view to providing them with targeted services. Such services include, for example, case management throughout their pathway to employment; personalised counselling, employment, training and post-placement services tailored to their needs, etc.

12. The one-stop employment and training centre will be housed in a new Amenity and Community Building in Tin Ching Estate in Tin Shui Wai, and fitting-out work is now in progress. To facilitate job seekers in obtaining employment and training/retraining services in one stop, an ERB Service Centre will be set up in the same building. We have already developed assessment tools to facilitate job seekers in analysing their employment needs and understanding their job related characteristics for more effective career planning. The tender exercise for contracting out the provision of case management and employment support services by a non-government organisation has been concluded. In addition, the development of an information technology system to facilitate data-sharing amongst relevant parties including LD, SWD and ERB, as well as the procurement of the necessary equipment and facilities, have been largely completed.

13. Besides, LD launched a special employment project targeting young people aged 15 to 24 with special employment difficulties in July 2010. Under the project, non-government organisations are commissioned to provide on-the-job training and internship opportunities of 12 months' duration to vulnerable youths.

14. There were 109 trainees enrolled in Phase One of the Project with the on-the-job training period commencing in November 2010 with monthly wages of \$4,500. With the statutory minimum wage (SMW) coming into force on

1 May 2011, the monthly wages of the participating trainees had been raised to \$6,128 or \$6,314, depending on the number of days in a calendar month. Phase Two of the project is planned to be launched in the fourth quarter of 2011 with a flat monthly wage rate of \$6,350, which is on a par with that of the adjusted level of Phase One.

**(G) Preparing legislative proposal, in consultation with stakeholders and after securing their consensus, to empower the Labour Tribunal to make a compulsory 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**

15. Under the existing provisions of the EO, if an employee is unlawfully dismissed<sup>1</sup> and the employer fails to show a valid reason as specified in the EO for the dismissal<sup>2</sup>, the Labour Tribunal (LT) may, subject to the mutual consent of the employer and the employee, make an order for reinstatement/re-engagement. If no order for reinstatement/re-engagement is made, LT may make an award of terminal payments and/or an award of compensation not exceeding \$150,000 to the employee. However, under the existing provisions, LT has no power to make an order for reinstatement or re-engagement without the employer's consent, even if it considers such an order appropriate.

16. To enhance employees' protection against unreasonable and unlawful dismissal, we propose to amend the EO and empower LT to make a compulsory order for reinstatement/re-engagement of an employee who has been dismissed unreasonably and unlawfully without securing the agreement of the employer, if LT considers making such an order appropriate and compliance with it by the employer reasonably practicable, and to order the employer to pay a further sum to the employee in the event of non-compliance of the order by the employer.

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<sup>1</sup> Unlawful dismissal refers to the situation where the employee is dismissed in contravention of labour legislation, 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 or information in any proceedings or inquiry in connection with the enforcement of the EO, work accidents or work safety legislation.

<sup>2</sup> The valid reasons for dismissal stipulated in the EO refer to an employee's conduct, his capability/qualification for performing the job, redundancy or other genuine operational requirements of the business, compliance with legal requirements, and any other reason of substance.

17. Pursuant to the operation of the Employment (Amendment) Ordinance (E(A)O) 2010 in October 2010, wilful defaults of the sums awarded by LT or the Minor Employment Claims Adjudication Board (MECAB) (including an award of compensation that also arises from unreasonable and unlawful dismissal) has been made a criminal offence, with culpable employers liable to a maximum fine of \$350,000 and imprisonment for three years. Since non-payment of an award of compensation made in circumstances of unreasonable and unlawful dismissal has been made a criminal offence, we have to consider how non-payment of the proposed further sum, which is also triggered in the event of unreasonable and unlawful dismissal, should be dealt with. We are consulting LAB and relevant stakeholders again on the legislative proposal on compulsory reinstatement. Upon securing their consensus, we will report the matter to this Panel for the purpose of introducing an amendment bill into LegCo as soon as possible.

**(H) Continuing to promote family-friendly employment practices to the general public and encourage a wider adoption of such practices by employers, as well as to conduct a study on legislating for paternity leave**

18. LD has been encouraging employers to adopt family-friendly employment practices (FFEP), taking into account the needs of employees as well as the operational circumstances of organisations, so as to help employees balance their work and family responsibilities, and to foster a caring organisational culture and working environment. Promotion of FFEP has become one of LD's major programmes. To enlist more employers' support in implementing FFEP and to deepen public understanding of these measures, we will continue to publicise the message through the network of industry-based Tripartite Committees and Human Resources Managers Clubs formed in various trades and industries as well as activities like staging exhibitions, broadcasting promotional video, distributing educational DVDs and promotional materials and publishing feature articles in newspapers, etc. Furthermore, we are undertaking a study on paternity leave. In the process, we will carefully consider the actual circumstances in Hong Kong and assess the possible impact of legislating for paternity leave on employers (especially small-and-medium-sized enterprises) and the economy as a whole, and whether there is a consensus in the community in this regard.

**(I) Undertaking a review of the definition of continuous employment under the Employment Ordinance with reference to the statistical data collected on employees engaged under employment contracts with short duration or working hours, and continuing to consult relevant stakeholders in the process**

19. Currently, the EO accords protection to all employees, irrespective of their duration of employment or hours of work per week, in areas such as payment of wages, restriction on deductions from wages, entitlement to statutory holidays and protection against anti-union discrimination, etc. Employees engaged under a continuous contract<sup>3</sup>, irrespective of whether they work full-time or part-time, are further entitled to other employment benefits, such as rest days, paid statutory holidays, annual leave, sickness allowance, severance payment and long service payment, etc, subject to their meeting the relevant eligibility criteria specified in the EO.

20. LD is undertaking a review of the definition of continuous employment under the EO with reference to the latest statistical data collected by the Census and Statistics Department on employees engaged under employment contracts with short duration or working hours. Since continuous contract is the basis upon which employers are required to provide various employment benefits to their employees under the EO, any change in this regard will have far-reaching implications on the labour market and the community as a whole. As such, before deciding whether changes need to be made, the Administration must conduct a prudent and thorough study of the subject. We will continue to consult relevant stakeholders in the process.

**(J) Continuing to adopt an integrated approach to promote the awareness of employers and employees on how to differentiate between an employee and a self-employed person with a view to protecting employees' rights and benefits**

21. At the meeting of 12 July 2011, we reported to this Panel the measures adopted by LD in tackling false self-employment by presenting the statistics collected and the relevant analysis conducted. As we have shared with this Panel, our experience in monitoring the cases involving disputes on false self-employment reveals that while every effort should be made to deter false self-employment, we need at the same time to maintain the flexibility of economic activities such that individuals may provide service as a self-employed

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<sup>3</sup> Under 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 each week.

person according to their own choices and needs. To achieve these targets, we will continue to adopt a three-pronged approach to tackle the problem of false self-employment.

22. On the promotional and publicity front, we will continue to launch a diverse range of activities including broadcasting television and radio Announcements in the Public Interest (API), placing advertisements on public transport, distributing leaflets and promotional materials, displaying posters, publishing feature articles as well as organising exhibitions, briefings and talks etc. to educate the public on the differences and pros/cons of the two different kinds of contractual relationships and to remind them of the importance of clarifying the relevant modes of working relationship before entering into contracts. In fact, after our last reporting to this Panel, we have launched new radio APIs in August 2011 to enhance public awareness of false self-employment.

23. Furthermore, we will continue to provide a user-friendly consultation and conciliation service to those who are involved in false self-employment disputes. For those aggrieved by suspected false self-employment, sufficient channels are in place for them to report the irregularities. Whenever there is sufficient evidence, rigorous enforcement actions will be taken and prosecution instituted against the offending employers to deter false self-employment.

**(K) Continuing enforcement action against wage offences, including breaches of the statutory minimum wage provisions, and offences of wilful defaults of Labour Tribunal or Minor Employment Claims Adjudication Board awards**

24. In 2011, LD has continued with its multi-pronged strategies of promotion, proactive workplace inspection and prosecution to combat wage offences. To tie in with the implementation of the Minimum Wage Ordinance (MWO), labour inspectors of LD will continue to proactively conduct inspections of establishments of various trades and mount targeted enforcement campaigns for low-paying sectors (including catering, retail, cleaning service, and security, etc), with a view to safeguarding the statutory rights of workers.

25. Extensive publicity and promotional efforts have been made by LD to remind employers of their statutory obligations, urge employees to report breaches of labour laws and pursue wage claims promptly, and publicise its complaint hotline (2815 2200) widely. With the growing economy, and rigorous enforcement and proactive measures of LD to prevent wage defaults, the wage default situation of the labour market is improving steadily. In the first nine months of 2011, 732 convicted summonses on wage offences were



recorded, down by 39% over the same period last year. In the first nine months of 2011, a total of 133 convicted summonses against company directors and responsible persons for defaulting wage payment were recorded, down by 65% over the same period last year.

26. Since the implementation of the SMW on 1 May, the state of law-compliance has been satisfactory. During 1 May to 30 September, labour inspectors conducted over 15 000 workplace inspections covering establishments of such low-paying sectors as catering, retail, cleaning service, and security, of which suspected violations of the MWO were detected in 57 cases. Labour inspectors have taken follow-up action on all such cases and confirmed that employees of most cases have received the SMW. Wilful offenders will be prosecuted if there is sufficient evidence.

27. The E(A)O 2010 came into operation on 29 October 2010. Under the EO, a new criminal offence is introduced against employers who wilfully and without reasonable excuse fail to pay any sum under a LT or MECAB award comprising wages and entitlements attracting criminal sanction under the EO. Up to the end of September 2011, ten convicted cases under the new ordinance were recorded. LD is taking active investigation and prosecution action on other suspected cases of defaulting awards.

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

28. Safeguarding the employment opportunities of local workers is a priority task of the Government. In the first nine months of 2011, LD mounted 149 joint operations with other law enforcement departments to raid targeted establishments to combat illegal employment. The number of operations in the same period last year was 150.

29. Apart from enforcement action, LD has launched publicity programmes through various channels, including advertisements in newspapers and public transport carriers, press releases and publicity leaflets, to remind the public of the serious consequences of employing illegal workers. LD has also widely publicised its complaint hotline (2815 2200) to encourage the public to report illegal employment activities. The Administration will continue to strengthen publicity and enforcement efforts to combat illegal employment.

**(M) Continuing to launch public education and publicity campaigns to promote understanding of the minimum wage legislation among employers and employees, and to forestall employers' wilful defaults of Labour Tribunal or Minor Employment Claims Adjudication Board awards**

30. Since the passage of the MWO in July 2010, LD has launched territory-wide publicity activities to promote SMW and assist employers and employees in understanding their respective obligations and entitlements under the SMW system. To sustain the momentum along with the implementation of the MWO, we will continue with our extensive education and promotional activities, staging large-scale seminars and roving exhibitions as well as publicising the SMW requirements through various channels.

31. To enhance public awareness of the E(A)O 2010 which criminalises employers' wilful defaults of LT and MECAB awards and to remind employers to comply with the statutory requirement, LD will continue to launch various educational and promotional activities such as distributing promotional publications, displaying posters, organising talks and staging roving exhibitions, etc. Furthermore, we have just published a leaflet illustrating the "without reasonable excuse" clause under the E(A)O 2010 in October 2011 and will distribute booklets introducing the legislative amendments in several ethnic minority languages by phases from the fourth quarter of 2011.

**(N) Continuing the legislative amendment exercise to expand the scope of the Protection of Wages on Insolvency Fund to cover pay for untaken annual leave and untaken statutory holidays under the Employment Ordinance**

32. The Protection of Wages on Insolvency Fund (the Fund) acts as a safety net to provide timely relief to employees in the form of ex gratia payment to cover wages, wages in lieu of notice and severance payment owed by their insolvent employers. The Protection of Wages on Insolvency (Amendment) Bill 2011 was introduced into LegCo on 13 July 2011 and will be examined in this legislative session. The Bill seeks to expand the scope of the Fund to cover pay for untaken annual leave under EO, not exceeding the employee's full statutory entitlement for the last leave year (ranging from seven to 14 days' pay depending on the employee's length of employment) and pay for untaken statutory holidays under EO within four months before his last day of service, subject to a payment ceiling at \$10,500. We look forward to its early passage to benefit the employees.

**(O) Continuing to enhance the regulatory system for mandatory safety training courses**

33. To enhance the existing regulatory system for mandatory safety training (MST) courses, LD launched three improvement measures in September 2011, including standardisation of course contents, centralisation of issue of course examination papers and consolidation of the existing guidance notes issued for different MST courses. LD will strengthen the monitoring effort to ensure smooth implementation of these improvement measures and review their effectiveness in due course.

**(P) Completing the implementation of a series of measures to enhance training and retraining services before the end of 2011-12, in accordance with the recommendations of the strategic review on the future directions of the Employees Retraining Board (ERB)**

34. ERB submitted the final recommendations of the strategic review on its future directions to the Government in early 2009. The recommendations were endorsed on 31 March 2009. ERB has been implementing the recommendations in phases, and will complete the task by the end of 2011-12. ERB has since provided the unemployed and in-service workers with more comprehensive, professional and diversified services.

**Conclusion**

35. Members are invited to note the content of this paper.

Labour and Welfare Bureau  
Labour Department  
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