

立法會
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Paper for the House Committee

**Report of Subcommittee on Employment (Amendment) (No. 2)
Ordinance 2018 (Commencement) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee on Employment (Amendment) (No. 2) Ordinance 2018 (Commencement) Notice ("the Subcommittee").

Background

2. The Employment (Amendment) Bill 2017 ("the Bill") was introduced into the Legislative Council ("LegCo") on 17 May 2017. A Bills Committee was formed at the House Committee on 19 May 2017 to study the Bill. The Bill was passed by LegCo on 17 May 2018, and the enacted Ordinance was published in the Gazette as the Employment (Amendment) (No. 2) Ordinance (Ord. No. 21 of 2018) ("the Amendment Ordinance") on 25 May 2018.

3. In gist, the Amendment Ordinance amends the Employment Ordinance (Cap. 57) ("EO") to remove the employer's agreement as the prerequisite for making a reinstatement¹ ("RI") or re-engagement² ("RE") order in the event of an employee being dismissed by the employer under section 32A(1)(c) of Part

¹ Under section 32N(4) of EO, an order for RI is an order that the employer shall treat the employee in all respects as if he had not been dismissed or as if there had been no such variation of the terms of the contract of employment.

² Under section 32N(6) of EO, an order for RE is an order that the employer must re-engage the employee in an employment on terms comparable to his original terms of the employment or in other suitable employment.

VIA of EO ("unreasonable and unlawful dismissal")³, and to provide for related matters.

The Employment (Amendment) (No. 2) Ordinance 2018 (Commencement) Notice

4. By the Employment (Amendment) (No. 2) Ordinance 2018 (Commencement) Notice (L.N. 116 of 2018) ("the Commencement Notice") made pursuant to section 1(2) of the Amendment Ordinance, the Secretary for Labour and Welfare has appointed 19 October 2018 as the day on which the Amendment Ordinance comes into operation.

The Subcommittee

5. The House Committee ("HC") agreed on 19 June 2018 that a subcommittee should be formed to study the Commencement Notice. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon WONG Ting-kwong, the Subcommittee has held one meeting with the Administration.

6. The scrutiny period of the Commencement Notice has been extended from 11 July 2018 to the first Council meeting of the 2018-2019 session by a resolution passed at the Council meeting of 11 July 2018.

Deliberations of the Subcommittee

Commencement of the Amendment Ordinance

7. Some members have enquired about the considerations of the Administration for appointing 19 October 2018 as the commencement date for the Amendment Ordinance. The Administration has advised that following the passage of the Bill on 17 May 2018, it has taken the first opportunity to arrange

³ Unreasonable and unlawful dismissal refers to the situation where an employee is dismissed as mentioned in section 32A(1)(c) of EO, viz., the employee is dismissed other than for a valid reason as specified under EO (including the conduct of the employee, his/her capability/qualification for performing the job, redundancy or other genuine operational requirements of the business, compliance with legal requirements, or other reason of substance), and the dismissal is in contravention of labour legislation, including dismissal during pregnancy and maternity leave, during paid sick leave, after work-related injury and before determination/settlement and/or payment of compensation under the Employees' Compensation Ordinance (Cap. 282), by reason of the employee exercising trade union rights or giving evidence for the enforcement of relevant labour legislation.

for the Commencement Notice to be gazetted on 8 June 2018 and tabled at the Council meeting of 13 June 2018. As the expiry of the full negative vetting period could be the first Council meeting of the next session, if extended by a resolution before the expiry of the first 28-day vetting period on 11 July 2018, the Administration therefore considers that the coming into operation of the Amendment Ordinance on 19 October 2018 would be able to take into account of the need to allow Members to have sufficient time to scrutinize the Commencement Notice and their right to propose to extend its scrutiny period by resolution to the first Council meeting of the next session.

8. Some members have expressed concern whether employees are well aware of their rights and protection under the Amendment Ordinance and called on the Administration to step up its publicity efforts in this respect. The Administration has advised that as it is not easy to explain the technical aspects of making an order for RI or RE by the court or the Labour Tribunal through broadcasting television and radio Announcements in the Public Interest, the Labour Department would focus its publicity work and disseminate promotional messages in respect of the commencement and contents of the Amendment Ordinance through relevant employers' associations and labour organizations.

Review timetable

9. Some members have expressed concern that after the coming into operation of the Amendment Ordinance, employees under fixed-term contracts are still not afforded adequate protection against unreasonable and unlawful dismissal. These members have pointed out that in the case of a fixed-term contract employee, the employer concerned would simply not renew the contract with the employee concerned. Separately, some members consider that in case of unreasonable and unlawful dismissal, if the employee concerned wishes to be reinstated or re-employed, the employer's obligation to reinstate or re-engage the employee should not be relieved by paying the sums specified in an order for RI or RE. In view of the above concerns, these members have enquired about the Administration's timetable for reviewing the implementation of the Amendment Ordinance, including the scope of the applicability of an order for RI or RE without employer's agreement as the prerequisite and the state of compliance with the order by the employers.

10. The Administration has advised that there are not many unreasonable and unlawful dismissal claims in which the employee requested RI or RE in each year. It would closely monitor the implementation of the Amendment Ordinance and conduct a review when necessary.

11. Having regard to the ambit of the Commencement Notice, the Chairman of the Subcommittee generally considers that issues relating to implementation of the Amendment Ordinance fall outside the purview of the Subcommittee, and

it would be more appropriate for the Panel on Manpower to follow up the concerns expressed by members. In this connection, members have requested the Administration to revert to the Panel on Manpower on the review of implementation of the Amendment Ordinance in due course.

Recommendation

12. The Subcommittee raises no objection to the Commencement Notice and will not propose any amendment to the subsidiary legislation.

Advice Sought

13. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
13 July 2018

**Subcommittee on Employment (Amendment) (No. 2) Ordinance 2018
(Commencement) Notice**

Membership list

Chairman Hon WONG Ting-kwong, GBS, JP

Members Hon Frankie YICK Chi-ming, SBS, JP
Hon LEUNG Che-cheung, SBS, MH, JP
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon HO Kai-ming
Hon Holden CHOW Ho-ding
Hon LUK Chung-hung, JP
Hon LAU Kwok-fan, MH

(Total : 12 members)

Clerk Miss Betty MA

Legal adviser Mr Alvin CHUI