

**Decisions taken by the Labour Advisory Board
at its meeting on 30 November 1999**

I. A proposal to amend sections 9, 31H, 31X and 32H of the Employment Ordinance in the light of Article 27 of the Basic Law

The Labour Advisory Board (LAB) considered the proposals to amend the Employment Ordinance (EO) in the light of Article 27 of the Basic Law which expressly guarantees employees' right to strike. The proposed amendments will make it clear that an employer may not terminate the employment contract of an employee without notice or payment in lieu of notice under section 9 solely on the ground that the employee has taken part in a strike as defined under the EO. The existing sections 31H, 31X and 32H, which have become redundant, will be deleted. The proposals only involve technical amendments to clarify the wordings of existing provisions so as to avoid ambiguity and prevent unnecessary disputes. They will not require employers to provide extra rights and benefits to employees.

The LAB endorsed the proposals.

II. A review of the applicability of the Employment Ordinance to live-in domestic helpers

Having conducted a review of the applicability of the EO to live-in domestic helpers (DHs), the Labour Department has made the following two proposals :

- (a) The EO shall remain fully applicable to all live-in DHs.

- (b) To provide **an additional option** under the EO such that a pregnant live-in DH and her employer may mutually agree to dissolve their employment contract on the condition that the employer pays the DH a specified amount of compensation. This option provides for an alternative flexible arrangement for the two parties but **will not reduce** the employment rights and benefits of the DH as she can choose to remain in employment and continue to enjoy the maternity benefits and protection accorded by the EO.

The LAB unanimously supported proposal (a). However, in view of the objection from relevant employers' association and employees' groups to (b), Members considered that the discussion on the provision of an alternative flexible arrangement under the maternity protection provisions of the EO should be deferred, so that the Administration may collect more views on the subject.

III. A review of the provisions on sickness allowance under the Employment Ordinance

Under the EO, an employee has to take a minimum of four consecutive days of sick leave to qualify for sickness allowance at a rate of four-fifths of the normal wages. Having conducted a review, the Labour Department has recommended no change to the existing provisions.

The LAB noted the result of the review and the majority of Members accepted the recommendation of the review.

IV. A review of the lay-off provisions under the Employment Ordinance

Under the EO, where an employee's remuneration depends on the amount of work being provided by his employer, the employee is taken to be laid off if:

- (a) his employer fails to provide him with work or pay on more than half of the total number of normal working days in any period of 4 consecutive weeks; or
- (b) his employer fails to provide him with work or pay on more than one-third of the total number of normal working days in any period of 26 consecutive weeks.

Having conducted a review of the definition of lay-off, the Labour Department has recommended that the existing definition should be maintained.

The LAB noted the result of the review and accepted the recommendation of the review.

V. A review of the wage provisions under the Employment Ordinance

Under the EO, overtime pay will be taken into account for the purpose of calculating various statutory benefits if his overtime pay is of a constant character or the monthly average of his overtime pay over the preceding 12-month period is equivalent to or exceed 20% of his average monthly wages during the same period. Also, wages including overtime pay should be paid within seven days after the wage period.

The Labour Department has conducted a review of the wage provisions and has recommended preserving the status quo.

The LAB noted the result of the review and accepted the recommendation.