

LEGISLATIVE COUNCIL BRIEF

Family Status Discrimination Ordinance (FSDO)
(Cap. 527)

FAMILY STATUS DISCRIMINATION (AMENDMENT) BILL 2000

INTRODUCTION

At the meeting of the Executive Council on 1 February 2000, the Council ADVISED and the Chief Executive ORDERED that the Family Status Discrimination (Amendment) Bill 2000 (“the Bill”), at the Annex, should be introduced into the Legislative Council (“LegCo”).

BACKGROUND AND ARGUMENT

Background

2. The Family Status Discrimination Ordinance was enacted on 26 June 1997. The Ordinance prohibits discrimination against a person who has family status in certain fields of activity, including employment, education, provision of goods, facilities, services and premises, and other activities concerning advisory bodies, barristers, clubs and government. Family status

is defined as the status of having the responsibility for the care of an immediate family member. An immediate family member is anyone who is related to the person by blood, marriage, adoption or affinity, such as parent, parent-in-law, sibling, child, grandparent, grandchild, spouse, parent's sibling and his/her child.

3. Apart from their employees, it is common practice for some Hong Kong employers to extend certain employment fringe benefits, such as medical and dental benefits, to the spouse and children of their employees, even though this is not required by law. It has not been our intention that the FSDO will require employers to afford benefits to **all** immediate family members in the care of their employees if such benefits are granted. In fact, Part 2 of Schedule 2 to the Ordinance already provides for some exceptions in relation to housing, education, air-conditioning, passage or baggage benefits or allowances. However, there is a body of legal opinion which considers that according to the wording of the existing provisions of the FSDO, there is an alternative way of interpreting the Ordinance, namely, it is unlawful for an employer to restrict benefits to only some immediate family members in the care of his employees. According to this interpretation, the list of exceptions in Schedule 2 is not sufficient to cover all situations in relation to the provision of benefits and allowances. In order to comply with the FSDO, the employer has two options. The first is that he can provide the benefits to **all** the immediate family members in the care of their employees, which will be very costly and unlikely. The second is that he may withdraw all the benefits currently offered in order to avoid infringing

the FSDO, in which case the employees' family members will lose the existing benefits.

The Proposal

4. We propose to amend the FSDO to clarify that it is not unlawful for a person to afford benefits only to one or more immediate family members of his employees without affording the same to all immediate family members. To put beyond doubt that it has never been our intention to require an employer to provide benefits to every immediate family members of his employees, the amendments should be deemed to have come into operation when the Ordinance took effect, that is, 21 November 1997. The proposal will not take away any legislative protection or benefits that are currently enjoyed by the employees themselves but will remove uncertainty over the interpretation of provisions in relation to the provision of benefits to immediate family members of the employees in the FSDO. The Bill shall not affect any proceedings instituted before 1 February 2000.

THE BILL

5. Clause 1(2) of the Bill provides for the retrospective commencement of Clause 2 so that it is deemed to have come into effect on 21 November 1997.

6. Clause 2 puts in place an exception which clarifies that it is not

unlawful for a person to accord differential treatment to his employees, contract workers or commission agents in the way he affords any of their immediate family members direct or indirect access to benefits, facilities or services.

7. Clause 3 provides that the Bill shall not affect any proceedings instituted before 1 February 2000.

PUBLIC CONSULTATION

8. The Equal Opportunities Commission and the Labour Advisory Board support the proposal in principle. The Legislative Council Panel on Home Affairs has been briefed about the proposal and has not raised objection to it.

BASIC LAW IMPLICATIONS

9. On the basis of paragraph 4 above, the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

10. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

11. The proposed amendments do not have any financial and staffing implications.

LEGISLATIVE TIMETABLE

12. The legislative timetable will be as follows—

Publication in the Gazette	3 February 2000
First Reading and commencement of Second Reading debate	16 February 2000
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

13. A press release will be issued on 3 February 2000. A spokesman will be available to handle media enquiries.

ENQUIRIES

14. For enquiries, please contact Miss Helen Tang, Principal Assistant Secretary for Home Affairs (3), on 2835 1373.

Home Affairs Bureau

2 February 2000

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